REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

CTA EB CRIM. NO. 028
(CTA Crim. Case Nos. O-188 O-189, O-190, O-191, O-192 and O-193)

Present:

Del Rosario, *PJ,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, *JJ.*

\- versus -

EDWIN T. SO, RAYMOND R. LEE, TECHPOINT COMPUTER CORPORATION,
Respondents.

Promulgated:

MAR 06 2015
10:56 a.m.

x- x

DECISION

COTANGCO-MANALASTAS, J.:

Before the Court *En Banc* is a *Petition for Review* filed by petitioner, seeking the reversal of the *Resolution* [1] dated September 27, 2013 of the Special First Division of the Court which denied petitioner's Motion for Partial Reconsideration (of the Civil Aspect of the Case) in CTA Crim. Case Nos. O-188, O-189, O-190, O-191, O-192 and O-193.

Petitioner prays that this Court render judgment declaring respondent Techpoint Computer Corporation liable for the payment of deficiency corporate taxes in the amount of P95,885,424.26 covering taxable years 2003, 2004 and 2005.

[1] *Rollo*, pp. 23-30.

The Facts

Respondents Techpoint Computer Corporation (TCC), Edwin T. So and Raymond R. Lee, as president and treasurer of TCC, respectively, were charged in six separate Informations for violations of the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, *to wit*:

1. Violation of Sections 105, 106, 114 and 255 of the NIRC of 1997, as amended, in relation to Section 253 thereof, for failure to file value added tax (VAT) return and pay VAT in the amount of P1,908,996.36 for taxable year 2005 despite the Final Assessment Notice (FAN) issued by the Bureau of Internal Revenue (BIR), which became final and executory, as well as various demands made, docketed as CTA Crim. Case No. O-188[2];

2. Violation of Sections 105, 106, 114 and 255 of the NIRC of 1997, as amended, in relation to Section 253 thereof, for failure to file VAT return and pay VAT in the amount of P6,521,569.11 for taxable year 2004 despite the FAN issued by the BIR, which became final and executory, as well as various demands made, docketed as CTA Crim. Case No. O-189[3];

3. Violation of Sections 105, 106, 114 and 255 of the NIRC of 1997, as amended, in relation to Section 253 thereof, for failure to file VAT return and pay VAT in the amount of P2,007,460.07 for taxable year 2003 despite the FAN issued by the BIR, which became final and executory, as well as various demands made, docketed as CTA Crim. Case No. O-190[4];

4. Violation of Sections 52(A), 75 and 255 of the NIRC of 1997, as amended, in relation to Section 253 thereof, for failure to file income tax return and pay income tax in the amount of P6,423,872.24 for

[2] Division docket, CTA Crim. Case No. O-188, pp. 2-3.
[3] Division docket, CTA Crim. Case No. O-189, pp. 1-2.
[4] Division docket, CTA Crim. Case No. O-190, pp. 1-2.

taxable year 2003 docketed as CTA Crim. Case No. O-191[5];

5. Violation of Sections 52(A), 75 and 255 of the NIRC of 1997, as amended, in relation to Section 253 thereof, for failure to file income tax return and pay income tax in the amount of P20,869,021.15 for taxable year 2004 despite the FAN issued by the BIR, which became final and executory, as well as various demands made, docketed as CTA Crim. Case No. O-192[6]; and

6. Violation of Sections 52(A), 75 and 255 of the NIRC of 1997, as amended, in relation to Section 253 thereof, for failure to file income tax return and pay income tax in the amount of P6,108,788.36 for taxable year 2005 despite the FAN issued by the BIR, which became final and executory, as well as various demands made, docketed as CTA Crim. Case No. O-193[7].

By way of background, these cases arose from the alleged failure of respondent TCC to file the VAT returns and income tax returns resulting to non-payment of the required taxes for taxable years 2003 to 2005 from its sales transactions with the Department of Transportation and Communications (DOTC) for its supply of computers to the latter.

Thereafter, Warrants of Arrest were issued on both accused Edwin T. So and Raymond R. Lee.

However, it was reported in the "Return of Warrant of Arrest" that TCC is no longer operating in the area; the address of TCC is now occupied by a bank; nobody in the area knows the whereabouts of the accused; and/or the warrant of arrest was not served because both the accused cannot be located.[8]

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[5] Division docket, CTA Crim. Case No. O-191, pp. 1-2.
[6] Division docket, CTA Crim. Case No. O-192, pp. 2-3.
[7] Division docket, CTA Crim. Case No. O-193, pp. 2-3.
[8] Division docket, CTA Crim. Case Nos. O-188, O-189, O-190, O-192 and O-193, p. 172, pp. 128-129, pp. 120-121, pp. 170 and 173, and pp. 143 and 145, respectively.

Only accused Raymond R. Lee submitted himself to the jurisdiction of the Court and filed the required cash/surety bail bond for his provisional liberty.[9]

When arraigned, accused Raymond R. Lee pleaded "not guilty" to the crimes charged.[10]

During trial, the prosecution presented four witnesses from the BIR, namely, Marita P. Panteriori, Atty. Elmer F. Carolino, Angela Marie T. Simpit, and Erlinda A. Simple, and one from the DOTC, Edna C. Tapar.

On November 29, 2012, accused Raymond R. Lee filed a Demurrer to Evidence based on gross insufficiency of evidence to sustain his indictment or to support a verdict of guilt beyond reasonable doubt.[11]

On March 14, 2013, the Court in Division issued a Resolution[12] granting the demurrer to evidence, the dispositve portion of which reads as follows:

> "**WHEREFORE**, the Demurrer to Evidence dated November 28, 2012, by the accused Raymond R. Lee, is hereby GRANTED. Consequently, accused-movant Raymond R. Lee is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. The instant criminal cases are therefore DISMISSED.
>
> **SO ORDERED**."

The Court in Division granted the demurrer to evidence for failure of the prosecution to prove that accused Lee is the treasurer of TCC, as alleged in the information. The Court in Division found, among others, that the testimonies of the prosecution witnesses show that the treasurer of TCC is a certain Paul Tan and not accused Lee. Neither was accused Lee the president, general manager, branch manager, nor officer-in-charge of TCC who should bear the punishment of the alleged infractions of the NIRC. Granting that accused Lee is one of the directors of TCC, being such will not automatically render him liable as the responsible officer or employee of the corporation. The prosecution was not able to

[9] Division docket, CTA Crim. Case Nos. O-188, O-189, O-190, O-191, O-192 and O-193, pp. 136-137, pp. 175-176, pp. 168-169, pp. 170-171, pp. 206-207, and pp. 178-179, respectively.
[10] Division docket, CTA Crim Case No. O-188, pp. 202, 248-249.
[11] Division docket, CTA Crim Case No. O-188, pp. 687-723.
[12] Division docket, CTA Crim. Case No. O-188, pp 739-759.

establish with particularity his connection or direct participation in the alleged violation of the NIRC. Neither was the prosecution able to establish his role in the management of the affairs of the corporation.

On April 17, 2013, petitioner filed a Motion for Partial Reconsideration (of the Civil Aspect of the Case)[13] praying that respondent TCC be held civilly liable to pay the deficiency taxes assessed despite the dismissal of the criminal cases against accused Lee.

However, the said motion was denied in the *Resolution*[14] dated September 27, 2013. The Court in Division held that the prosecution miserably failed to prove that there was proper service of the Preliminary Assessment Notice (PAN) and Formal Letter of Demand (FLD) with Assessment Notices either upon accused Lee or TCC, rendering the alleged assessment infirm and without any legal and binding consequences.

Aggrieved, petitioner filed the instant *Petition for Review*[15] on November 13, 2013.

Respondents were ordered to file their comment within ten (10) days from receipt of the Resolution[16] dated December 23, 2013. However, respondents failed to file their comment.[17]

In the Resolution[18] dated March 26, 2014, the Court resolved to give due course to the petition and ordered the parties to submit their respective memoranda.

Petitioner filed a Memorandum[19] on April 28, 2014 while respondents failed to file their memorandum[20]. Thus, the above-captioned case was submitted for decision on July 24, 2014.[21]

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[13] Division docket, CTA Crim. Case No. O-188, pp 760-769.
[14] *Supra*, Note 1.
[15] *Rollo*, pp 6-19.
[16] *Rollo*, pp. 36-37.
[17] *Rollo*, p. 38.
[18] *Rollo*, pp. 40-41.
[19] *Rollo*, pp. 42-53.
[20] *Rollo*, p. 55.
[21] *Rollo*, p. 57-58.

The Issues

The petitioner raises the following issues[22] for the Court *En Banc's* resolution:

> "WHETHER OR NOT THERE HAD BEEN A VALID SERVICE OF THE PRELIMINARY ASSESSMENT NOTICE AND FORMAL LETTER OF DEMAND TO RESPONDENT TCC
>
> WHETHER OR NOT RESPONDENT TCC MAY BE HELD ACCOUNTABLE FOR THE UNPAID TAXES ARISING FROM ITS FAILURE TO PAY INCOME AND VALUE-ADDED TAXES FOR THE YEARS 2003, 2004 AND 2005."

The Ruling of the Court

The Petition for Review has no merit.

Petitioner argues that the PAN and FLD were validly served upon respondent TCC through constructive service as witnessed by Barangay Officials of Barangay Immaculate Concepcion, Area 20 District 4, Quezon City. Melodiya Falla, the employee of TCC who signed her name in the PAN and FLD with Assessment Notices, but despite affixing her signature therein refused to receive the PAN and FLD, was the same Melodiya Falla who received the Letter of Authority No. 2001 00026005 [23] dated June 6, 2006, Letter-Request for presentation of records[24] dated June 6, 2006, Second Request for presentation of records[25] dated July 7, 2006, Final Notice for presentation of records [26] dated July 24, 2006, and *Subpoena Duces Tecum* [27] with attached list of required documents to be presented dated November 13, 2006. Despite receipt of the PAN and FLD, respondent TCC failed to file a protest against the assessment against it. Hence, the assessment became final, demandable and executory pursuant to Section 228 of the NIRC of 1997.

[22] *Rollo*, p. 11.
[23] Exhibit "G".
[24] Exhibit "H" to "H-3".
[25] Exhibit "I".
[26] Exhibit "J".
[27] Exhibit "K".

Petitioner stresses that the due process requirement is to notify the taxable entity of whatever tax delinquencies and/or deficiencies assessed against it and thereafter give said entity an opportunity to explain his defense(s). Applying this in the present case, the FAN and FLD was validly served to Melodiya Falla. In fact, as testament that respondent received the notices, respondent TCC, through its lawyer, asked for an extension of time within which to submit the required documents. This only goes to show that the FAN and FLD served through Melodiya Falla came into the knowledge of respondent TCC. Surely, this suffices the requirement of "notice" under the due process clause. To uphold the ruling of the Special First Division of the Court would set a dangerous precedent where taxable entities could escape tax liability by the simple expedite of having "unauthorized persons" receive assessment notices against it. This restricted view would put a premium to dishonesty and lack of accountability and is anathema to the concept of fair play, equity and justice.

The mandatory nature of the due process requirement in the issuance of an assessment, particularly the requirement of informing the taxpayer of the assessment, is adequately established in Section 228 of the NIRC of 1997, as amended, and Section 3 of Revenue Regulations (RR) No. 12-99, pertinent portions of which are as follows:

> 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 preassessment 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**.
>
> xxx xxx xxx
>
> SECTION 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 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. 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**. (*Emphasis supplied)*

The above-quoted Section 228 clearly mandates that when the BIR determines the need to assess proper taxes, the taxpayer shall first be informed of the findings through a pre-assessment notice, unless any of the exceptions enumerated therein applies. It also requires that taxpayers must be informed of the facts and law upon which the assessment was made; otherwise, the assessment will be void.

Similarly, Section 3 of RR No. 12-99, which laid down the due process requirement in the issuance of a deficiency tax assessment, clearly requires the sending of the PAN and the FAN by the BIR and the receipt thereof by the taxpayer as part of due process in the issuance of assessments. Furthermore, if the assessment is sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, indicating his (a) name, (b) signature, (c) designation and authority to act for and in behalf of the taxpayer, if received by a person other than the taxpayer himself, and (d) date of receipt thereof.

In the case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*[28], the Supreme Court emphasized that the notice requirements prescribed under Section 228 of the NIRC of 1997, as amended, and RR No. 12-99 must be strictly complied with and that failure to do so amounts to a denial of due process, and consequently, renders nugatory any assessment, *to wit*:

> **Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations - that taxpayers should be able to present their case and adduce supporting evidence.**
>
> This is confirmed under the provisions R.R. No. 12-99 of the BIR which pertinently provide:
>
> 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**

[28] G.R. No. 185371, December 8, 2010.

> **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**." *(Emphasis supplied)*

Moreover, the Supreme Court in the case of *Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue*[29] held that it is a requirement of due process that the taxpayer must actually receive the assessment, *to wit*:

> "xxx **the foregoing rule requires that the notice be sent to the taxpayer, and not merely to a disinterested party**. Although there is no specific requirement that the taxpayer should receive the notice within the said period, **due process requires at the very least that such notice actually be received**. In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*, we had occasion to say:
>
>> An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. **To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer.**" *(Emphasis supplied)*

Applying the foregoing, the Court finds that respondent TCC's right to due process of law was violated due to improper service of the PAN and FLD with Assessment Notices as will be discussed below.

Petitioner insists that the PAN and FLD were validly served upon respondent TCC through constructive service considering that Melodiya Falla, the employee of TCC, refused to receive the PAN and FLD.

Section 3.1.7 of RR No. 12-99 provides how constructive service is considered effected, *to wit*:

> 3.1.7 *Constructive Service.* — If the notice to the taxpayer herein required is served by registered mail, and no response is received from the taxpayer within the prescribed

[29] G.R. No. 155541, January 27, 2004.

> period from date of the posting thereof in the mail, the same shall be considered actually or constructively received by the taxpayer. If the same is personally served on the **taxpayer or his duly authorized representative** who, however, **refused to acknowledge receipt** thereof, the same shall be **constructively served on the taxpayer**. **Constructive service thereof shall be considered effected by leaving the same in the premises of the taxpayer and this fact of constructive service is attested to, witnessed and signed by at least two (2) revenue officers other than the revenue officer who constructively served the same. The revenue officer who constructively served the same shall make a written report of this matter which shall form part of the docket of this case** (see illustration in ANNEX D[30] hereof). (*Emphasis supplied*)

However, petitioner failed to comply with the requirement that the constructive service must be attested to, witnessed and signed by at least two (2) revenue officers other than the revenue officer who constructively served the same.

An examination of the PAN[31] dated May 23, 2008 shows a handwritten note that it was "constructively served by Atty. Elmer F. Carolino on Sept. 23, 2008 1:45pm" and was witnessed by: "Rodolfo C. Robles, Bgy. Immaculate Conception,

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30 ANNEX D

CONSTRUCTIVE SERVICE OF NOTICE/S

MEMORANDUM FOR:

The Commissioner/Regional Director
Thru Channel

SUBJECT:

Name of Taxpayer: ________________
Address: ________________
T.I.N.: ________________
Kind of Taxes: ________________
Amount: P________________

This is to report that I/We personally served on the subject taxpayer at the above given address on ____________, 1999, the formal letter of demand and assessment notice, dated ______________, 1999, calling for payment of his/its above stated tax liability. However, the taxpayer refused to acknowledge receipt thereof. I/We also tried to serve the same on ______________________________, the taxpayer's duly authorized representative, but the latter likewise refused to acknowledge receipt thereof.

Due to the foregoing, the said formal letter of demand and assessment notice were constructively delivered by leaving the same conspicuously at the taxpayer's residence/place of business at ____________________, on ___________, 1999.

____
Revenue Officer

______________________ ______________________
Name and Signature of Witness Name and Signature of Witness

______________________ ______________________
Designation Designation

31 Exhibits "JJ" to "JJ-1" and "JJ-4" to "JJ-7".

Area 20-Dist. IV, Q.C., Bgy. Verifier" and "Leon M. Saracanlao, Jr. BPSO" while the FLD[32] dated October 16, 2008 shows a handwritten note that it was "constructively served by Marita P. Panteriori 12/18/08 11:01 am" and witnessed by "Victor Esguerra OIC-Brgy" and "Lorenzo Lomontad Tanod". Clearly, only the revenue officer who served the notices was present, no other revenue officers were present to witness such service.

Moreover, no written report of the matter in accordance with Annex D of RR No. 12-99 was presented in evidence.

The Court also noted that the Letter of Authority[33] dated June 6, 2006 issued in this case was for the period from taxable year 2005 to "unverified prior years".

Section 6(A) of the NIRC of 1997, as amended, vests the Commissioner of Internal Revenue the power to authorize the examination of any taxpayer and the assessment of the correct amount of tax due, *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)

In relation thereto, Section 13 of the NIRC of 1997, as amended, provides that a Letter of Authority or LA 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.[34] Section 13 provides:

> SEC. 13. *Authority of a Revenue Officer.* — Subject to the rules and regulations to be prescribed by the Secretary of

[32] Exhibits "KK" to "KK-1".
[33] Exhibit "G".
[34] *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.

> Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself. (Emphasis supplied)

Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity.[35]

In the case of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*[36], the BIR issued a Letter of Authority to examine Sony's books of accounts and other accounting records for "the period 1997 and unverified prior years." The Supreme Court held that the CIR acting through its revenue officers went beyond the scope of their authority as to the deficiency tax assessment arrived at based on records from January to March 1998. Thus, the deficiency tax assessment from January to March 1998 is not valid and must be disallowed. The Supreme Court also upheld the invalidity of the phrase "unverified prior years" in the LA, because it violated Section C of Revenue Memorandum Order (RMO) No. 43-90, which provides:

> 3. A Letter of Authority should cover a taxable period not exceeding one taxable year. The practice of issuing L/As covering audit of "unverified prior years" is hereby prohibited. If the audit of a taxpayer shall include more than one taxable period, the other periods or years shall be specifically indicated in the L/A.

A deficiency assessment issued without a valid authority is a nullity. Considering that the LA issued in this case authorized the audit for taxable year 2005 to "unverified prior years", which is prohibited, the deficiency VAT and income tax assessments for the taxable years 2003 and 2004 should be cancelled based on this additional ground.

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[35] *Ibid.*
[36] G.R. No. 178697, November 17, 2010.

From all the foregoing, there is no doubt that the assessment issued by the BIR is void and a void assessment bears no valid fruit[37]. Consequently, respondent TCC should not be held civilly liable for the deficiency VAT and income tax assessments for taxable years 2003 to 2005.

Finding no reversible error, *We* affirm the assailed *Resolution* dated September 27, 2013 of the Court in Division.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ON LEAVE
ESPERANZA R. FABON-VICTORINO
Associate Justice

[37] *Commissioner of Internal Revenue v. Azucena T. Reyes,* G.R. Nos. 159694 & 163581, January 27, 2006.

(With due respect, I join the dissenting opinion of Presiding Justice Del Rosario)
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* 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. 028
(CTA Crim. Case Nos. O-188, O-189, O-190, O-191, O-192 & O-193)

- versus -

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.
BAUTISTA
UY
CASANOVA
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS
RINGPIS-LIBAN, *JJ.*

EDWIN T. SO, RAYMOND R. LEE, TECHPOINT COMPUTER CORPORATION,
Respondents.

Promulgated:

MAR 06 2015
10:56 a.m.

x- -x

DISSENTING OPINION

DEL ROSARIO, PJ.:

With utmost respect to the *ponencia* of my esteemed colleague, the Honorable Associate Justice Amelia R. Cotangco-Manalastas, I dissent on the dismissal of the Petition for Review filed before the Court *En Banc* finding no reversible error anent the assailed Resolution of the Court in Division dated September 27, 2013 in the consolidated criminal cases of People vs. Edwin T. So, Raymond R. Lee and Technopoint Computer Corporation, *CTA Crim. Case Nos. O-188, O-189, O-190, O-191, O-192 and O-193.* It is my humble opinion that the Court in Division's resolution holding Technopoint Computer Corporation (TCC) not civilly liable to pay the deficiency assessed taxes was premature and may not be considered a correct conclusion.

It should be stressed that there were three (3) accused in the aforesaid consolidated CTA Crim. Case Nos. O-188, O-189, O-190, O-191, O-192 and O-193, namely: (1) Edwin T. So, (2) Raymond R. Lee, and (3) Technopoint Computer Corporation (TCC). Except for accused Raymond R. Lee, who voluntarily surrendered, jurisdiction over the person of Edwin T. So and TCC was not acquired by the Court in Division. The return of warrants of arrest showed that TCC was no longer operating in the area and that nobody in the area knows the whereabouts of the accused. The warrants were not served because the accused cannot be located.[1] The records of the case likewise do not disclosed that said accused Edwin T. So and TCC (through counsel or a duly authorized representative) voluntarily submitted to the jurisdiction of the Court.

For not having acquired jurisdiction over the two other accused, it is my opinion that the Court in Division committed a reversible error in dismissing the **entire consolidated criminal cases in its earlier Resolution promulgated on March 14, 2013 as a result of the favorable action on accused Raymond R. Lee's Demurrer to Evidence**, and in absolving TCC of any civil liability when it issued the assailed Resolution promulgated on September 27, 2013 in response to petitioner's Motion for Partial Reconsideration *(of the Civil Aspect of the Case)* of the March 14, 2013 Resolution. Jurisdiction of the Court in Division is limited only to the resolution of accused Raymond R. Lee's demurrer to evidence. It should not have extended the dismissal of said criminal cases insofar as the other two accused are concerned; neither should it have exonerated TCC of any civil liability as it lacks jurisdiction over the person of accused Edwin T. So and TCC. The basis of my opinion is ***Paramount Insurance Corporation vs. Japzon***,[2] where the Supreme Court held the following:

> "Jurisdiction is the power with which courts are invested for administering justice, that is, for hearing and deciding cases. **In order for the court to have authority to dispose of the case on the merits, it must acquire jurisdiction over** the subject matter and **the parties**." (Emphasis supplied)

The foregoing pronouncement clearly mandates that a court must acquire jurisdiction not only over the subject matter of the case but also over the parties before it will have an authority to dispose of the case on the merits.

[1] Division Dockets CTA Crim. Case Nos. O-188, O-189, O-190, pages 172, 128-129 and 120-121, respectively.
[2] G.R. No. L-68037 July 29, 1992

on

Likewise, in ***Regner vs. Logarta*,**[3] the Supreme Court ruled that a court must acquire jurisdiction over the persons of indispensable parties before it can validly pronounce judgments personal to the parties.

Jurisprudence dictates that a judgment rendered by a court without jurisdiction is null and void and may be attacked anytime. It creates no rights and produces no effect. The decision of a court without jurisdiction is a total nullity.[4]

Considering that the Court in Division has not acquired jurisdiction over the person of accused Edwin T. So and TCC, it cannot validly pronounce judgments personal to said accused. The judgment therefore of the Court in Division in dismissing the consolidated criminal cases in its entirety *(except the judgment of acquittal in favor of accused Raymond R. Lee)* and absolving TCC of any possible civil liability is, with due respect, fraught with infirmity.

IN VIEW OF THE FOREGOING, I vote to GRANT the Petition for Review. The appealed consolidated criminal cases should be REMANDED to the Court in Division for the continuation of the proceedings and eventual judgment on the merits of the case as regards accused Edwin T. So and TCC.

ROMAN G. DEL ROSARIO
Presiding Justice

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[3] G.R. No. 168747, October 19, 2007.
[4] Tiu vs. First Plywood Corporation, G.R. No. 176123; Tiu vs. Timber Exports, Inc. *et al.*, GR No. 185265, March 10, 2010.