REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

CTA *EB* CRIM. NO. 142
(CTA CASE NO. O-895)

Present:

RINGPIS-LIBAN, *Acting P.J.,*
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

-versus-

ENRICO CANDELARIA TUAZON, NWOOD71 MARKETING,
Respondent.

Promulgated:
NOV 05 2025 3:12 p.m.

x- -x

RESOLUTION

MANAHAN, *J.*:

For this Court's resolution is petitioner's *Motion for Reconsideration* filed on June 25, 2025 without respondent's comment, seeking the reversal of the Court *En Banc's* Decision dated June 9, 2025, denying its Petition for Review and affirming the Resolutions of the Second Division (Court in Division) dated July 31, 2023 and February 12, 2024.

Quoted hereunder is the dispositive portion of the assailed *En Banc* Decision, to wit:

> **WHEREFORE**, premises considered, the Petition for Review is **DENIED** for lack of merit.
>
> Accordingly, the Court in Division's Resolutions dated July 31, 2023 and February 12, 2024 are hereby **AFFIRMED**.
>
> **SO ORDERED.**

Petitioner's Motion for Reconsideration is anchored on the following ground, and we quote:

> The Honorable Court erred in ruling that the invalidity of the Final Assessment Notice completely negates criminal liability under Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, and consequently bars the imposition of civil liability against respondent.

Petitioner contends that the finding of the Court in Division that the absence of a due date in the Final Assessment Notice (FAN) renders the same invalid is erroneous as the Formal Letter of Demand (FLD) nevertheless reflected the due date within which payment of deficiency taxes must be paid. It asserts that the lack of a due date in the FAN is merely a clerical omission and should not bind the State in the enforcement of its public obligations, especially in a case where other documents, specifically the FLD contains the required due date for the payment of the alleged deficiency taxes.

In the alternative, petitioner maintains that a FAN is not a condition precedent to the prosecution of tax cases under Section 255 of the 1997 NIRC, as amended, especially where fraud is present. It alleges that the prosecution has established that respondent (then the accused) underdeclared his purchases by 87.81% as compared to the Summary List of Sales submitted by his suppliers which constitutes a *prima facie* evidence of fraud pursuant to Section 248(B) of the 1997 NIRC, as amended.

Petitioner cites the case of *People of the Philippines vs. Joel C. Mendez (Mendez* case*)*,[1] where it was supposedly ruled that a prior assessment is not indispensable in criminal prosecutions for tax violations. It argues that the doctrine laid out in the *Mendez* case is that willful failure to pay taxes "may still be prosecuted notwithstanding the absence or invalidity of an assessment." In the present case, petitioner claims that all the elements of the crime were shown in the prosecution's evidence.

Lastly, petitioner invokes the presumption in favor of the propriety and correctness of the assessment against

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[1] G.R. Nos. 298310-11, March 28, 2023.

respondent citing the case of *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*.[2]

Petitioner prays, among others, that the civil aspect of the assailed *En Banc* Decision be reversed and that respondent be ordered to pay the amount of Php1,065,914.48 representing deficiency income tax, exclusive of interest, surcharge and penalties.

RULING OF THE COURT

We shall first resolve the timeliness of the filing of petitioner's *Motion for Reconsideration* with the Court.

On June 9, 2025, the Court *En Banc* issued a Decision in the above-captioned case, denying petitioner's Petition for Review.

A copy of the assailed *En Banc* Decision was received by the Legal Division of the Bureau of Internal Revenue (BIR) on June 11, 2025 and by the Office of the Solicitor General (OSG) on June 13, 2025.[3]

Pursuant to Section 1 of Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA), a party dissatisfied with a decision of the Court must file a motion for reconsideration or new trial within fifteen (15) days from receipt thereof, and we quote:

> **Rule 15**
> **Motion for Reconsideration or New Trial**
>
> **Section 1.** *Who may and when to file motion.* – Any aggrieved party may seek a reconsideration or new trial of any decision , resolution or order of the Court by filing a motion for reconsideration or new trial within fifteen days from the date of receipt of notice of the decision, resolution or order of the Court in question.

Counted from counsel of petitioner's receipt of the assailed *En Banc* Decision on June 13, 2025,[4] petitioner had until June 28, 2025 to file its Motion for Reconsideration.

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[2] G.R. No. 134062, April 17, 2007.
[3] *EB* Docket, p. 42.
[4] Date of receipt by counsels of the OSG.

Records show that petitioner filed the present *Motion for Reconsideration* on June 25, 2025, hence, the instant motion was timely filed.

We now proceed to rule on the merits of petitioner's arguments.

Petitioner attempts to excuse the absence of a definite date for payment in the FAN by stating that the FLD supplants this lack by indicating the date when the taxes should be paid.

We are not convinced.

In resolving said issue, We echo the ruling of the Court in Division[5] (as affirmed by the Court *En Banc*) that the so-called "due date" in the FLD is couched in general terms and did not specify if this refers to the date for payment as this may be the due date when the FLD/FAN must be served to the taxpayer. The FAN on the other hand, contains a categorical statement when the taxes should be paid accompanied by a blank space pertaining to a definite date. Unfortunately, the FAN in the present case left this date blank. We emphasize the importance of providing for a definite date in an assessment notice as explained clearly in the case of *Commissioner of Internal Revenue vs. Fitness by Design,*[6] and we quote:

> **A final assessment is a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof**. This demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies. Thus, it must be "sent to and received by the taxpayer, and **must demand payment of the taxes described therein within a specific period**. *(Emphasis supplied)*

Without this important piece of information, the assessment/s are deemed void, hence the assailed *EB* Decision in affirming the Court in Division's Resolution, stated, thus:

> In absolving the accused of the crime charged in the present case, the Court found the Formal Letter of

[5] Court Resolution in accused's Demurrer to Evidence dated July 31, 2023.
[6] G.R. No. 215957, November 9, 2016

Demand/Final Assessment Notice (FLD/FAN) void for failure to indicate the due date for payment.

As to the alternative theory of petitioner that an assessment is not a condition to the prosecution of tax cases under Section 255 of the 1997 NIRC, as amended, this Court finds this to be a general statement that admits of exceptions in the light of the nature of the crimes enumerated under Section 255 of the 1997 NIRC, as amended.

Respondent herein is accused of violating Section 255 of the 1997 NIRC, as amended, which reads as follows:

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

In the *Mendez* case, the Supreme Court provided for the elements of the crimes punishable under said Section 255, to wit:

1. The taxpayer is required to pay any tax, make or file a return, keep any 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;
2. The taxpayer failed to do so; and
3. The act is willful.

A reading of the crimes covered by Section 255 of the 1997 NIRC, as amended, reveals that the crimes covered therein are varied and contemplate separate acts that may be used or applied to charge a taxpayer, if done intentionally or willfully, and some of these are:

a. Failure to pay tax as may be required under the Code or by rules and regulations;
b. Failure to make and file a tax return;
c. Failure to keep any record or supply correct and accurate information;
d. Failure to withhold or remit taxes withheld; and
e. Failure to refund excess taxes withheld on compensation.

In the present case, the accused is charged with willful failure to pay tax but the element of willfulness in this case stems from an alleged demand to pay in the form of a deficiency tax assessment issued by the Commissioner of Internal Revenue (CIR). In such a case, the refusal to pay the tax is a consequence of an official notice from the BIR demanding payment based on Section 6(A) of the 1997 NIRC, as amended, which is quoted in part as follows:

> Section 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.-
>
> xxx xxx xxx
>
> **The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative**. *(Emphasis supplied)*

In this type of violation based on the afore-quoted Section 6(A) of the 1997 NIRC, as amended, **a tax deficiency assessment is necessary**, otherwise the crime does not exist.

While it is an established doctrine that an assessment for deficiency taxes is not a prerequisite for the collection of the taxpayer accused's civil liability for unpaid taxes in the criminal prosecution for tax law violations,[7] this only applies if

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[7] *People of the Philippines vs. Joel C. Mendez,* G.R. Nos. 298310-11, March 28, 2023; *Adamson vs. Court of Appeals,* G.R. Nos. 120935 & 124557, May 21, 2009.

the failure to pay the tax **is not** hinged or dependent upon a demand to pay embodied in a deficiency assessment as in the present case. The variety of the crimes covered in Section 255 of the 1997 NIRC, as amended, calls for a careful discernment on when to apply the ruling enunciated in the *Mendez* case in a given set of circumstances especially on the nature of the crime charged.

Considering that the assessment in the present case is deemed extinguished or rendered void due to the absence of a definite due date for payment, the civil liability arising from said assessment is likewise extinguished.

WHEREFORE, premises considered, petitioner's *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice