REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

KATHERINE M. LIM
EDELYN CORONACION,
Accused.

CTA CRIM. CASE NO. O-113

For: *Violation of Section 255 in relation to Sections 253 (d) and 256 of the 1997 Tax Code*

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:
DEC 12 2011
9:35 a.m.

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D E C I S I O N

CASTAÑEDA, JR., ***J.:***

STATEMENT OF THE CASE

Accused Katherine M. Lim and Edelyn Coronacion are being charged, as the responsible officers of UE AUTOMOTIVE MANUFACTURING, INC., for violation of Section 255, in relation to Sections 253(d) and 256 of the National Internal Revenue Code (NIRC) of 1997, as amended.

STATEMENT OF FACTS

Plaintiff People of the Philippines is represented by complainant Bureau of Internal Revenue (BIR), the government agency primarily tasked to collect internal revenue taxes for the support of the government, with office at the BIR National Office Building, Diliman, Quezon City.[1]

Accused Katherine M. Lim and Edelyn Coronacion are the President and the Chief Accountant, respectively, of UE AUTOMOTIVE MANUFACTURING, INC. (hereafter referred to as "UEAM"), a domestic corporation engaged in the manufacture of automotive spare parts.[2]

Accused Lim and Coronacion are charged before this Court for violation of Section 255, in relation to Sections 253(d) and 256 of the NIRC of 1997, as amended, under Information filed by Assistant City Prosecutor Magnolia P. Gonzales on February 19, 2009, which reads:

> "The undersigned accuses **KATHERINE M. LIM and EDELYN CORONACION** of a Violation of **Section 255 in relation to Sec. 253 (d) and 256 of the 1997 Tax Code**, committed as follows:
>
> That on or about April 16, 2007, in the City of Manila, Philippines, the said accused, being then the authorized responsible officers/President and Chief Accountant, respectively, of **UE AUTOMATIVE MANUFACTURING, INC**. with business address located at # 1046-1050 G. Masangkay St., Binondo this City, having filed their internal revenue tax for the year 2004/2005, and after an examination and audit of the same, it has been found that there is due and collectible from said **UE AUTOMATIVE MANUFACTURING, INC**. the amount of **Php 9,864,759.57** as **Value Added Tax** for the said year, did then and there willfully, unlawfully and knowingly fail, refuse and neglect to pay said **Value Added Tax** and without formally protesting against or appealing the same despite due assessment, notice and demand to do so, to the damage and prejudice of the Republic of the Philippines in the aforesaid amount of **Php 9,864,759.57**, Philippine currency.
>
> Contract *(sic)* to law."

The facts as culled from the records are as follows:

UEAM, through its Board of Directors, decided to close and cease its operations effective January 31, 2000. Notices of the said closure were sent to Department of Labor

[1] Plaintiff's Memorandum, *rollo*, p. 742.
[2] Accused's Memorandum, *rollo*, p. 752.

and Employment (DOLE), Social Security System (SSS), Home Development Mutual Fund (Pag-Ibig), and the City Treasurer of the City of Caloocan.[3]

In a letter[4] dated March 2, 2006, UEAM informed the BIR, through the Revenue District Officer of Revenue Region No. 6, that it has decided to permanently close and cease operations effective September 2005.

Consequently, a Tax Verification Notice[5] was issued by the BIR authorizing its Revenue Officer, Arnold Apdua, to verify UEAM's supporting documents and pertinent records relative to the latter's closure of business. The verification prompted the issuance of the assessment[6] for alleged value-added tax (VAT) deficiency of UEAM in the aggregate amount of P9,835,759.57, which in turn, led to the filing of the instant case on February 19, 2009, against accused, as the alleged responsible officers of UEAM.

Accused Katherine M. Lim and Edelyn Coronacion pleaded "not guilty" during their arraignment respectively held on April 13, 2009 and May 18, 2009.

Trial ensued and the prosecution presented in evidence Exhibits "A" to "CC", and in a Resolution[7] dated January 13, 2010, Exhibits "I-2" and "V" to "V-5" were denied but the following pieces of evidence were admitted:

Exhibit	Document
"A" to "A-2"	UEAM's Annual Income Tax Return for taxable year 2003
"B"	UEAM's Financial Statements for taxable year 2004
"C" to "C-2"	UEAM's General Information Sheet filed with the Securities and Exchange Commission (SEC)
"D"	UEAM's letter to the BIR dated March 2, 2006
"E" to "E-4"	Tax Verification Notice No. 2003 00009851 dated April 10, 2006
"F" to "F-3"	BIR's Request for Presentation of Records dated April 18, 2006
"G" to "G-4"	BIR's Informal Conference Letter dated June 30, 2006 together with the computation of proposed VAT assessment of P7,934,212.08
"H" to "H-7"	Revenue Officer's Audit Report on VAT relative to the audit of UEAM for taxable years 2004-2005

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[3] Admitted Facts, Pre-Trial Order, *rollo*, p. 141.
[4] Exhibits "D" and "12".
[5] Exhibit "E".
[6] Exhibit "O".
[7] *Rollo*, pp. 427-428.

"I"	Proposed VAT Assessment Form of RDO No. 30, BIR-Manila containing the amount of P7,954,212.08
"J"	Memorandum Report dated July 21, 2006 of Revenue Officer Arnold Apdua of RDO No. 30, BIR-Manila with Indorsement of then RDO Rosemarie Ramos-Ragasa to the Regional Director of BIR-Manila
"K"	Assignment Slip of Assessment Division, BIR-Manila
"L" to "L-3"	Pre-Assessment Notice dated February 5, 2007 issued by the BIR against UEAM for deficiency VAT of P7,946,150.88 for taxable years 2004-2005
"M"	Demand Letter dated March 14, 2007 issued by the Commissioner of Internal Revenue to UEAM for compromise penalty on VAT amounting to P25,000.00 covering taxable years 2004/2005
"N" to "N-3"	Demand Letter dated March 14, 2007 issued by the Commissioner of Internal Revenue to UEAM for deficiency VAT liability amounting to P9,835,759.57 covering taxable years 2004-2005
"O" to "O5"	Final Assessment Notice No. 30-2004/2005 dated March 14, 2007 issued by the Commissioner of Internal Revenue, through the Regional Director, to UEAM as deficiency VAT liability amounting to P9,835,759.57 covering taxable years 2004-2005
"P" to "P-3"	Transmittal Slip of Assessment Notice and Demand Letters for UEAM covering the deficiency VAT assessment of P9,835,759.57 under Final Assessment Notice No. 30-2004/2005 with the Registry Receipt No. 907461 dated March 14, 2007
"Q"	Registry Return Receipt of UEAM relative to mailed matter under Registry Receipt No. 907461 dated March 14, 2007
"R" to "R-3"	Final Notice Before Seizure dated July 24, 2007
"S" to "S-4"	Referral Memorandum dated July 24, 2007
"T" to "T-7"	Warrant of Distraint and/or Levy dated August 13, 2007
"U" to "U-2"	Memorandum Report dated October 19, 2007
"W" to "W-1"	Indorsement dated October 19, 2007
"X"	Judicial Affidavit of Arnold Apdua
"Y"	Judicial Affidavit of Ma. Paz Arcilla
"Z"	Judicial Affidavit of Candida E. Labaya
"AA"	Judicial Affidavit of Edna Ortalla
"BB"	Judicial Affidavit of Teresita Maglunog
"CC"	Judicial Affidavit of Agnes Salta

The prosecution also presented the testimonies of the following witnesses:

1. Revenue Officer Arnold A. Apdua, who was the Revenue Officer tasked to investigate UEAM's books and records pursuant to a Tax Verification Notice;

2. Ms. Paz Arcilla, Section Chief of the Billing Section of the Assessment Division of BIR-Manila;

3. Ms. Candida E. Labaya, then the Revenue Reviewer assigned at the Assessment Division of the BIR, Revenue Region No. 6, Manila;
4. Ms. Edna Ortalla, Section Chief of the Review Section of the Assessment Division of the BIR, Revenue Region No. 6, Manila;
5. Ms. Teresita Maglunog, then the Section Chief of the Records Section, Administrative Division, BIR-Manila;
6. Mr. Armando C. Makatangay, Mailing Custodian of the Administrative Division of Revenue Region No. 6, BIR-Manila; and
7. Ms. Agnes Salta, then the Collection Enforcement Officer assigned at the Collection Unit of RDO No. 30, BIR-Manila.

On other hand, after being allowed by this Court,[8] accused Lim and Coronacion filed their Demurrer to Evidence[9] on March 18, 2010, praying for the dismissal of the instant case on the ground of insufficiency of evidence to prove their guilt.

In a Resolution[10] dated July 7, 2010, the said Demurrer was denied for lack of merit. Accused then filed a Motion for Reconsideration[11] of the denial, but the same was also denied in a Resolution[12] promulgated on October 14, 2010.

Consequently, both accused testified and filed their Formal Offer of Exhibits[13] on July 7, 2011. They presented in evidence Exhibits "1" to "14". Exhibits "1" to "5" were denied admission in a Resolution[14] dated August 16, 2011. The admitted pieces of evidence for the accused are as follows:

Exhibit	Document
"6" to "6-H"	Decision dated September 29, 2000 rendered by Labor Arbiter Manuel R. Caday of the National Labor Relations Commission (NLRC)

[8] Resolution dated March 3, 2010, *rollo*, pp. 460-461.
[9] *Rollo*, pp. 463-482.
[10] *Rollo*, pp. 484-496.
[11] *Rollo*, pp. 497-506.
[12] *Rollo*, pp. 535-538.
[13] *Rollo*, pp. 727-733.
[14] *Rollo*, pp. 738-739.

"7" to "7-Z"	Decision dated April 17, 2001 rendered by Labor Arbiter Manuel R. Caday of the NLRC
"8" to "8-TTT"	Notice of Levy/Sale on Execution of Personal Property dated September 4, 2002 issued by NLRC Sheriff Manolito G. Manuel
"9" to "9-F"	NLRC Sheriff's Return dated January 30, 2003
"10" to "10-A"	NLRC Sheriff's Certificate of Sale dated January 27, 2003
"11" to "11-F"	Certificate of Sale dated January 12, 1999
"12"	Letter dated March 2, 2006 sent to the BIR
"13"	Judicial Affidavit of accused Edelyn Coronacion dated January 12, 2011
"14"	Judicial Affidavit of accused Katherine M. Lim dated June 23, 2011

On September 19, 2011, the prosecution filed its Memorandum interposing the following contentions:

> "The criminal liability of the two accused as the prime statutory responsible officers of UEAMI, they being the President and Chief Accountant, is direct, distinct and separate from the corporation, hence, the corporate act of non-payment of its VAT liability for taxable years 2004/2005 despite repeated demands, made the two accused liable under Sections 255 & 253(d) of the 1997 Tax Code. The two accused cannot escape the legal consequences of their being responsible officers of UEAMI. The accused contention that demand letters were not personally addressed to them is inconsequential.
>
> Under Section 253(d), it is not required that the demand for payment of VAT liability be served personally to the two accused, before said accused as the President and Chief Accountant of UEAMI, be criminally liable for UEAMI's violation of Section 255 of the 1997 Tax Code. Service to UEAMI is equivalent to service to its responsible officers, specifically to both accused as President and Chief Accountant thereof. The sending of demand letters to UEAMI and the latter's willful failure to pay its VAT liability for taxable years 2004/2005 despite said demands is sufficient to establish the criminal liability of the accused as responsible officers of UEAMI, which the prosecution has clearly established during trial.
>
> The fact that the demands for payment for taxes such as the Final Notice Before Seizure, and the Warrant of Distraint and/or Levy (Exhibits 'R' and 'T' respectively) were addressed to UEAMI and not to the two accused in this case, is not a valid ground to exclude the two accused for violation of Section 255, considering that two accused, being the President and Chief Accountant of UEAMI, are the prime responsible officers statutorily liable for UEAMI's willful non-payment of its VAT liability for taxable years 2004/2005.
>
> xxx xxx xxx

> Plaintiff maintains that UEAMI shall be liable to pay the BIR of its deficiency VAT of P7,946,150.88 for taxable years 2004/2005. The charge against the accused for willful non-payment of the aforesaid tax liabilities of UEAMI despite repeated demand was duly established during proceedings. xxx.
>
> The prosecution satisfactorily established the three (3) essential elements of the offense under Section 255 of the NIRC of 1997, namely:
>
> > (1) The accused is the responsible person required by law to pay said P7,946,150.88 for and on behalf of UEAMI;
> >
> > (2) That the deficiency taxes were not paid at the time required by law, that is, when the same have become collectible because UEAMI failed to protest the assessments;
> >
> > (3) That the non-payment was willful due to continual refusal to pay despite repeated demands.
>
> xxx xxx xxx
>
> All presumptions are in favor of the correctness of the assessment made by the Commissioner of Internal Revenue; the taxpayer must prove the contrary xxx.
>
> Plaintiff maintains that the deficiency VAT assessment of P7,946,150.88 was based on factual findings of revenue officers of BIR-Manila which was never disputed by the corporate taxpayer UEAMI, hence, said assessment has become final, demandable and executory."

In their Memorandum filed on September 23, 2011, the accused asserted that proper service and issuance of both the PAN and FAN are mandatory. Both accused consistently denied having received the PAN and FAN. Hence, the prosecution has the burden to prove the fact of sending the PAN and FAN at the correct address and the actual receipt thereof.

The accused further argued that UEAM could not be held liable for deficiency VAT since its real and personal properties had already been foreclosed prior to 2004-2005. During said period, UEAM no longer had any assets nor were there any commercial transactions which could have been subject to VAT. The prosecution's witness confirmed that no commercial transaction occurred in the covered periods of 2004-2005 and that its assets were already foreclosed.

The accused alleged that it was in 2003 when there was an actual sale, which was the levy and public auction of all remaining personal properties owned by UEAM. The same holds true for the foreclosure of UEAM's real property by Metrobank in 1999. Said sales were held to satisfy UEAM's debt and not made in the "course of trade or business" which may be considered transactions deemed sale. Thus, the failure to protest the assessment does not make the accused criminally liable since there was actually no deficiency VAT due.

Even assuming that both accused were validly served with the PAN/FAN and that there was a valid deficiency VAT assessment for 2004-2005, nevertheless accused would assert that they did not "willfully" fail to pay the tax because UEAM was financially incapable to do so. There was no malice because no money or assets were left for payment of the supposed deficiency VAT.

Lastly, since accused supposedly never received any of the assessment notices, no willfulness could be attributed as such and in fact they were not even aware of the legal and factual bases of the tax assessment.

On September 29, 2011, the case was considered submitted for decision after the parties submitted their memoranda.

STATEMENT OF ISSUES

During the preliminary conference held on June 1, 2009, the parties stipulated on the following issues for this Court's resolution:

"A. Factual Issues

1. Whether or not there was deficiency Valued Added Tax ('VAT') incurred by UEAMI for taxable year 2004-2005. ℛ

2. Whether UEAMI received copies of the Preliminary and Final Assessments.

3. Whether both accused received copies of the Preliminary and Final Assessments.

4. Whether or not accused, Katherine M. Lim, as the President, and Edelyn Coronacion, as Chief Accountant, respectively, of UE AUTOMOTIVE MANUFACTURING, INC., knowingly and willfully failed to pay the alleged deficiency VAT of P9,864,759.57 for taxable year 2004/2005 pursuant to Section 255 in relation to Sections 253 (d) and 256 of the 1997 Tax Code.

B. Legal Issues:

1. Whether or not the deficiency VAT assessment issued by the BIR to UE AUTOMOTIVE MANUFACTURING, INC. has become final, demandable and executory.

2. Whether or not the *mens rea* requirement of 'willfully' in Section 254 of the National Internal Revenue Code ('NIRC') of 1977 requires that the Preliminary and Final Assessments be served upon the accused in order to personally apprise the accused of the existence of the deficiency VAT and thus be able to charge the accused of having 'willfully' failed to pay the deficiency VAT.

3. Whether or not service of the Preliminary and Final Assessments on the corporate taxpayer is considered as valid service on all corporate officers.

4. Assuming there was valid service of the Preliminary and Final Assessments, whether or not good faith on the part of the accused is a valid defense against the requirement of the 'willful failure to pay' the deficiency VAT under Section 254 of the NIRC."

The pivotal issue here is whether or not accused Katherine M. Lim and Edelyn Coronacion are liable for violation of Section 255 in relation to Sections 253(d) and 256 of the NIRC of 1997, as amended.

THIS COURT'S RULING

The relevant penal provisions of the NIRC of 1997, as amended, are Section 255, Section 253(d) and Section 256. Section 255 provides as follows:

"SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes* Jr

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

xxx xxx xxx." (*Emphasis supplied*)

On the other hand, Sections 253(d) and 256 read:

"SEC. 253. *General Provisions.* —

xxx xxx xxx

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

"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)."

The law is clear. The prosecution must prove beyond reasonable doubt the following three (3) essential elements before a taxpayer can be held liable under Section 255:

1. the accused is a person required to pay tax;
2. the accused failed to pay such tax at the time required by law; and
3. the failure to pay such tax was willful.

If the taxpayer is a corporation, Section 256 imposes the penal liability upon the corporate taxpayer's responsible officers enumerated in Section 253.

This Court will discuss the elements *in seriatim*.

THE ACCUSED IS A PERSON REQUIRED TO PAY TAX

The instant criminal case is rooted upon the purported failure of UEAM to pay the VAT due on an alleged "transaction deemed sale", in accordance with Section 106(B)(4) of the NIRC of 1997, as amended, for taxable years 2004-2005.

UEAM being a corporate taxpayer, it follows that the penal liability for its alleged violation is pinned upon its responsible officers. And accused Katherine M. Lim and Edelyn Coronacion are charged as the responsible officers of UEAM.

In a Resolution dated July 7, 2010, where accused's Demurrer to Evidence was denied, this Court put to rest the issue of whether accused Lim and Coronacion are the proper responsible officers in the instant case. Relevant portions of the Resolution read:

> "Based on the foregoing, this Court finds that accused Lim as the President and accused Coronacion as the Chief Accountant of UEAMI for taxable years 2004 and 2005 are responsible officers of UEAMI because their positions have something to do with the power and responsibility related to the finances of the corporation especially in ensuring that correct taxes are paid to the government. It is noted that the accused Lim and Coronacion never objected that they are responsible officers of UEAMI, accused Lim as the President and accused Coronacion as the Chief Accountant of UEAMI. Moreover, the names of the accused appear on the last page of the income tax return of UEAMI for taxable year 2003 as the signatories thereof. In addition, the General Information Sheet which was filed to the Securities and Exchange Commission (SEC) on 2005 proves that accused Lim was then the President of UEAMI. Lastly, it was accused Coronacion, as Chief Accountant of UEAMI, who submitted accounting documents in response to the BIR's Request Letter."

Therefore, what is left for determination is whether UEAM has obligation to pay the alleged VAT deficiency.

A perusal of the records shows that the BIR issued the assessment for VAT deficiency after Revenue Officer Apdua considered UEAM's assets, reported in its Audited Financial Statements for the year ending December 31, 2004, as remaining taxable inventories taxable as "transaction deemed sale" in accordance with Section

106(B)(4) of the NIRC of 1997, as amended, or in the alternative, Section 106(B)(2)(b) of the same Code.

The testimony of Revenue Officer Apdua during his re-direct examination on September 2, 2009, gives light on the matter, to wit:

"ATTY. CACATIAN

Q. Will you please tell before this Court how did you compute that alleged deficiency VAT assessment?

MR. APDUA

A. I made an **assessment on the assets of the subject taxpayer based on a transaction deemed sale**. Since it is in the National Internal Revenue Code that transaction deemed sale will include inventories prior to the whole term of the business. However, **I recognized also that it was stated in the notes of the Financial Statement that it is being foreclosed by the Metrobank and Trust Company**. As we all know, in Section 106 of the National Internal Revenue Code, there are different modes of transaction deemed sale which include: first, is the inventories prior to the closure of the business. However, it also includes those which are in payment of creditors which is also considered as transaction deemed sale. **I have relied on the Financial Statement which states that it is still an asset on the part of the subject taxpayer. If it should have been foreclosed by the Metropolitan Bank and Trust Company, it should have already been deleted from the assets of the company. However, if it is still existing, therefore, based on the adaptation of the Chief Accountant and the President, it still form part of the assets. However, if you will consider it already as a foreclosure, and therefore, a payment on the part of the subject taxpayer to the creditor, Metropolitan Bank and Trust Company, it will still fall under the provision of the National Internal Revenue Code, as transaction deemed sale since it will be considered as payment in satisfaction of debt**."[15] (*Emphasis supplied*)

Indeed, the Preliminary Assessment Notice[16] dated February 5, 2007 and the Demand Letter[17] dated March 14, 2007 show that the assessment for deficiency VAT was based on a "transaction deemed sale" in the amount of P66,476,886.31:

Transaction Deemed Sale	P66,476,886.31
Output Tax Due per Audit	P 6,647,688.63

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[15] TSN, September 2, 2009, pp. 13-15.
[16] Exhibit "L".
[17] Exhibit "N".

Less: Input tax	780,152.07
VAT Payable	5,867,536.56
Less: VAT Payment	-
Deficiency Value-added Tax	**P 5,867,536.56**

Undisputedly, UEAM decided to close its operations effective January 31, 2000. It even sent letters to government agencies like SSS, Pag-Ibig, DOLE, and the City Treasurer of Caloocan City notifying them of its closure.[18]

Section 106(B)(4) of the NIRC of 1997, as amended, clearly provides that cessation of business is considered under the law as "transaction deemed sale" and any remaining inventories at that time shall be subject to VAT, to wit:

> "SEC. 106. *Value-added Tax on Sale of Goods or Properties.* –
>
> xxx xxx xxx
>
> (B) *Transactions Deemed Sale.* – The following transactions shall be deemed sale:
>
> xxx xxx xxx
>
> (4) Retirement from or cessation of business, with respect to inventories of taxable goods existing as of such retirement or cessation."

However, accused Lim and Coronacion deny the existence of UEAM's inventories that may be subjected to VAT. Their defense hinges on the foreclosure of UEAM's real properties in favor of its creditor and the sale in public auction of its personal properties.

Hardly controvertible is the fact that UEAM's land together with all the buildings and improvements at 28-30 Gen. Mascardo St., Balintawak, Caloocan City, where its manufacturing plant was located, was foreclosed and sold at public auction by UEAM's creditor, Metropolitan Bank and Trust Company (hereafter referred to as "Metrobank"),

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[18] *Supra,* note 3.

in 1999. A Certificate of Sale[19] dated January 12, 1999 was executed in favor of Metrobank over the said real property.

Similarly undisputed is the fact that in a labor case filed by UEAM's employees who were affected by the cessation of its business operations, the National Labor Relations Commission (NLRC) rendered a decision in favor of its employees and ordered UEAM to pay its employees separation pay and attorney's fees. In the implementation of said decision, personal properties of UEAM, including its raw materials and finished products were levied and sold at a public auction on January 27, 2003.[20]

Be that as it may, it is worth stressing that closure of a business and/or cessation of one's business operations would not automatically imply or result in the absence of inventories or properties, which may be subjected to VAT under Section 106 of the NIRC of 1997, as amended. This is primarily the reason why the NIRC of 1997, as amended, considered "retirement of business" relative to the "inventories of taxable goods existing as of such retirement or cessation" as "transaction deemed sale" subject to VAT, because the law contemplates the eventual sale and disposal by the taxpayer of its remaining taxable goods.

In the same vein, the foreclosure and public sale of one's properties do not necessarily mean non-existence of taxable goods in the absence of proof to the contrary.

Accused Coronacion and Lim may have proven the foreclosure and disposal of UEAM's properties in 1999 and 2003, but they failed to present ample evidence showing that UEAM has no existing inventories.

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[19] Exhibit "11".
[20] Pars. 5-7, Admitted Facts, Pre-trial Order, *rollo*, p. 141.

Contrariwise, UEAM's Audited Financial Statements[21] for the year ending December 31, 2004, which were filed with the BIR, belie the allegations of the accused.

The said Financial Statements clearly confirm that UEAM still reported "Inventories" in the amount of P34,672,119.31 and Property, Plant and Equipment in the amount of P31,804,767.00 as follows:

Inventories	P34,672,119.31
Property, Plant and Equipment	P31,804,767.00
Total	**P66,476,886.31**

Financial Statements (which include balance sheet, income statement, and statement of cash flow) show the fiscal condition of a particular entity within a specified period. The financial statements prepared by external auditors who are certified public accountants are audited financial statements.[22] They are certified under the auditors' professional oath.

Thus, the Court considers the credibility of the said Financial Statements, bearing in mind that they were filed with the BIR and the data therein are assured by a Certified Public Accountant, who prepared the same, under pain of perjury.

Furthermore, accused Lim and Coronacion never assailed nor questioned the data in the said Financial Statements. Except for the Certificates of Sale[23] showing the disposal of UEAM's real and personal properties in 1999 and 2003, both accused failed to disprove the truthfulness of the Financial Statements.

In addition, accused Coronacion testified during her direct examination that the remaining inventories of UEAM were disposed in 2003 in favor of UEAM's erring employees. Yet, UEAM still reported inventories and properties in its 2004 Financial

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[21] Exhibit "B".
[22] *Salas vs. Sta. Mesa Market Corporation, et al.*, G.R. No. 157766, July 12, 2007, 527 SCRA 465.
[23] Exhibits "10" and "11".

Statements. Nothing was given by the accused to explain such apparent inconsistency.

The following are the excerpts of accused Coronacion's testimony:

> "ATTY. ALCANTARA:
>
> Q. And Ms. Witness, how much was UE Automotive Manufacturing Incorporated's made to pay the complaining employees?
>
> MS. CORONACION:
>
> A. Succeeding Orders was executed by the National Labor Relations Commission headed by Arbiter Mr. Manuel Caday that UE Automotive Manufacturing Incorporated must to *(sic)* pay the amount of PhP 48 million.
>
> xxx xxx xxx
>
> ATTY. ALCANTARA:
>
> Q. What happened next after UE Automotive Manufacturing Incorporated was made to pay this Php 48,845,000.31?
>
> MS. CORONACION:
>
> A. UE Automotive Manufacturing Incorporated wasn't able to pay because the manufacturing plant or the real property was already foreclosed by Metro Bank. So, the National Labor Relations Commission Arbiter was able to foreclose and sold the remaining inventories such as personal properties of UE Automotive Manufacturing Incorporated."[24]

The probative weight of any piece of evidence must be evaluated not in isolation but in conjunction with the other evidence,[25] and if all the evidence presented by both parties support a party's claim; then, a favorable judgment will be rendered in favor of such party.

It is evident from the pieces of evidence submitted by the parties and perusal of the records that the BIR aptly assessed UEAM for VAT deficiency.

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[24] TSN, March 14, 2011, pp. 29-31.
[25] *Donato C. Cruz Trading Corp. vs. Court of Appeals*, G.R. No. 129189, December 5, 2000, 347 SCRA 13.

THE ACCUSED FAILED TO PAY SUCH TAX AT THE TIME REQUIRED BY LAW

As discussed above, the prosecution has adequately established through UEAM's Financial Statements, Assessment Notice, Demand Letters and supporting documents that there is deficiency VAT and that the accused failed to sufficiently refute it.

Here, accused Lim and Coronacion never disputed UEAM's failure to pay on time the assessment for VAT deficiency. What they questioned was the propriety of paying such deficiency.

First, accused Coronacion testified that there is no basis for the assessment because UEAM has no more properties prior to 2004 and 2005 and there were neither assets nor commercial transactions that could be subjected to tax.[26]

Second, accused Lim and Coronacion contended that they have no knowledge of the assessment, the same being made known to them only when they were criminally charged and even assuming UEAM is liable to pay the deficiency, it was financially incapable to do so.[27]

PROSECUTION FAILED TO PROVE THAT FAILURE TO PAY WAS WILLFUL

The term "willfully" generally connotes a voluntary, intentional violation of a known legal duty.[28] Willfulness involves the mental state of the offender and therefore the Court must examine all the facts of the case in order to determine whether willfulness exists.[29] *Jr*

[26] TSN, March 14, 2011, p. 34 and Exhibit "13".
[27] Exhibits "13" and "14".
[28] Mertens Law of Federal Income Taxation, Volume 15, 1988 Ed., Chapter 55A, p. 76.
[29] *Ibid*, p. 75.

An act or omission is "willfully" done if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law. A willful act may be described as one done intentionally, knowingly, and purposely, without justifiable excuse.[30]

The crime of failure to pay tax under Section 255 is defined by the element of "willfulness" of not paying the tax, which in turn, requires the showing of "knowledge" and "voluntariness". Simply stated, the offender is aware or knows the existence of and obligation to pay a tax liability but voluntarily and intentionally failed to pay it.

In the instant case, UEAM is a corporate taxpayer and it is noteworthy that corporations incur no criminal liability for the same is personal upon its officers. This is so because of the difficulty, if not impossibility, of imposing the penal sanction, *i.e.*, imprisonment, to a being that has no corporal existence, and which cannot therefore be thrown in jail. Also, a crime cannot be imputed to a corporation, being a mere artificial being without a mind, since the criminal intent as an essential ingredient of a crime would be missing.[31] The NIRC affirms the impossibility of lodging criminal sanctions upon a corporate entity; thus, it is the corporate officers who are made criminally liable.

Accordingly, it becomes imperative upon the prosecution to prove accused Lim's and Coronacion's knowledge or awareness of UEAM's tax liability and their intention to evade such tax liability.

Here, the proofs adduced by accused Lim and Coronacion are all related to their lack of willfulness on UEAM's default, principally due to want of knowledge of an existing tax deficiency and in case there is, their incapacity to pay the deficiency. Jc

[30] Black's Law dictionary, 6th Ed., p. 1599.
[31] Philippine Corporate Law, Villanueva, 2001 Ed., p. 40.

The prosecution claims otherwise and proceeds to convince this Court that accused had been notified of UEAM's liability through the issuance of several notices. The prosecution presented Preliminary Assessment Notice[32] dated February 5, 2007, which it claimed to have been sent to UEAM; Demand Letter dated March 14, 2007[33] for compromise penalty on VAT; Demand Letter dated March 14, 2007[34] for the VAT liability; and Final Assessment Notice dated March 14, 2007[35] for the deficiency VAT liability.

To substantiate its claim that the Preliminary Assessment Notice, the Assessment Notice dated March 14, 2007, and the Demand Letters were sent, the prosecution presented the following:

a. Judicial Affidavit[36] and testimony of Ms. Teresita Maglunog, where it was stated that the aforesaid PAN was in the List of PAN forwarded by the Assessment Division of the BIR for mailing and which she instructed to be hand delivered to the post office for mailing through registered mail; and that she likewise checked the Assessment Notice dated March 14, 2007 and the Demand Letters, and instructed her subordinates to deliver them to the post office for mailing by registered mail;

b. Transmittal Slip of the Assessment Notice dated March 14, 2007 and Demand Letters all dated March 14, 2007;[37]

c. Registry Receipt No. 907461 dated March 14, 2007[38] for the mailing of the FAN and Demand Letters;

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[32] Exhibit "L".
[33] Exhibit "M".
[34] Exhibit "N".
[35] Exhibit "O".
[36] Exhibit "BB".
[37] Exhibit "P".
[38] Exhibit "P-3".

d. Registry Return Receipt with the handprinted name of a certain Lourdes Lisandra and her signature above the caption "Signature or name of addressee";[39] and

e. Testimony of Mr. Armando Macatangay who claimed to have mailed the PAN, Assessment Notice dated March 14, 2007, and Demand Letters through registered mail.

After a scrutiny of the parties' allegations and pieces of evidence, this Court finds the prosecution's assertions untenable.

Pertinent to this case is the Supreme Court case of ***Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,***[40] wherein the assessment was declared void for failure to prove that the PAN was received by petitioner. We quote pertinent portion of the said case, as follows:

> On the matter of service of a tax assessment, a further perusal of our ruling in *Barcelon* is instructive, *viz*:
>
> > Jurisprudence is replete with cases holding that **if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The *onus probandi* was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail.** The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee (Republic vs. Court of Appeals, 149 SCRA 351). xxx xxx xxx.
>
> The Court agrees with the CTA that the CIR failed to discharge its duty and present any evidence to show that Metro Star indeed received the PAN dated January 16, 2002. It could have simply presented the registry receipt or the certification from the postmaster that it mailed the ge

[39] Exhibit "Q".
[40] G.R. No. 185371, December 8, 2010, 637 SCRA 633.

> PAN, but failed. Neither did it offer any explanation on why it failed to comply with the requirement of service of the PAN. xxx xxx xxx.
>
> From the provision quoted above, it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the "due process requirement in the issuance of a deficiency tax assessment," the absence of which renders nugatory any assessment made by the tax authorities. The use of the word "*shall*" in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process. Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void."*(Citation Omitted; Underline Supplied).*

Based on the foregoing case, due process requires that the receipt of the PAN be proven by the prosecution. It is noteworthy to mention that accused Lim and Coronacion denied having received the PAN.

In civil cases, service made through registered mail is proved by the registry receipt issued by the mailing office and an affidavit of the person mailing of facts showing compliance with Section 7 of Rule 13 (in relation to Section 13 of Rule 13 of the 1997 Rules of Civil Procedure).[41] Then there is more reason to require the prosecution, the instant case being a criminal case, to show the registry receipt issued by the mailing office and the affidavit of the person who mailed the matter.

After re-scrutiny of the evidence for the prosecution, it was established that the prosecution failed to show that the PAN was indeed received by the accused. The prosecution failed to show the registry receipt and relied mainly on Mr. Macatangay's testimony for support. Moreover, Ms. Maglunog admitted, during her testimony on October 14, 2009, that there was no proof that the PAN was actually received. Rather,

[41] *Ting and Chan-Azajar vs. Court of Appeals, et al.*, G.R. No. 140665, November 13, 2000, 344 SCRA 551.

it was presumed to have been received by UEAM when the said PAN was not returned to the BIR's Administrative Office.[42]

With respect to the Assessment Notice dated March 14, 2007 and the Demand Letters, the prosecution was able to present the testimony of the person who supposedly mailed them and the corresponding registry receipt. Nonetheless, it is equally important for the prosecution to demonstrate that said Assessment Notice and Demand Letters were actually received by both accused. Again, the prosecution failed to prove that accused or their duly authorized representatives received the BIR's notices.

For notice by mail, it must appear that the same was served on the addressee or a duly authorized agent of the addressee. In fact, the registry return receipt itself provides that "[a] registered article must not be delivered to anyone but the addressee, or upon the addressee's written order, in which case the authorized agent must write the addressee's name on the proper space and then affix legibly his own signature below it."[43]

The registry return receipt[44] was signed by a certain person named Lourdes Lisandra, claimed by the prosecution as the representative of UEAM. However, the prosecution never made an effort to demonstrate that Lourdes Lisandra was truly the agent of accused Lim and Coronacion, which is a critical issue herein considering that both accused denied the receipt of the said notices and denied knowing Lourdes Lisandra.

The rule is that receipts for registered letters and return receipts do not prove themselves; they must be properly authenticated in order to serve as proof of receipt of the letter.[45] At most, registry receipts show that it was possible for UEAM and/or a

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[42] TSN, October 14, 2009, pp. 14-15.
[43] *Ting and Chan-Azajar vs. Court of Appeals, et al., supra.*
[44] Exhibit "Q".
[45] *Martin Del Rosario vs. Judge Eranio G. Cedillo,* A.M. No. MTJ-04-1557, October 21, 2004, 441 SCRA 70.

certain person to have received the notices. Possibilities, however, cannot replace proof beyond reasonable doubt.

Moreover, this Court cannot agree with the prosecution's theory that notice to UEAM is notice to accused. Applying by analogy the ruling of the Supreme Court in *Lao vs. Court of Appeals, et al.,*[46] the Highest Tribunal held that in criminal prosecution for violation of Batas Pambansa (BP) Blg. 22, constructive notice to the corporation is not enough and notice to the corporation does not constitute notice upon its criminally charged officers. The relevant portions of the said decision read:

> "In this light, the postulate of Respondent Court of Appeals that '(d)emand on the Corporation constitutes demand on appellant (herein petitioner)', is erroneous. **Premiere has no obligation to forward the notice addressed to it to the employee concerned, especially because the corporation itself incurs no criminal liability under B.P. Blg. 22** for the issuance of a bouncing check. **Responsibility under B.P. Blg. 22 is personal to the accused; hence, personal knowledge of the notice of dishonor is necessary. Consequently, constructive notice to the corporation is not enough to satisfy due process. Moreover, it is petitioner, as an officer of the corporation, who is the latter's agent for purposes of receiving notices and other documents, and not the other way around. It is but axiomatic that notice to the corporation, which has a personality distinct and separate from the petitioner, does not constitute notice to the latter.**" (*Emphasis supplied*)

In criminal cases, the burden is on the prosecution to prove, beyond reasonable doubt, the essential elements of the offense with which the accused is charged; and if the proof fails to establish any of the essential elements necessary to constitute a crime, the accused are entitled to an acquittal. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding the possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. At best, the evidence proffered by the prosecution only goes so far as to create a suspicion that accused probably perpetrated the crime charged. But

[46] G.R. No. 119178, June 20, 1997, 274 SCRA 572.

suspicion alone is insufficient, the required quantum of evidence being proof beyond reasonable doubt. When the People's evidence fail to indubitably prove the accused's authorship of the crime of which they stand accused; then, it is the Court's duty, and the right of the accused, to proclaim their innocence. Acquittal, therefore, is in order. [47]

As to the civil aspect of this case, the same is deemed instituted herewith pursuant to Section 7(b)(1) of Republic Act No. 9282, which provides that "criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of a criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized."

Considering that the prosecution failed to prove that the PAN was received by the accused, the assessment made by the CIR is void. It is well-settled that a void assessment bears no fruit.[48] Thus, no civil liability arises in this case.

WHEREFORE, premises considered, accused Coronacion and Lim are hereby ACQUITTED for failure of the prosecution to establish the guilt of both Accused beyond reasonable doubt and without civil liability.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[47] *Darvin vs. Court of Appeals, et al.*, G.R. No. 125044, July 13, 1998, 292 SCRA 534.
[48] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc., supra*, citing the case of *Commissioner of Internal Revenue vs. Azucena T. Reyes*, G.R.No. 159694 & G.R. No. 163581, January 27, 2006, 480 SCRA 382.

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

ATTESTATION

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice