REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

MASTER SPEED SHOE BAGS ENTERPRISES and RITO ALAYON JARDELIZA,
Accused.

CTA Crim. Case No. O-897

For: Violation of Section 255 of the NIRC of 1997, as amended.

Members:

UY, *Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:

MAR 3 1 2023

9:05 a.m.

x - x

RESOLUTION

UY, J.:

For Resolution is accused's ***Demurrer to Evidence***[1] filed on December 14, 2022, without comment from the prosecution, despite due notice.[2]

Accused Rito Alayon Jardeliza, proprietor of Master Speed Shoe Bags Enterprises, is charged in the Information[3] dated January 10, 2020, docketed as CTA Criminal Case No. O-897, for violation of Section 255 of the NIRC of 1997, as amended, allegedly committed as follows:

> "That on or about January 7, 2019 and thereafter, in Pasig City and within the jurisdiction of this Honorable Court, the accused MASTER SPEED SHOE AND BAGS ENTERPRISES, a domestic business entity and accused RITO ALAYON JARDELIZA, being the proprietor thereof,

[1] Docket, pp. 335 to 361.
[2] Docket, pp. 362 to 364.
[3] Docket, pp. 5 to 8.

> required by law to file income tax return and to pay the corresponding tax, did then and there willfully, unlawfully and feloniously fail to pay the deficiency income tax (IT) for the taxable year 2012 in the amount of Two Million Five Hundred Ninety Six Thousand Pesos (₱2,596,000.00), exclusive of surcharges and interests, despite due notices and demands to pay, the latest being in the nature of Demand Before Suit issued by the Bureau of Internal Revenue on January 7, 2019, to the damage and prejudice of the government.
>
> CONTRARY TO LAW."[4]

On July 23, 2021, this Court issued a Resolution,[5] finding the existence of probable cause for the issuance of a warrant of arrest against accused Jardeliza, for willful failure to pay tax under Section 255 of the NIRC of 1997, as amended. Pursuant thereto, a Warrant of Arrest[6] was issued on September 29, 2021, and the bail for the provisional liberty of the accused was fixed at ₱60,000.00.

On December 3, 2021, Floria Dominica P. Jardeliza, the wife of accused Jardeliza, posted the required bond for his provisional liberty in the amount of ₱60,000.00, since the accused was detained at the Criminal Investigation and Detection Group (CIDG) of the Philippine National Police (PNP), Region Field Unit National Capital Region at Camp BGen. Rafael T. Crame, Quezon City.[7] Accordingly, the Warrant of Arrest dated September 29, 2021 was lifted and set aside, and the Clerk of Court of the Third Division was ordered to issue a Release Order,[8] pursuant to Section 8, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA).

On April 20, 2022, Atty. Arjay V. Puyot of the Public Attorney's Office filed his *Formal Entry of Appearance*[9] on behalf of accused Jardeliza. The *Pre-Trial Brief (For the Plaintiff)*[10] was filed on April 21, 2022, while the *Pre-Trial Brief (For the Accused)*[11] was filed on April 22, 2022.

During the arraignment and pre-trial conference held on April 27,

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[4] *Id.*
[5] Docket, pp. 65 to 66.
[6] Docket, pp. 67 to 70.
[7] Docket, pp. 72 to 73, and 85.
[8] Docket, p. 80.
[9] Docket, pp. 92 to 93.
[10] Docket, pp. 95 to 100.
[11] Docket, pp. 103 to 108.

2022[12], accused Rito Alayon Jardeliza, assisted by defense counsel Atty. Puyot, pleaded "NOT GUILTY" to the crime charged in the instant criminal case.[13]

Thereafter, the Pre-Trial Conference proceeded and both parties' counsels agreed to file a Joint Stipulation of Facts and Issues,[14] while the Preliminary Conference[15] was held on April 28, 2022.

On June 20, 2022, the parties filed their *Joint Motion to Admit Joint Stipulation of Facts and Simplification of Issues*[16] with attached *Joint Stipulation of Facts and Simplification of Issues,*[17] where the parties agreed to the following:

> **"II.**
> **ADMITTED FACTS/DOCUMENTS**
>
> The following facts are admitted and undisputed by Plaintiff and Accused:
>
> 2.1 Plaintiff People of the Philippines as represented by Bureau of Internal Revenue (BIR) Revenue Region No. 7B – East NCR, with principal office at the Legal Division 25th Floor The Podium West Tower, ADB Avenue, Ortigas, Mandaluyong City. Plaintiff may be served orders, notices, resolutions and other processes of this Court through its undersigned counsel at its office address stated below *(sic)*.
>
> 2.2 Accused Rito Alayan Jardeliza is of legal age, Filipino, married and resident *(sic)* 122 2nd Floor, Pasig Public Market, Caruncho Complex, Pasig City where he may be served with notices, orders and other processes of the Honorable Court.
>
> 2.3 The arraigned Accused admit their individual identities as the same person charged in the Information.
>
> **III.**
> **SIMPLIFICATION OF ISSUES**
>
> Plaintiff and Accused hereby submit that the issues

[12] Docket, pp. 157 to 159.
[13] Certificate of Arraignment dated April 27, 2022; Docket, p. 154.
[14] Docket, pp. 157 to 159.
[15] Docket, pp. 160 to 166.
[16] Docket, pp. 249 to 250.
[17] Docket, pp. 251 to 257.

to be resolved in this case are:

3.1 Whether or not the Accused is guilty of the crime charged in the Information for violation of Section 255 of the NIRC, as amended; and

3.2 Whether or not accused is civilly liable to pay deficiency tax liabilities for taxable year 2012 in the amount of ₱2,596,000.00."[18]

In the Resolution[19] dated June 24, 2022, this Court granted the parties' *Joint Motion to Admit Joint Stipulation of Facts and Simplification of Issues* and the attached *Joint Stipulation of Facts and Simplification of Issues* was approved and admitted as part of the records of the case. Thereafter, Pre-Trial was terminated, and a Pre-Trial Order[20] was issued on June 24, 2022.

On July 20, 2022, Atty. Jeffrey L. Ontangco of the Public Attorney's Office entered his appearance for accused Jardeliza,[21] which was noted by this Court on August 3, 2022.[22]

During trial, plaintiff presented the following witnesses: (1) Revenue Officer Ella D. Solon;[23] and (2) Revenue Officer Jennifer P. Enriquez.[24] The direct testimonies of said witnesses were by way of Judicial Affidavits. They testified as follows:

1) Ella D. Solon,[25] Revenue Officer III at RDO 41-Mandaluyong City, BIR RR7B East NCR, testified that : she is the Revenue Officer (RO) tasked to supervise the conduct of the audit investigation of all internal revenue taxes for tax cases assigned to Revenue Officers under her and to perform other related functions as may be assigned to her from time to time. The BIR filed a criminal case against the accused under the Run After Tax Evaders (RATE) Program of the government, for failure to pay the deficiency tax assessments issued against him for taxable year 2012. She is one of the ROs previously assigned at RDO No. 43B-West Pasig City, who was tasked to conduct

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[18] *Id.*
[19] Docket, p. 259.
[20] Docket, pp. 261 to 269.
[21] Docket, pp. 274 to 275.
[22] Docket, pp. 279 to 280.
[23] Exhibit "P-37," Judicial Affidavit of Ella D. Solon dated May 6, 2022, Docket, pp. 195 to 201.
[24] Exhibit "P-38," Judicial Affidavit of Jennifer P. Enriquez dated May 11, 2022, Docket, pp. 174 to 178.
[25] Exhibit "P-37," Judicial Affidavit of Ella D. Solon dated May 6, 2022, Docket, pp. 195 to 201.

the audit investigation/examination of the books of accounts and other accounting records for all internal revenue taxes, including documentary stamp tax and other miscellaneous taxes, pursuant to Letter of Authority No. LOA-43B-2015-000000263. The subject LOA dated July 9, 2015 authorized Revenue Officer (RO) Ma. Josefina Lucero and Group Supervisor (GS) Josefina Lopez, who were then assigned to RDO No. 43B-West Pasig City, to conduct the audit investigation/examination of the accused. RO Lucero and GS Lopez prepared a Memorandum for Issuance of Preliminary Assessment Notice (PAN) dated September 21, 2015. Thereafter, Memorandum of Assignment (MOA) No. 2016-43B-00000260 dated May 17, 2016 was issued to RO Solon and GS Irma M. Bernardo to comply with the review/reporting requirements of the Assessment Division. After preparing Confirmation Letters to third party information sources, RO Solon also prepared the Memorandum and RO's Audit Report on IT, VAT, EWT and Miscellaneous Tax stating the result of the investigation conducted on accused's revenue tax liabilities for TY 2012. Subsequently, a PAN with Details of Discrepancy dated October 18, 2016 was issued against the accused, which was served through registered mail, as evidenced by Registry Receipt No. RD 661 953 174 ZZ. After the lapse of the 15-day period given to the accused to reply to the PAN, the Final Assessment Notice (FAN) with Demand No. 043B-B070-12(W.12.31.16) and Formal Letter of Demand (FLD) with Details of Discrepancies was issued on November 10, 2016, which was likewise served through registered mail, with Registry Receipt No. 674 554 825 ZZ. Since the accused failed to file a valid and timely protest against the FLD/FAN within thirty (30) days from receipt hereof, the Assessments issued against him have become final, executory and demandable.

On cross-examination, RO Solon testified that her assignment to conduct audit investigations on the accused was through a MOA, and there was no separate or amended Letter of Authority issued in her favor. The MOA is for purpose of reassignment and transfer of cases of ROs. She issued a PAN, even without a new LOA, as the case was assigned to her through a MOA. With regard to the PAN, the same was mailed to the accused, but she has no knowledge if it was received by the accused. According to RO Solon, it would be impossible to determine when the fifteen (15) day period stated in the PAN would lapse, since they are not certain if accused received the PAN. Anent the FAN and FLD, she is also unsure if accused received the same, as it was sent through registered mail. In the Assessment Notices, there are no specific dates stated as to when the accused will be allowed to settle the discrepancies.[26]

[26] TSN dated July 20, 2022, pp. 5 to 17.

2) Jennifer P. Enriquez,[27] Revenue Officer III assigned at the Collection Division, BIR RR7A-Quezon City, testified as follows: she is the RO tasked to conduct the enforcement of summary remedies for collection of the delinquent account of the accused for taxable year 2012. The BIR sent a Preliminary Collection Letter (PCL) dated February 24, 2017 to the accused, with registry receipt no. 180. A Final Notice Before Seizure (FNBS) dated March 6, 2017 was sent to the accused through registered mail, with registry receipt no. RD 718 507 605 ZZ dated March 13, 2017. Thereafter, a Warrant of Distraint and/or Levy (WDL) was issued against the accused, which was constructively served at the registered address of the accused, because he can no longer be located. Warrants of Garnishment (WOG) to several banks were also issued and served. Finally, a Demand Before Suit dated January 7, 2019 was sent by the Chief, Legal Division through registered mail with registry receipt RE 008 904 245 ZZ dated January 16, 2019.

On cross-examination, RO Enriquez testified that RO Jonathan Genova caused the issuance of the PCL and that it was served by registered mail. However, she is uncertain if it was received by the accused. The amount stated in the PCL is not a fixed and determinate amount due because it states that the "*interest in total amount will be adjusted up to the date of actual payment.*" In addition, the FNBS was also served through registered mail, but she does not know if it was received by the accused.[28]

On clarificatory questions, RO Enriquez confirmed that with regard to the PCL and FNBS, there was no receiving copy, only the registry receipt, and the date stated therein is not so clear. Thus, based on the receipts that she received, it cannot be determined if accused received the PCL and FNBS.[29] She also stated that the WOG were served to banks, while the WDL was constructively served because accused can no longer be found in his registered address.[30]

Upon completion of its presentation of its witnesses, *Plaintiff's Formal Offer of Evidence*[31] was filed on August 15, 2022, to which accused filed his *Comment/Opposition (To Plaintiff's Formal Offer of Evidence dated June 7, 2021)*.[32] On September 5, 2022, all of plaintiff's evidence were admitted, subject to this Court's final

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[27] Exhibit "P-38," Judicial Affidavit of Jennifer P. Enriquez dated May 11, 2022, Docket, pp. 174 to 178.
[28] TSN dated August 3, 2022, pp. 7 to 11.
[29] *Id.* at 13.
[30] *Id.* at 14 to 16.
[31] Docket, pp. 289 to 298.
[32] Docket, pp. 299 to 302.

evaluation and/or appreciation of their purposes, materiality, relevancy, and probative value to the issues involved in this case. This Court, however, noted that the date of the registry receipts stamped on Exhibits "P-13-A" and "P-21" were partly blurred or unreadable.[33]

On October 3, 2022, accused filed his *Motion for Leave of Court to File Demurrer to Evidence,*[34] which was granted in the Resolution dated November 29, 2022.[35] Hence, accused filed his *Demurrer to Evidence*[36] on December 14, 2022. In view of the failure of the prosecution to file its Comment thereto, despite due notice,[37] the *Demurrer to Evidence* was deemed submitted for resolution on January 12, 2023.[38]

According to accused, the case against him must fail for failure of the prosecution to prove that it has complied with the due process requirement. Thus, he asserts that due process is indispensable vis-à-vis the power of the State to collect and assess taxes.

In this case, LOA dated July 9, 2015 was issued authorizing RO Ma. Josefina Lucero and GS Josefina Lopez to examine the books of accounts and other financial documents of accused for taxable year 2012. However, it was RO Ella D. Solon who conducted the investigation against the accused, without a new or amended Letter of Authority issued in her favor. The issuance of Memorandum No. 2016-43B-00000260 dated May 17, 2016 in favor of Ella D. Solon did not cure the conduct of audit investigation without a valid LOA.

Moreover, accused argues that the PAN and FAN does not appear to have been actually received by the accused. In addition, accused argues that the Second and Final Notice allegedly furnished to him refers to a different Letter of Authority than the one offered by the prosecution. Finally, accused contends that the Waiver of Defense of Prescription in this case was defective for failure of the CIR to sign, for failing to specify the kind and amount of tax due, and for not complying with the requirements of RMO No. 20-90.

THE ISSUES

In the Pre-Trial Order[39] dated June 24, 2022, the parties agreed

[33] Docket, pp. 305 to 306.
[34] Docket, pp. 309 to 312.
[35] Docket, pp. 332 to 334.
[36] Docket, pp. 335 to 361.
[37] Docket, p. 362.
[38] Docket, p. 364.
[39] Docket, pp. 261 to 269.

on the following issues for this Court's resolution in the instant criminal case:

> "Whether or not the Accused is guilty of the crime charged in the Information for violation of Section 255 of the NIRC, as amended; and
>
> Whether or not accused is civilly liable to pay deficiency tax liabilities for taxable year 2012 in the amount of ₱2,596,000.00."[40]

In view of the filing of a Demurrer to Evidence by accused, the issue boils down to whether or not the evidence presented by the prosecution sufficiently establishes a *prima facie* case against accused Rito Alayon Jardeliza, proprietor of Master Speed Shoe Bags Enterprises, for violation of Section 255 of the NIRC of 1997, as amended, that will sustain the indictment, or support a verdict of guilt, against the accused.

THE COURT'S RULING

A demurrer to the evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is in sufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict.[41] The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.[42]

In a nutshell, a demurrer to evidence is a motion to dismiss on the ground of *insufficiency* of evidence. It is a remedy available to the defendant, to the effect that the evidence produced by the plaintiff is insufficient in point of law, whether true or not, to make out a case or sustain an issue. The question in a demurrer to evidence is whether the plaintiff, by his evidence in chief, had been able to establish a *prima facie* case.[43] Naturally, this entails a calibration of the evidence on record to properly determine whether the material allegations of the complaint were amply supported by evidence.[44]

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[40] Docket, p. 262.
[41] *JCLV Realty & Development Corporation vs. Phil Galicia Mangali,* G.R. No. 236618, August 27, 2020.
[42] *Gregorio Singian, Jr. vs. Sandiganbayan, et al.,* G.R. Nos. 195011-19, September 30, 2013.
[43] *Republic of the Philippines vs. Alfredo R. De Borja*, G.R. No. 187448, January 9, 2017.
[44] *Id.*, citing *Felipe vs. MGM Motor Trading Corporation,* G.R. No. 191849, September

Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial or official action demanded according to the circumstances. To be considered sufficient therefore, the evidence must prove: (a) the commission of the crime, and (b) the precise degree of participation therein by the accused.[45]

Moreover, the burden of such proof rests with the prosecution, which must rely on the strength of its case rather than on the weakness of the case for the defense. Proof beyond reasonable doubt, or that quantum of proof sufficient to produce a moral certainty that would convince and satisfy the conscience of those who act in judgment, is indispensable to overcome the constitutional presumption of innocence.[46]

The evidence presented by the prosecution is insufficient to sustain the indictment, or support a verdict of guilt, against the accused.

In the instant case, accused corporation and Jardeliza, the latter being the proprietor of the former, are being charged for Violation of Section 255 of the NIRC of 1997, as amended, *viz*:

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

23, 2015.
[45] *People of the Philippines vs. Honorable Sandiganbayan (Fourth Division), et al.,* G.R. No. 233437, April 26, 2021.
[46] *Guilbemer Franco vs. People of the Philippines*, G.R. No. 191185, February 1, 2016.

Elements of violation of Section 255 of the NIRC of 1997, as amended.

To prove a *prima facie* case for willful failure to pay deficiency income tax for TY 2012, under Section 255 of the NIRC of 1997, as amended, the following elements must be present:

1. Accused is required under the NIRC of 1997 to pay any tax, make 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. Accused failed to pay the required tax, make a return or keep the required record, or supply the correct and accurate information; and

3. Accused willfully failed 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.

Upon examination of the testimonial and documentary evidence of the prosecution, this Court finds that the prosecution was unable to establish a *prima facie* case against the accused.

First Element: *Accused is required under the NIRC of 1997, as amended, to pay any tax, at the time or times required by law or rules and regulations.*

In order to determine the presence of the ***first element***, that accused is *required* under the NIRC of 1997 to pay any tax, at the time or times required by law or rules and regulations, reference is made to Section 56 of the NIRC of 1997, as amended, to wit:

> "**SEC. 56.** ***Payment and Assessment of Income Tax for Individuals and Corporations.*** —
>
> (A) *Payment of Tax.* —
>
> (1) *In General.* — The total amount of tax imposed by this Title shall be paid by the person subject thereto **at**

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> **<u>the time the return is filed</u>**. xxx xxx .
>
> xxx xxx xxx.
>
> (B) *Assessment and Payment of Deficiency Tax.* — After the return is filed, the Commissioner shall examine it and assess the correct amount of the tax. The tax or deficiency income tax so discovered shall be paid **<u>upon notice and demand</u>** from the Commissioner." *(Emphasis supplied.)*

Based on the foregoing provision, the legal obligation to pay tax under the NIRC of 1997, as amended, arises from two (2) *distinct* instances: *first*, at the time required by the law to pay a particular tax; and *second*, upon being informed of a tax assessment issued by the BIR, requiring the taxpayer to pay the assessed tax or deficiency tax within a specific period, as set forth in the assessment.

The *first* instance, involves a self-assessment of tax obligations as outlined by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Fitness by Design, Inc.,*[47] to wit:

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

In essence, a self-assessment approach starts and ends with the initial assessment by the taxpayer of the tax due, corresponding with the filing of the requisite return and payment of the said tax. Thereafter, assuming the tax obligations were properly computed and paid, the process is rendered complete without the participation or intervention of the BIR.

The *second* instance, on the other hand, involves the issuance by the BIR of a deficiency tax assessment, when the tax obligation was not properly computed or paid. The deficiency tax assessment, shall then be paid by the taxpayer *upon notice and demand*. This notice and demand is predicated upon a *valid assessment* issued in full compliance with the requirements on procedural due process.

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[47] G.R. No. 215957, November 9, 2016.

In this case, the alleged legal obligation of accused to pay deficiency taxes under the NIRC of 1997, as amended, pertains to the *second* instance of being required to pay deficiency taxes. In the other words, the prosecution is tasked to first prove that that there is a *valid* assessment, notice and demand from the BIR. Accordingly, the examination of the validity of the subject deficiency tax assessments becomes crucial.

The subject deficiency tax assessments are void for violating the taxpayer's right to due process.

In the instant case, the Court finds that the revenue officer who continued the audit and investigation of the accused was not validly authorized by a valid Letter of Authority (LOA).

Section 6 (A) of the NIRC of 1997, as amended, provides for the power of the CIR or his duly authorized representative to authorize the examination of any taxpayer and the assessment of the correct amount of tax, to wit:

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

Based on the foregoing, before an examination and an assessment can be made, an authority emanating from the CIR or his duly authorized representative must first be secured.

Relative thereto, Section 13 of the NIRC of 1997 provides that the authority of a Revenue Officer to examine or to recommend the assessment of any deficiency tax due must be exercised pursuant to an LOA, to wit:

> "**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, <u>pursuant to a Letter of Authority issued by the Revenue Regional Director,</u> 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." *(Emphasis and underscoring supplied.)*

In other words, a Revenue Officer is mandated to be first clothed with authority, <u>through a valid LOA</u> issued in his/her favor, before he/she can validly examine taxpayers and perform tax assessment and collection functions.

An LOA is the *authority* given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.[48]

The importance of an LOA and the corresponding authority it confers upon the Revenue Officer, is further highlighted by RMO No. 43-90, which prescribes the revised policy guidelines for the audit/investigation and issuance of letters of authority to audit. Specifically, it requires that **<u>all</u>** audits/investigations should be conducted under a Letter of Authority, and requires the issuance of a **<u>new LOA</u>** in case of any reassignment or transfer of cases to another Revenue Officer, to wit:

> "C. Other policies for issuance of L/As.
>
> 1. All audits/investigations, whether field audit or office audit, should be conducted under a Letter of Authority.
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> xxx xxx xxx

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[48] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 222743, April 5, 2017.

> 5. Any re-assignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As."

In the most recent case of *Republic of the Philippines vs. Robiegie Corporation,*[49] the Supreme Court reiterated that the investigatory powers of the ROs flow from the LOA, which is the ***statutorily designed means*** by which the CIR delegates its investigative powers to the BIR revenue officers.

Stated otherwise, the LOA is the ***concrete manifestation of the grant of authority bestowed by the CIR or his authorized representatives to the revenue officers***, pursuant to Sections 6, 10(c) and 13 of the NIRC of 1997, as amended.[50]

The issuance of an LOA prior to examination and assessment is a requirement of due process. It is *not* a mere formality or technicality. The result of the ***absence of an LOA*** is the ***nullity of the examination and assessment*** based on the violation of the taxpayer's right to due process.[51]

In the *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp.,*[52] it was categorically held that the practice of using a memorandum of assignment, referral memorandum, or any equivalent document as proof of authority of the substitute or replacement revenue officer, would *no longer be countenanced*, to wit:

> "The memorandum of assignment, referral memorandum, or any equivalent document is **<u>not a proof of the existence of authority</u>** of the substitute or replacement officer. The memorandum of assignment, referral memorandum, or any equivalent document is not issued by the CIR or his duly authorized representative for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts. It is issued by the revenue district officer or other subordinate official for the purpose of reassignment and transfer of cases of revenue officers.

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[49] G.R. No. 260261, October 3, 2022.
[50] *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp.,* G.R. No. 242670, May 10, 2021.
[51] *Id.*
[52] *Id.*

xxx xxx xxx

> x x x an LOA is not a general authority to any revenue officer. **It is a special grant of authority granted to a particular revenue officer**.
>
> The practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting them with new revenue officers who do not have a separate LOA issued in their name, **is in effect a usurpation of the statutory power of the CIR or his duly authorized representative**." *(Emphasis supplied.)*

In fact, it was held that the practice of reassigning or transferring revenue officers originally named in the LOA and substituting them with new revenue officers to continue the audit or investigation without a separate or amended LOA:

(i) Violates the taxpayer's right to due process in tax audit or investigation;
(ii) Usurps the statutory power of the CIR or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and
(iii) Does not comply with existing BIR rules and regulations, particularly RMO No. 43-90 dated September 20, 1990.

Applying the foregoing principles to the facts established by the prosecution, this Court finds that the RO who continued the audit and investigation of the accused, and recommended the issuance of the PAN and FAN, was not properly clothed with authority, through a valid LOA.

In this case, Letter of Authority No. LOA-43B-2015-000000263[53] dated July 9, 2015, specifically authorizes RO Ma. Josefina Lucero and GS Josefina Lopez, to examine accused's book of accounts and other accounting records, for deficiency IT, VAT, other taxes for TY 2012.

A perusal of the records show, however, that it was RO Ella D. Solon who exercised assessment functions and continued the audit investigation, as shown by the following:

[53] Exhibit "P-1," Docket, p. 212.

1) Memorandum Recommending the Issuance of a PAN;[54] and
2) Revenue Officer's Audit Reports for IT,[55] VAT,[56] EWT,[57] and Miscellaneous Tax.[58]

Evidently, RO Solon was ***not*** validly authorized by a new or amended LOA. Rather, her authority stems from Memorandum of Assignment (MOA) No. 2016-43B-00000260[59] issued by Revenue District Officer Honorata S. Aguilar on May 17, 2016.

This was confirmed by RO Solon in her Judicial Affidavit[60] and on cross-examination. To be specific, RO Solon testified that the assignment to conduct audit investigations on the accused was bestowed to her through a MOA.[61] There was, however, no separate or amended Letter of Authority issued in her favor.[62] The MOA is for purpose of reassignment and transfer of cases of ROs.[63] She issued a PAN, even without a new LOA, as the case was assigned to her through a MOA.[64]

Considering that the RO who acted on accused's case was not properly clothed with the requisite LOA, the subject tax assessments, resulting from the continuation of the investigation, audit, and recommendation of RO Solon is void for violating the respondent's right to due process. For being void, the same bears no valid fruit.[65]

The prosecution failed to establish that accused received the PAN and FAN/FLD.

Section 228 of the NIRC of 1997, as amended, specifies the procedure for the issuance of deficiency tax assessments. The law requires that taxpayers be informed, in writing, of the law and the facts

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[54] Exhibit "P-7," Docket, p. 219.

[55] Exhibit "P-8," Docket, p. 220.
[56] Exhibit "P-9," Docket, p. 221.
[57] Exhibit "P-10," Docket, p. 222.
[58] Exhibit "P-11," Docket, p. 223.
[59] Exhibit "P-6," Docket, p. 218.
[60] Q&A 14 and 16, Exhibit "P-37," Judicial Affidavit of Ella D. Solon dated May 6, 2022, Docket, pp. 195 to 201.
[61] TSN dated July 20, 2022, p. 6.
[62] *Id.* at 8.
[63] *Id.* at 13.
[64] *Id.* at 13 to 14.
[65] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,* G.R. No. 185371, December 8, 2010.

upon which the assessment is made, otherwise, the assessment shall be void, to wit:

> "**SEC. 228. Protesting of Assessment**. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, that a pre-assessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void."

Corollary thereto, Section 3 of Revenue Regulations No. 12-99,[66] outlines the due process requirement to be observed in the issuance of deficiency tax assessments, to wit:

> "**SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*** —
>
> 3.1 *Mode of procedures in the issuance of a deficiency tax assessment*:
>
> xxx xxx xxx
>
> 3.1.2 *Preliminary Assessment Notice (PAN)*. — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, **the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN)** for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment

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[66] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

xxx xxx xxx

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

From the foregoing, if the CIR or his authorized representative finds that sufficient basis exists to assess the taxpayer, he is mandated to inform the latter of the law and facts on which the assessment is made. Otherwise, the assessment shall be void.

The use of the word '*shall*' in Section 228 of the National Internal Revenue Code and in Revenue Regulations No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him or her is *mandatory.*[67] This is an essential requirement of due process and applies to the Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and the Final Decision on Disputed Assessment.[68] Thus, it is stressed that the law imposes a *substantive*, not merely a formal, requirement.[69]

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[67] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018; citing *Commissioner of Internal Revenue v. Liquigaz Philippines Corp.*, 784 Phil. 874, 888 (2016).
[68] *Id.*
[69] *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 4, 2021; *Commissioner of Internal Revenue vs. Azucena T. Reyes, et seq.*, G.R. Nos. 159694 and 163581, January 27, 2006.

The issuance of a valid formal assessment, pursuant to the provisions of Section 228 of the NIRC, as amended, in relation to RR No. 12-99, is a *substantive prerequisite to tax collection.* Accordingly, the service of a valid assessment, *i.e.*, PAN and FAN/FLD, must be proven before a taxpayer can be compelled to pay for alleged deficiency taxes, or for the BIR to enforce the collection thereof.

Stated otherwise, it is thus incumbent upon the prosecution to prove and establish that the requisite assessment notices were duly served to accused-taxpayer within the prescriptive period.

As stated in the subject Information, the prosecution contends that accused was required to pay "*the deficiency income tax (IT) for the taxable year 2012 in the amount of Two Million Five Hundred Ninety Six Thousand Pesos (₱2,596,000.00), exclusive of surcharges and interests, despite due notices and demands to pay, the latest being in the nature of Demand Before Suit issued by the Bureau of Internal Revenue on January 7, 2019.*" Thus, according to the prosecution, since the accused failed to file a valid and timely protest against the FLD/FAN within thirty (30) days from receipt hereof, the Assessments issued against him have become final, executory and demandable.[70]

In this case, RO Solon testified that the PAN with Details of Discrepancy dated October 18, 2016 issued against the accused, was served through registered mail, as evidenced by Registry Receipt No. RD 661 953 174 ZZ.[71] On cross-examination, however, she admitted that she has no knowledge if it was received by the accused.[72]

This Court notes, however, that the alleged proof that the PAN was duly served, *i.e.*, Registry Receipt No. RD 661 953 174 ZZ, offered by the prosecution as Exhibit "P-13-A," was denied admission for being blurred or unreadable.[73] Hence, this casts doubt on whether or not the plaintiff complied with due process requirements and served the PAN to the accused.

RO Solon likewise testified that after the lapse of the 15-day period given to the accused to reply to the PAN, the FAN with Demand No. 043B-B070-12(W.12.31.16) and FLD with Details of Discrepancies was issued on November 10, 2016, which was likewise served through

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[70] Q&A 22, Exhibit "P-37," Judicial Affidavit of Ella D. Solon dated May 6, 2022, Docket, pp. 195 to 201.
[71] Q&A 18, Exhibit "P-37," Judicial Affidavit of Ella D. Solon dated May 6, 2022, Docket, pp. 195 to 201.
[72] TSN dated July 20, 2022, p. 15.
[73] Docket, pp. 305 to 306.

registered mail, with Registry Receipt No. 674 554 825 ZZ.[74] However, she admitted that it would be impossible to determine when the fifteen (15) day period stated in the PAN would lapse, since they are not certain if accused received the PAN.[75] Anent the FAN and FLD, she is also unsure if accused received the same, as it was sent through registered mail.[76]

From the foregoing, this Court finds that the prosecution was unable to adduce sufficient evidence to prove that the subject assessment notices were properly served to the accused. It should be stressed that even the testimony of the prosecution witness admits that there is no indication that accused received the subject assessment notices.

Taken together, the subject deficiency tax assessments for TY 2012 are declared void, for having been issued in violation of the due process requirements under the law and RR No. 12-99. In addition, considering that there are no valid assessments to begin with, the Warrant of Distraint and/or Levy and Warrants of Garnishment issued by the CIR against the accused are likewise void.

Correspondingly, as the subject deficiency tax assessments in this case are declared void, it therefore follows that there is ***no legal obligation*** ***on the part of the accused to pay the subject deficiency tax assessments.***

In view of the absence of the first element, as there is no requirement on the part of the accused to pay any tax, as there is no competent or sufficient evidence to sustain the indictment, an acquittal is in order.

WHEREFORE, premises considered, the Demurrer to Evidence filed by accused Rito Alayon Jardeliza, proprietor of Master Speed Shoe Bags Enterprises, is hereby **GRANTED**. Accused **RITO ALAYON JARDELIZA** is hereby **ACQUITTED** for failure of the prosecution to present competent and sufficient evidence to establish his guilt. Accordingly, CTA Criminal Case No. O-897 is hereby **DISMISSED**.

Further, the accused is likewise declared not civilly liable to pay the assessed deficiency taxes. Accordingly, Preliminary Assessment

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[74] Q&A 20, Exhibit "P-37," Judicial Affidavit of Ella D. Solon dated May 6, 2022, Docket, pp. 195 to 201.
[75] TSN dated July 20, 2022, p. 15.
[76] TSN dated July 20, 2022, pp. 15 to 16.

Notice dated October 18, 2016, Assessment Notices dated November 10, 2016, Formal Letter of Demand dated November 10, 2016, Final Notice Before Seizure dated March 6, 2017, Warrant of Distraint and/or Levy No. RR7-2017-04-19-236, and Warrants of Garnishment No. RR7-17-04-19-624 dated May 17, 2017, are hereby **CANCELLED AND SET ASIDE.**

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(With Separate Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

MASTER SPEED SHOE BAGS ENTERPRISES AND RITO ALAYON JARDELIZA,
Accused.

CTA CRIM. CASE NO. O-897

For: Violation of Section 255 of the NIRC of 1997, as amended

Present:

UY, ***Chairperson,***
BACORRO-VILLENA, and
CUI-DAVID, ***JJ.***

Promulgated: MAR 31 2023
9:05 a.m.

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SEPARATE OPINION

BACORRO-VILLENA, J.:

I concur with the *ponencia* of our esteemed colleague, Hon. Justice Erlinda P. Uy, as it dismisses the criminal action against the accused on account of the plaintiff's failure to prove the accused's guilt beyond reasonable doubt. With due respect, however, it is my humble submission that the discussion as regards the issue of the validity of the assessment leaves little or no bearing at all on the outcome of this case nor is the proper subject of a criminal case of tax evasion.

The *ponencia* emphasizes two (2) main reasons for the dismissal of the criminal action: (1) the invalidity of the assessment due to the alleged lack of authority of the Revenue Officer (**RO**) who conducted the audit of the accused; and, (2) the prosecution's failure to prove receipt of the Preliminary Assessment Notice (**PAN**) and Final Assessment Notice (**FAN**).

In connection thereto, the Supreme Court in *Commissioner of Internal Revenue v. The Hongkong Shanghai Banking Corporation Limited - Philippine Branch*[1] (**HSBC**), enumerated the elements of tax evasion, to wit:

> ...
> ... To constitute tax evasion, the following factors must be proven: "(l) 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," "willful," or "deliberate and not accidental"; and (3) a course of action or failure of action which is unlawful. " In other words, the payment of lesser taxes does not necessarily constitute tax evasion. The taxpayer's resort to minimize taxes must be in the context of fraud, which must be proven by clear and convincing evidence and cannot be based on mere speculation. ...
> ...

Moreover, the Supreme Court defines a Demurrer to Evidence in the following wise:

> ...
> A demurrer to evidence is a motion to dismiss on the ground of insufficiency of evidence. It is a remedy available to the defendant, to the effect that the evidence produced by the plaintiff is insufficient in point of law, whether true or not, to make out a case or sustain an issue. The question in a demurrer to evidence is whether the plaintiff, by his evidence in chief, had been able to establish a *prima facie* case.[2]
> ...

Therefore, considering the above pronouncements, the plaintiff's failure to prove any one of these elements would indubitably cause a dismissal of the criminal action on a Demurrer to Evidence as the former would have no *prima facie* case against the accused.

Returning to the first ground cited in the *ponencia*, *i.e.*, the alleged lack of authority of the RO who conducted the audit of the accused, it is clear that proving the same does not necessarily entail that any of the elements of tax evasion has not been proven. With due respect, such fact only proves an irregularity in the conduct of the assessment, the validity of which is not even an element of the crime of tax evasion.

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1 G.R. No. 227121, 09 December 2020; Citations omitted.

2 *Republic of the Philippines v. Alfredo R. De Borja*, G.R. No. 187448, 09 January 2017; Citations omitted.

On the other hand, the second ground (the plaintiff's failure to prove receipt of the PAN and FAN), to my mind, could provide the more appropriate ratio on which a finding of the plaintiff's failure to prove accused's guilt should be based.

To recall, the Information charges the accused with willful failure to pay tax in violation Section 255 of the National Internal Revenue Code (**NIRC**) of 1997, as amended. In *Emilio E. Lim, Sr., et al. v. Court of Appeals, et al.*[3], it was explained that such crime can only be consummated after receipt of the accused of a demand to pay coupled with the latter's failure to pay when the same falls due. The Supreme Court in that case, held:

> ...
>
> Relative to Criminal Cases Nos. 1788 and 1789 which involved petitioners' refusal to pay the deficiency income taxes due, again both parties are in accord that by their nature, **the violations as charged could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayers.** ...
>
> ...
>
> Inasmuch as the final notice and demand for payment of the deficiency taxes was served on petitioners on July 3, 1968, it was only then that the cause of action on the part of the BIR accrued. **This is so because prior to the receipt of the letter-assessment, no violation has yet been committed by the taxpayers. The offense was committed only after receipt was coupled with the [willful] refusal to pay the taxes due within the allotted period.** ...
>
> ...

Resultantly, when the prosecution failed to prove the accused's receipt of the PAN and FAN, there was no demand on which the Bureau of Internal Revenue (**BIR**) could anchor the allegation of the accused's willful failure to pay as it would appear that the accused was not aware of any payment of taxes was due.

With the foregoing considered, it is thus my submission that the discussion as regards the RO's lack of authority should be deleted or be rendered, at the least, as a mere observation by the Court.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[3] G.R. Nos. L-48134-37, 18 October 1990; Emphasis supplied.