REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES, Petitioner,	**CTA EB CRIM. No. 052 (CTA Crim. Case No. O-631)**
-versus-	**Present:** Del Rosario, *PJ,* Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, Manahan, Bacorro-Villena, and Modesto-San Pedro, *JJ.*
CROSS COUNTRY OIL & PETROLEUM CORP., ARTURO M. ZAPATA and JACOB VALERIANO, JR., Respondents.	Promulgated: FEB 07 2020 2:06 p.m.

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D E C I S I O N

CASTAÑEDA, JR., *J.*:

Before the CTA *En Banc* is the petition for review filed by petitioner People of the Philippines ("petitioner") on June 29, 2018 assailing the Resolutions dated March 13, 2018[1] and May 28, 2018[2] promulgated by the CTA Third Division[3] ("CTA Division") in the case entitled, *"People of the Philippines v. Cross Country Oil & Petroleum Corporation, Arturo M. Zapata and Jacob Valeriano, Jr.",* docketed as CTA CRIM. Case No. O-

[1] *Rollo,* pp. 16-23.
[2] *Id.,* pp. 25-28.
[3] Composed of Associate Justice (now retired) Lovell R. Bautista, Associate Justice Esperanza R. Fabon-Victorino, and Associate Justice Ma. Belen M. Ringpis-Liban.

631. The CTA Division granted the Demurrer to Evidence (with Leave of the Honorable Court)[4] filed by the accused (respondents in this CTA *En Banc* case), and CTA Crim. Case No. O-631 was dismissed on the ground of insufficiency of evidence.

The dispositive portion of the March 13, 2018 Resolution reads:

> In view of the foregoing, the Demurrer to Evidence (with Leave of the Honorable Court) filed by accused is hereby **GRANTED.** Accordingly, CTA Crim. Case No. O-631 is **DISMISSED** on the ground of insufficiency of evidence.
>
> **SO ORDERED.**

The dispositive portion of the May 28, 2018 Resolution reads:

> **WHEREFORE,** premises considered, the prosecution's Motion for Reconsideration on the Civil Aspect of the Resolution is hereby **DENIED** for lack of merit. The Resolution promulgated by the Court on March 13, 2018 is **AFFIRMED.**
>
> **SO ORDERED.**

THE FACTS

On February 13, 2017, an Information was filed against Cross Country Oil and Petroleum Corporation (CCOPC) represented by its responsible officers Arturo M. Zapata as President and Jacob Valeriano as Treasurer, respectively with TIN No. 007-120-826, of the crime of "Willful failure to withhold and remit expanded withholding tax income payments for the taxable year 2010" under Section 255[5], in relation to Sections 253(d)[6]

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[4] The CTA Division mentioned in its Resolution dated March 13, 2018, p. 2, that "the accused failed to move for leave of court to file Demurrer to Evidence... Hence, the Court will treat the present Demurrer to Evidence as one filed without leave of court."

[5] 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. xxx xxx xxx."

[6] "SECTION 253. General Provisions. —

"(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.

and 256,[7] of the National Internal Revenue Code (NIRC) of 1997, as amended.[8]

On March 2, 2017, the CTA Division issued a Resolution ordering the prosecution to make the necessary correction to the Information, *i.e.,* with regard to the date of the commission of the offense; and submit original or certified true copies of the signed Bureau of Internal Revenue (BIR) letter referral recommending the criminal prosecution of Mr. Arturo M. Zapata, Mr. Jacob Valeriano, and CCOPC for willful failure to pay EWT for CY 2010; and additional evidence, if any.

On March 20, 2017, the prosecution filed a Manifestation/Compliance with Entry of Appearance, with attached: BIR referral letter dated August 17, 2015; and Amended Information dated March 17, 2017.

On March 30, 2017, the CTA Division noted the prosecution's Manifestation /Compliance and found it to be deemed compliant with the March 20, 2017 Resolution. The CTA Division also noted the Entry of Appearance of the prosecution's legal counsel. The CTA Division also found the existence of probable cause to hold the accused for trial, thus, the Court ordered the issuance of Warrant of Arrest against the responsible officers of CCOPC, Arturo M. Zapata and Jacob Valeriano. Bail bond for the provisional liberty of the accused was fixed at P30,000.00 for each of the accused.

On May 30, 2017, the accused Arturo M. Zapata and Jacob Valeriano appeared and submitted their persons to the jurisdiction of this Court. They posted the required bond which they paid in cash.

On June 20, 2017, the People, through the Prosecutor, filed a Motion to Admit Attached Second (2^{nd}) Amended Information.[9] The motion was filed in order to reflect the correct identity of the accused Jacob Valeriano, Jr. with respect to this case.

A Second Amended Information was filed in this case by the Department of Justice. The Amended Information[10] states that:

> The undersigned Prosecution Attorney of the Department of Justice hereby accuses, CROSS COUNTRY OIL AND

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[7] "SECTION 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 (P50,000) but not more than One hundred thousand pesos (P100,000).

[8] Division Docket, p. 6.

[9] Division Docket, pp. 137-145, inclusive of the Amended Information.

[10] Division Docket, pp. 143-144.

PETROLEUM CORPORATION, its responsible officers ARTURO M. ZAPATA and JACOB VALERIANO, JR. respectively with TIN No. 007-120-826, of the crime of "Willful Failure to Withhold and Remit Expanded Withholding Tax on income payments for taxable year 2010" under Section 255, in relation to Section 253 (d) and 256, of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

> "That on July 2014 and thereafter, in Metro Manila, and within the jurisdiction of this Honorable Court, accused *CROSS COUNTRY OIL AND PETROLEUM CORPORATION, ARTURO M. ZAPATA and JACOB VALERIANO, JR.*, respectively conspiring and confederating with one another, did then and there, willfully, unlawfully and feloniously fail to withhold and remit the corporation's basic deficiency Expanded Withholding Tax for the taxable year 2010 in the amount of *Eight Million Eight Hundred Thirty Five Thousand Nine Hundred Four Pesos and Twenty Three Centavos* (Php8,835,904.23) exclusive of penalties, surcharges, and interest, despite final assessment, including prior and post notices and demands to pay, the latest of which was issued by the BIR on 15 July 2014, to the damage and prejudice of the government."
>
> CONTRARY TO LAW.

On June 21, 2017, there being no objection from the two accused, the CTA Division admitted the prosecution's Motion to Admit Attached Second (2nd) Amended Information. When arraigned, accused Arturo M. Zapata and Jacob Valeriano, Jr., assisted by counsel, pleaded "Not guilty" to the crimes charged under the Second Amended Information.

Thereafter, Preliminary Conference was set on July 20, 2017 while the Pre-Trial Conference was set on August 23, 2017 at 1:30 p.m.

The admitted facts as contained in the Pre-Trial Order dated September 5, 2017,[11] are as follows:

(1) The identity of both accused as the same persons charged in the Second Amended Information. Je

[11] Division Docket, pp. 258-259.

(2) The jurisdiction of the Honorable Court over the case.

(3) For the taxable year 2010, accused Arturo M. Zapata was the President of Cross Country Oil and Petroleum Corporation.

(4) For the taxable year 2010, accused Jacob Valeriano, Jr. was the Treasurer of Cross Country Oil and Petroleum Corporation.

(5) For the year 2010, the registered business address of Cross Country Oil and Petroleum Corporation was at 3105 31st Floor World Trade Exchange Bldg. (WTEB), 215 Juan Luna Street, Binondo, Manila.

(6) In the Memorandum dated 22 November 2014, the Bureau of Internal Revenue Officer II Jefferson T. Ocampo again informed Ms. Marivic G. Tulio, Chief of Collection Division of Revenue Region No. 6 that accused Corporation has ceased occupancy of its office address at the WTEB. In his Memorandum, Mr. Ocampo attached the Notice of Company Disclosure dated 02 May 2012 signed by accused Arturo M. Zapata, President and General Manager of accused Corporation, formally informing the management of WTEB of the company's closure. The Notice of Company Disclosure reads:

> "This is to formally inform that Cross Country Oil and Petroleum Corporation is no longer tenant of Asia Cargo Container Line, Inc., located at Unit 3105 World Trade Exchange, 215 Juan Luna St., Binondo, Manila effective May 1, 2012 due to company closed.
>
> For any future business transaction connected to Cross Country Oil and Petroleum Corporation is not honored or entertain of the same company (sic)."

During trial, the prosecution presented the following witnesses: (1) Revenue Officer (RO) Jeffry P. Camba;[12] (2) RO Fernando R. Gonzales;[13] (3) RO Ma. Paz Arcilla;[14] (4) RO Dennis V. Ruelo;[15] and RO Jefferson T. Ocampo.[16]

On October 18, 2017, the prosecution filed Plaintiff's Formal Offer of Evidence.

[12] Judicial Affidavit, Exhibit "P-33".
[13] Judicial Affidavit, Exhibit "P-34".
[14] Judicial Affidavit, Exhibit "P-35".
[15] Judicial Affidavit, Exhibit "P-36".
[16] Judicial Affidavit, Exhibit "P-37".

On November 7, 2017, accused filed their Comment/Opposition To Plaintiff's Formal Offer of Evidence.

On December 5, 2017, the CTA Division admitted Exhibits "P-1," "P-2," "P-3," "P-4," "P-6," "P-7," "P-8," "P-9," "P-10," "P-10-1," "P-10-2," "P-11," "P-12," "P-12-1," "P-12-2," "P-12-3," "P-12-4," "P-13," "P-14," "P-15," "P-16," "P-17," "P-17-1," "P-18," "P-18-2," "P-19," "P-20," "P-20-1," "P-20-2," "P-21," "P-21-1," "P-21-2," "P-22," "P-23," "P-24," "P-25," "P-26," "P-27," "P-27-1," "P-27-2," "P-28," "P-29," "P-29-1," "P-29-2," "P-29-3," "P-30," "P-31," "P-32," "P-33," "P-33-a," "P-34," "P-34-a," "P-35," "P-35-a," "P-36," "P-36-a," "P-37," and "P-37-a," subject to the Court's final evaluation and appreciation of their purpose, materiality, relevancy, and probative value relative to the issues involved in the case. The CTA Division denied Exhibit "P-18-1" for failure to present the original during trial and Exhibit "P-18-2" for not being properly identified by any of the prosecutor's witnesses.

On December 22, 2017, accused filed a Demurrer to Evidence (With Leave of the Honorable Court).

On January 12, 2018, the CTA Division ordered the prosecution to file comment or opposition to accused's Demurrer to Evidence.

On February 6, 2018, the prosecution filed a Motion with Leave of Court to Admit Attached Comment/Opposition to Demurrer to Evidence.

On March 13, 2018, the CTA Division granted the prosecution's Motion with Leave of Court to Admit Attached Comment/Opposition to Demurrer to Evidence, and admitted the Comment/Opposition to Demurrer to Evidence. The CTA Division also granted the accused's Demurrer to Evidence (with Leave of the Honorable Court). Accordingly, on the ground of insufficiency of evidence, the CTA Division dismissed CTA Crim. Case No. O-631.

On April 3, 2018, plaintiff People filed a Motion for Reconsideration on the Civil Aspect of the Resolution.

On May 11, 2018, accused filed an Opposition (To Plaintiff's Motion for Reconsideration dated 02 April 2018).

On May 28, 2018, the CTA Division denied the prosecution's Motion for Reconsideration on the Civil Aspect of the Resolution.

On June 1, 2018, accused filed a Motion to Withdraw Cash Bond. The CTA Division granted the said motion on June 19, 2018, and the cash bail bond were cancelled and released.

On June 14, 2018, petitioner filed a Motion for Extension of Time (To File Petition for Review). The CTA *En Banc* granted the said motion on June 20, 2018.

Within the period of extension granted, petitioner filed the Petition for Review on June 29, 2018.

On August 7, 2018, the CTA *En Banc* ordered petitioner to submit the certified true copy of Revenue Delegation Authority No. 2-2007, pursuant to Section 7 of the NIRC of 1997, as amended. On August 28, 2018, petitioner submitted its Compliance.

On September 7, 2018, this Court ordered respondents to file their Comments.

On October 19, 2018, respondents filed their Comment/Opposition (To Petition for Review dated 28 June 2018).

On October 29, 2018, the parties were granted a period of thirty (30) days from receipt of notice, within which to file their respective memoranda.

On December 10, 2018, Petitioner's Memorandum was filed. On December 12, 2018, respondents filed their Memorandum

On February 7, 2019, this case was submitted for decision.

On January 10, 2020, the counsel for respondents filed a Notice of Death that respondent Arturo M. Zapata passed away on November 18, 2019.

Hence, this Decision.

ISSUES

Whether or not the Third Division of the Honorable Court of Tax Appeals erred in granting accused's Demurrer to Jr

Evidence, and in dismissing CTA Crim. Case No. O-631 on the ground of insufficiency of evidence.

THIS COURT'S RULING

The petition is denied.

After a careful review of petitioner's Petition for Review, We noted that the arguments in the Petition are similar to the arguments raised in prosecution's Motion for Reconsideration on the Civil Aspect of the Resolution resolved by the CTA Division in the assailed Resolution.

Petitioner reiterates that the right of the BIR to collect is based on a valid assessment that is final, executory and demandable.

In pursuing the civil aspect of the case, petitioner's additional discussions in the Petition pertain to the simultaneous institution of the civil aspect of the case citing Section 7(b)(1)[17]of Republic Act No. 9282, that the 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 and also cited the case of *Petron [sic] Pilipinas Corp. v. Republic of the Philippines, represented by the Bureau of Customs.*[18]

Respondents also reiterate that BIR is bereft of any authority to perform and undertake any audit on the books of Cross Country, making its actions null and void; and that respondents' right to due process was violated when no assessment was served on them, informing them of Cross Country's alleged tax deficiency.

We agree with respondents.

"Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties

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[17] "(b) Jurisdiction over cases involving criminal offenses as herein provided:
"(1) xxx xxx xxx Any provision of law or the Rules of Court to the contrary notwithstanding, the 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 the 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.

[18] G.R. No. 165027, October 16, 2006; should be Proton Pilipinas Corp.

in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process."[19]

The following are the findings of the CTA Division as stated in the assailed Resolution dated March 13, 2018:

> In the present case, the BIR issued two (2) LOAs. The first LOA was for the period January to June 2010 and was validly served on CCOPC within thirty (30) days from its issuance (*i.e.*, the first LOA was issued on October 20, 2010 and received by accused Zapata on October 26, 2010). On the other hand, the second LOA – the basis for the subsequently issued assessment – was for CY 2010 and was served on CCOPC after the thirty (30)-day period from issuance had lapsed (*i.e.,* the second LOA was issued on July 22, 2011, but received by accused Zapata only on September 2, 2011 or forty-two [42] days from issuance of the second LOA).

In this case, the CTA Division ruled that "without a valid assessment, accused cannot be made liable- civilly or criminally- for failure to pay or withhold and remit payment of withheld taxes." This Court reiterates with approval the discussion in the assailed Resolution dated May 28, 2018, as follows:

> In the present case, it is undisputed that the second LOA was served on accused outside the thirty (30)-day period from issuance contrary to *Revenue Audit Memorandum Order ("RAMO") No. 01-00.*[20] As expressly stated in the *RAMO*, failure to serve the LOA on the taxpayer within the thirty (30)-day period renders such LOA null and void unless revalidated. Considering no such revalidation was made in the case at bar and service of the second LOA was made after the thirty (30)-day period from issuance, any examination conducted by the BIR and resulting assessment pursuant to such void LOA is likewise a nullity. Lacking authority to conduct the examination of the books of accused, any resulting assessment is invalid and cannot become final and executory precisely because there was no authority to conduct such examination in the first place. Necessarily, **without a valid assessment, accused cannot be**

[19] Consolidated cases of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99, October 3, 2018, and *Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue*, G.R. Nos. 201418-19, October 3, 2018.

[20] SUBJECT : Updated Handbook on Audit Procedures and Techniques Volume I (Revision —Year 2000) March 17, 2000; Relevant provision reads: " 2.3 A Letter of Authority must be served or presented to the taxpayer within 30 days from its date of issue; otherwise, it becomes null and void unless revalidated. The taxpayer has all the right to refuse its service if presented beyond the 30-day period depending on the policy set by top management. Revalidation is done by issuing a new Letter of Authority or by just simply stamping the words "Revalidated on ____________" on the face of the copy of the Letter of Authority issued."

made liable- civilly or criminally- for failure to pay or withhold and remit payment of withheld taxes.

In the consolidated cases of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*,[21] and *Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue,*[22] the Supreme Court explicitly stated that, "Section 228 of the Tax Code, as implemented by Revenue Regulations No. 12-99,[23] provides certain procedures to ensure that the right of the taxpayer to procedural due process is observed in tax assessments, thus:

> Section 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 preassessment notice shall not be required in the following cases:
>
> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
>
> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
>
> (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
>
> (d) When the excise tax due on excisable articles has not been paid; or
>
> (e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

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[21] G.R. Nos. 201398-99, October 3, 2018.
[22] G.R. Nos. 201418-19, October 3, 2018.
[23] RR No. 12-99, was later on amended by RR No.18- 2013. RR 18-2013 deleted the requirement of Notice of Informal Conference in RR 12-99 but RR 7-2018 reinstated the requirement.

> 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.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.
>
> xxx xxx xxx

The importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void. Section 3.1.2 of Revenue Regulations No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. xxx xxx xxx

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.** 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.
>
> On **the other hand, the taxpayer is explicitly given the opportunity to explain or present his or her side throughout the process, from tax investigation through tax assessment.** xxx xxx xxx Again, under Section 228 of the Tax Code and Section 3.1.2 of Revenue Regulations No. 12-99, the taxpayer is required to respond within 15 days from receipt of the Preliminary Assessment Notice; otherwise, he or she will be considered in default and the Final Letter of Demand and Final Assessment Notices will be issued. **After receipt of the Final Letter of Demand and Final Assessment Notices, the taxpayer is given 30 days to file a protest, and subsequently, to appeal his or her protest to the Court of Tax Appeals**. *(Emphases Supplied).*

In this case, upon review of the pieces of evidence presented by petitioner,[24] We find that petitioner failed to show proof that CCOPC indeed received the Notice of Informal Conference (Amended), Preliminary Assessment Notice, or Final Assessment Notice/Formal Letter of Demand. In effect, due process requirement was not complied in this case.

To be liable for the alleged crime in this case, the following elements have to be proven by the prosecution beyond reasonable doubt:

1. the corporate taxpayer is required to pay tax and it failed to pay such tax at the time required by law;

2. the accused is the partner, president, general manager, branch manager, treasurer, officer-in-charge or employee responsible for the violation of the corporate taxpayer; and

3. the accused willfully fails to or withhold and remit payment of withheld taxes.

The term "willfully" generally connotes a voluntary, intentional violation of a known legal duty.[25]

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[24] Exhibits "P-12-3", "P-12-4", "P-18", "P-17", "P-19", "P-20", "P-21", "P-21-1", and "P-21-2".
[25] Mertens Law of Federal Income Taxation, Volume 15, 1988 Ed., Chapter 55A, p. 76.

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 the 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.[26]

In this case, the last element of willful failure to pay or withhold and remit payment of withheld taxes was not established because receipt of the assessment was not established.

Anent the civil aspect, Section 7(b)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282, provides that "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." Thus, the civil aspect of this case, is deemed simultaneously instituted and jointly determined with the instant criminal cases.

Moreover, it is well-settled that the acquittal of a taxpayer in the criminal case cannot operate to discharge him or her from the duty to pay tax, because that duty is imposed by statute prior to and independent of any attempt on the part of the taxpayer to evade payment. The obligation to pay the tax is not a mere consequence of the felonious acts charged in the information, nor is it a mere civil liability derived from crime that would be wiped out by the judicial declaration that the criminal acts charged did not exist.[27]

In this case, there is no basis for the imposition of civil liability because there was no valid assessment to speak of. As correctly concluded by the then CTA Third Division in this case in the assailed Resolution dated May 28, 2018, "without a valid assessment, accused cannot be made liable-civilly or criminally- for failure to pay or withhold and remit payment of withheld taxes."

"The grant or denial of a demurrer to evidence is left to the sound discretion of the trial court, and its ruling on the matter shall not be disturbed in the absence of a grave abuse of such discretion."[28]As to effect, "the grant of a demurrer to evidence amounts to an acquittal and cannot be appealed because it would place the accused in double jeopardy. The order is

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[26] Black's Law Dictionary, 6th Ed., p. 1599.
[27] *Castro vs. The Collector of Internal Revenue*, G.R. No. L-12174, April 26, 1962.
[28] *People v. Go*, G.R. No. 191015, August 6, 2014, citing, *Te v. Court of Appeals*, 400 Phil. 127, 139 (2000).

reviewable only by *certiorari* if it was issued with grave abuse of discretion amounting to lack or excess of jurisdiction."[29]

In *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation),*[30] the Supreme Court ruled that "it is fundamental that the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties." Moreover, "[i]t is established that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grueling examination."[31]

Based on the foregoing discussions, the Court *En Banc* finds no reversible error to disturb the assailed Resolutions of the then CTA Third Division.

WHEREFORE, premises considered, the Petition for Review is **DENIED**. Accordingly, the assailed Resolutions promulgated on March 13, 2018 and May 28, 2018, respectively, by the then CTA Third Division are **AFFIRMED.**

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[29] *People v. Go,* G.R. No. 191015, August 6, 2014, citing, *People v. Sandiganbayan (Third Division),* G.R. No. 174504, March 21, 2011, 645 SCRA 726, 731.
[30] G.R. No. 188016, January 14, 2015 citing *Sea-Land Service Inc. v. Court of Appeals,* G.R. No. 122605, April 30, 2001, 357 SCRA 441, 445-446.
[31] *Heirs of Villanueva v. Heirs of Mendoza,* G.R. No. 209132, June 5, 2017.

(On Official Business)
ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(I join the Concurring and Dissenting Opinion of Justice Jean Marie A. Bacorro- Villena.)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

(With due respect, please see Concurring and Dissenting Opinion.)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

CTA EB CRIM. No. 052
(CTA Crim. Case No. O-631)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and,
MODESTO-SAN PEDRO, *JJ.*

- versus -

CROSS COUNTRY OIL AND PETROLEUM CORP., ARTURO M. ZAPATA, AND JACOB VALERIANO, JR.
Respondents.

Promulgated:
FEB 07 2020
2:06 p.m.

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CONCURRING AND DISSENTING OPINION

Bacorro-Villena, J.

I concur with the *ponencia* of our esteemed colleague, Hon. Justice Juanito C. Castañeda, Jr., denying the Petition for Review seeking the reversal of the 13 March 2018 and 28 May 2018 Resolutions of the Third Division of this Court in CTA Crim Case No. O-631, entitled *People of the Philippines v. Cross Country Oil and Petroleum Corporation et al.* However, with all due respect, I take exception from the ratio relied upon in the *ponencia*.

It appears that the assailed resolutions of this Court found respondents not civilly liable for the crime of tax evasion due to the irregularity in service of the BIR's Preliminary Assessment Notice (**PAN**). However, distinction must be drawn between civil liability *ex delicto* and civil liability arising from tax assessments. Accordingly, criminal cases for tax evasion must likewise be distinguished petitions for review of disputed assessments. In the 2018 case of *Macario Lim Gaw, Jr. v. CIR*[1] (*Gaw*), the Supreme Court explains:

> ...
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> Rule 111, Section 1 (a) of the Rules of Court provides that **what is deemed instituted with the criminal action is only the action to recover civil liability arising from the crime. Civil liability arising from a different source of obligation, such as when the obligation is created by law, such civil liability is not deemed instituted with the criminal action.**
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> It is well-settled that the taxpayer's obligation to pay the tax is an obligation that is created by law and does not arise from the offense of tax evasion, as such, the same is not deemed instituted in the criminal case.
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> ....
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> ...**what is deemed instituted with the criminal action is only the government's recovery of the taxes and penalties relative to the criminal case. The remedy of the taxpayer to appeal the disputed assessment is not deemed instituted with the criminal case. To rule otherwise would be to render nugatory the procedure in assailing the tax deficiency assessment.**
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> ...

In *Gaw*, the Supreme Court cited its decision in *Republic of the Philippines v. Pedro B. Patanao*[2] stating:

> ...
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> **Civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him.** The criminal liability arises upon failure of the debtor to satisfy his civil obligation. The incongruity of the factual premises and foundation principles of the two cases is one of the reasons for not imposing civil indemnity on the criminal infractor of the income tax law. x x x Considering that **the Government cannot seek satisfaction of the taxpayer's civil liability in a criminal proceeding under the tax law or,**

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[1] G.R. No. 222837, 23 July 2018, emphasis supplied.

[2] G.R. No. L-22356, 21 July 1967, emphasis supplied.

> **otherwise stated, since the said civil liability is not deemed included in the criminal action, acquittal of the taxpayer in the criminal proceeding does not necessarily entail exoneration from his liability to pay the taxes.** It is error to hold, as the lower court has held that the judgment in the criminal cases Nos. 2089 and 2090 bars the action in the present case. **The acquittal in the said criminal cases cannot operate to discharge defendant appellee from the duty of paying the taxes which the law requires to be paid, since that duty is imposed by statute prior to and independently of any attempts by the taxpayer to evade payment. Said obligation is not a consequence of the felonious acts charged in the criminal proceeding nor, is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of nonexistence of the criminal acts charged.**
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> ...

The Supreme Court quotes further its decision in *Proton Pilipinas Corp. v. Republic of the Phils.*[3], to wit:

> ...
> While it is true that according to the aforesaid Section 4, of Republic Act No. 8249, the institution of the criminal action automatically carries with it the institution of the civil action for the recovery of civil liability, however, in the case at bar, **the civil case for the collection of unpaid customs duties and taxes cannot be simultaneously instituted and determined in the same proceedings as the criminal cases before the Sandiganbayan, as it cannot be made the civil aspect of the criminal cases filed before it.** It should be borne in mind that **the tax and the obligation to pay the same are all created by statute; so are its collection and payment governed by statute. The payment of taxes is a duty which the law requires to be paid. Said obligation is not a consequence of the felonious acts charged in the criminal proceeding nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of non-existence of the criminal acts charged. Hence, the payment and collection of customs duties and taxes in itself creates civil liability on the part of the taxpayer. Such civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him.**
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> ...

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[3] G.R. No. 165027, 12 October 2006, emphasis supplied.

As culled from the records, respondents never even filed their protest to the BIR's assessment even after receiving a Final Letter of Demand (**FLD**) or Final Notice Before Seizure (**FNBS**) thereby rendering BIR's assessment final, executory, and demandable in accordance with Section 228[4] of the National Internal Revenue Code (**NIRC**). Thus, to hold them not civilly liable (in CTA Crim. Case No. O-631) on the grounds of a supposed irregularity in the assessment process is improper as the findings of the BIR on the matter are already final and beyond judicial review.

It is thus my opinion that the denial of the present petition for review should be by reason of petitioner's failure to prove by preponderance of evidence respondents' civil liability arising from the crime of tax evasion. As it would seem, aside from the PAN, FLD and FNBS, no other supporting documentary evidence was admitted by the Third Division to support petitioner's claim of deliberate under-declaration of the tax due the corporation.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[4] **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...

...

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.

Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.