REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Third Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

CORAZON C. GERNALE,
Accused.

CTA CRIM CASE NO. O-336

Members:
FABON- VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:
SEP 26 2018
1:40 p.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

Accused Corazon C. Gernale ("Gernale") is charged in her capacity as Treasurer and responsible officer of Gernale Electrical Contractor Corporation ("GECC"), for violation of Section 255 in relation to Sections 253(d) of the National Internal Revenue Code ("NIRC") of 1997, as amended, for failure by GECC to pay its alleged deficiency taxes for taxable year 2003.

The plaintiff, on the other hand, is represented by the Bureau of Internal Revenue ("BIR"), the government agency primarily tasked to collect internal revenue taxes for the support of the government, with office at the BIR National Office Building, Diliman, Quezon City.

The Information against the accused reads as follows:

> "That on or about July 31, 2006, in the City of Manila, Philippines, the said accused, being then the Treasurer and responsible officer of Gernale Electrical Contractor Corporation

with business address at 1384 Gomez St., Paco, in said City, having filed her internal revenue tax of the latter for the year 2003 and after examination and audit of the same, it has been found that there is due collectibles from said Gernale Electrical Contractor Corporation the following, to wit:

Kind of Tax		Amount
Deficiency Income [Tax]		[Php] 7,317,380.55
Deficiency VAT		2,346,474.98
	TOTAL	[Php] 9,663,855.53

for the said year under BIR Assessment/Demand Notice No. 34-2003, did then and there willfully and unlawfully fail and refuse and neglect to pay said taxes and without formally appealing the same, despite due assessment, notice and demand to do so, to the damage and prejudice of the Republic of the Philippines, in the total amount of **[Php]9,663,855.53**, Philippine Currency.

Contrary to law."

On June 25, 2013, this Court issued a Resolution[1] ordering the issuance of warrant of arrest for accused Gernale. On June 28, 2013, the Court issued the Warrant of Arrest[2] for accused.

The said Warrant of Arrest returned for the reason that accused cannot be located at the given address despite diligent efforts exerted by the warrant server, this Court issued another Resolution[3] on September 24, 2013 ordering the issuance of an alias warrant of arrest for accused Gernale.

On the same day, the Court issued the Alias Warrant of Arrest[4] for accused.

On October 08, 2013, accused Gernale voluntarily appeared before the Court and submitted herself to the jurisdiction of the Court by posting a cash bond in the amount of Php30,000.00, for her provisional liberty.[5]

[1] Docket, pp.52-53.
[2] *Id.*, p.46.
[3] *Id.*, pp.60-61.
[4] *Id.*, p.59.
[5] *Id.*, p.63.

During the arraignment on February 12, 2014, accused, with the assistance of her counsel *de parte*, entered a plea of "Not Guilty" to the crime charged.[6] After the termination of the pre-trial held on May 07, 2014, the parties presented their respective evidence.

Trial ensued and, to prove its case, plaintiff presented five (5) witnesses, namely: Anita T. Mariñas, Gloria S. Maliwanag, Ma. Paz Arcilla, Armando C. Macatangay and Zaldy A. Dancel.

The plaintiff's first witness, ***Anita T. Mariñas,***[7] Revenue Officer I, is presently assigned at Revenue District Office ("RDO") No. 26, Malabon City, and previously, during taxable years 2004-2005, was assigned at RDO No. 34-Paco-Pandacan-Sta. Ana-San Andres, Manila. She testified that her duty is to conduct an audit/investigation of taxpayers within the jurisdiction of the district office where she is assigned pursuant to a Letter of Authority, Tax Verification Notice, Letter Notice and other forms of notice of audit. She was assigned to conduct audit on GECC by virtue of a Letter Notice L.N. No. 034-R-03-00-S00009[8] dated October 27, 2004, relative to its discrepancy in sales per tax return filed as against the summary list of purchases submitted by its customers for taxable year 2003. Thereafter, her office located on file GECC's Annual Income Tax Return ("AITR") with Financial Statements for taxable year 2003.[9] On November 23, 2004, she personally served upon GECC the Letter Notice at GECC Bldg., 1384 Gomez St., Paco, Manila. Subsequently, on January 17, 2005, she personally served upon GECC on the same address a Follow-up Letter[10] giving the corporation the chance to reconcile the discrepancy and to refute the findings against them. The letter was received by a certain Arvy G. Gutlay. Then on March 30, 2005, she personally served on GECC a Notice of Informal Conference[11] duly signed by OIC-RDO Edgardo S. Santos, which was received by a certain Julio Basilio. The President of GECC in turn wrote a letter[12] authorizing Julio Basilio to make representation in behalf of the corporation for an informal conference relative to the issued Letter Notice.

She and the representative of GECC had the informal conference on April 14, 2005 where she discussed the matter contained in the Letter Notice. Based on the computerized matching conducted by the BIR on the purchases of GECC's customers against the sales declared by GECC in the tax returns filed, it was found out that there was an underdeclaration of sales amounting to Php39,519,842.80, which resulted to an income tax deficiency of

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6 *Id.*, pp.99-101.
7 Testified on February 08, 2015.
8 Exhibits "P-3" and "P-4".
9 Exhibits "P-1" and "P-2".
10 Exhibit "P-5".
11 Exhibit "P-7".
12 Exhibit "P-6".

Php4,638,911.92 and value-added tax ("VAT") deficiency of Php1,519,961.35. Despite this, GECC still failed to present or submit any supporting documents. Consequently, she made a Memorandum Report recommending the forwarding of the case to higher authorities for appropriate review and assessment.[13]

After the audit, she and her team prepared the Revenue Officer's Audit Report on Income Tax (BIR Form No. 0500)[14] and Revenue Officer's Audit Report on Value-Added Tax (BIRForm No. 0507)[15] regarding their findings. Her team then endorsed the entire tax docket of GECC to the Assessment Division of Revenue Region No. 6, for review and preparation of assessment notices. Thereafter, the Assessment Division issued a Memorandum[16] returning to her office the report of investigation with comments. She then recomputed the deficiency tax liabiltiies of GECC according to the recommendation of the Assessment Division and made a revised Revenue Officer's Audit Report on Income Tax (BIR Form No. 0500)[17] and Revenue Officer's Audit Report on Value-Added Tax (BIR Form No. 0507)[18]. She also made a Post Reporting Notice on August 18, 2005 with attached Revised Computation Sheets (BIR Form No. 2112-A)[19]. A copy of the Post Reporting Notice was personally received by Julio Basilio.[20] Lastly, her team prepared a Memorandum[21] regarding their findings and endorsed the entire tax docket of GECC to the Assessment Division for the issuance of assessment notices.

She identified her Judicial Affidavit marked as Exhibit "P-52."

On cross examination, she testified that the address of GECC as indicated in the tax returns for 2003 is different from that indicated in the notices sent by the BIR. In the tax returns, the address is 1331 Burgos St., Paco, Manila and not 1834 Gomez St., Paco, Manila, the address indicated in the Letter Notice, Follow-up Letter, Notice of Informal Conference and Post Reporting Notice (collectively "BIR notices"). However, on re-direct, she testified that she was certain that the BIR notices were received by GECC because having arrived at the location, she first presented herself as an employee of the BIR and inquired if the same was the office of GECC.

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13 Exhibit "P-14" and "P-14-a".
14 Exhibits "P-15", "P-15-a", "P-15-b" and "P-15-c".
15 Exhibits "P-16" , "P-16-a", "P-16-b" and "P-16-c".
16 Exhibit "P-19".
17 Exhibit "P-37".
18 Exhibits "P-36" , "P-36-a", "P-36-b" and "P-36-c".
19 Exhibits "P-34" , and "P-35".
20 Exhibits "P-33" , and "P-33-a".
21 Exhibits "P-38", "P-38-a" and "P-38-b".

The plaintiff's second witness, ***Gloria S. Maliwanag***,[22] Revenue Officer-Reviewer, Assessment Division of Revenue Region No. 6, BIR Manila, testified that among her duties is to review the reports of investigation or revenue examiners of various districts of Revenue Region No. 6, BIR Manila where taxpayers were audited by virtue of a Letter of Authority, Tax Verification Notice and other forms of Notice of Audit. The 2003 tax case of GECC was assigned to her for review on June 17, 2005 as evidenced by an Assignment Slip[23]. He reviewed the 2003 internal revenue tax case of GECC after Revenue Officer Anita T. Mariñas submitted her report of investigation. After the review, she prepared a Preliminary Assessment Notice ("PAN") [24] with Details of Discrepancy dated May 03, 2006 finding GECC liable for deficiency income tax in the amount of Php7,160,363.19 and deficiency VAT in the amount of Php2,296,723.84. The PAN was then transmitted to the Administrative Division, BIR Manila, for mailing to GECC. After the lapse of fifteen (15) days from the issuance of PAN, she forwarded the 2003 tax docket of GECC to the Billing Section for issuance of formal letters of demand.

She identified her Judicial Affidavit marked as Exhibit "P-53."

On cross examination, she testified that the address indicated in the PAN was 1384 Gomez St., Paco, Manila.

The plaintiff's third witness, ***Ma. Paz Arcilla***[25] Revenue Officer IV-Chief, Billing Section at the Assessment Division, BIR, Manila, testified that among her duties is to personally supervise in the preparation, issuance and monitoring of demand letters and final assessment notices of tax cases. On June 28, 2006, her office issued to GECC Final Assessment Notice No. 34-2003 for deficiency income tax and VAT in the amounts of Php7,317,380.55 [26] and Php2,346,474.98[27], respectively, and the formal demand of letters[28] ("assessment notices and FLD"). The assessment notices and FLD were duly signed by their Regional Director.[29] Thereafter, the originals thereof were transmitted to the Administrative Division, BIR Manila, for mailing to GECC.

She identified her Judicial Affidavit marked as Exhibit "P-54."

[22] Testified on March 18, 2015.
[23] Exhibit "P-18".
[24] Exhibit "P-39".
[25] Testified on July 08, 2015.
[26] Exhibit "P-40".
[27] Exhibit "P-42".
[28] Exhibits "P-41" and "P-50".
[29] Exhibits "P-40-a," "P-41-a", "P-42-a" and "P-50-a".

On cross examination, she testified that the address indicated in the assessment notices and FLD was 1384 Gomez St., Paco, Manila.

The plaintiff's fourth witness, ***Armando C. Macatangay***[30] Mailing Custodian at the Records Section of the Administrative Division, Revenue Region No. 6, BIR Manila, testified that among his duties is to personally send final notices of assessments and their corresponding formal demand letters including demand letters for compromise penalties to the taxpayers through registered mail, after personally receiving them and checking them thoroughly. On June 28, 2006, his office issued Final Assessment Notice No. 34-2003 for deficiency income tax and VAT in the amounts of Php7,317,380.55[31] and Php2,346,474.98[32], respectively, and the formal demand of letters[33] to GECC. The same were transmitted to him for mailing. After checking them, he placed them in one envelope, addressed it to GECC at 1384 Gomez St., Paco, Manila, sealed it, and attached a registry return receipt/card. He then personally brought them to the Central Post Office Manila and mailed it through registered mail on the same day under Registry Receipt No. 220597[34]. Thereafter, he gave the copy of Registry Receipt No. 220597 to their Chief of Administrative Division for pasting in the office copy of the Transmittal Slip[35] as proof that the documents indicated therein have been mailed to GECC. He also received a registry return card[36] addressed to GECC in relation to the said mail matter.

He identified his Judicial Affidavit marked as Exhibit "P-55."

On cross examination, he testified that the assessment notices and FLD were all mailed to GECC at the address indicated in the notices, at 1384 Gomez St., Paco, Manila.

The plaintiff's last witness, ***Zaldy A. Dancel***,[37] is a Revenue Officer III-Collection Officer/Seizure Agent presently assigned at RDO No. 53-B, Alabang Muntilupa City, and previously before 2008, was assigned at RDO No. 34-Paco-Pandacan-Sta. Ana-San Andres, Manila since 2003. He testified that among his duties is to serve collection notices, demand letters and warrants of distraint and/or levy to taxpayers with delinquent accounts payable. The 2003 tax case of GECC was assigned to him for enforcement of collection of its delinquent taxes. He then prepared a Preliminary Collection Letter ("PCL")[38] dated November 23,

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30 Testified on August 26, 2015.
31 Exhibit "P-40".
32 Exhibit "P-42".
33 Exhibits "P-41" and "P-50".
34 Exhibit "P-47".
35 Exhibits "P-46" and "P-46-a".
36 Exhibit "P-57".
37 Testified on November 11, 2015.
38 Exhibits "P-43" and "P-43-a".

2006, signed by Elenita P. Nuguid, Chief of Collection Section of Revenue Region No. 6, BIR Manila. The same was served to GECC *via* registered mail, demanding for the payments of its deficiency taxes. For failure by GECC to respond, he prepared a Final Notice Before Seizure ("FNBS")[39] on December 13, 2006, also signed by Elenita P. Nuguid. It was sent *via* registered mail as well.

Thereafter, he issued an undated Warrant of Distraint and/or Levy ("WDL")[40] against GECC, signed by OIC-RDO Edgardo S. Santos. He personally served the WDL at 1384 Gomez St., Paco, Manila and was received by Gay Gernale-Nubla.

Considering that GECC still failed to pay its tax liabilities despite the notices/letters issued by the BIR, he prepared a Memorandum[41] dated December 28, 2007 addressed to the Chief of Collection Division, recommending that the records of GECC be forwarded to the Legal Division, Revenue Region No. 6 for further action.

He identified his Judicial Affidavit marked as Exhibit "P-56".

On cross examination, he testified that the PCL, FNBS and WDL were served to GECC at 1384 Gomez St., Paco, Manila.

On December 10, 2015,[42] the plaintiff filed its Formal Offer of Evidence then rested its case with the admission of all its documentary evidence in the Resolutions dated April 13, 2016[43] and September 02, 2016[44].

On December 07, 2016, the Court issued an Order[45] setting the initial presentation of evidence for the accused on February 01, 2017, at 1:30 p.m.

The defense presented two (2) witnesses, namely: Gay Gernale-Nubla, and accused Gernale.

Gay Gernale-Nubla[46], testified that she is the daughter of accused Gernale. She resides at 1384 Gomez St., Paco, Manila. GECC is a small business

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[39] Exhibits "P-43" and "P-43-a".
[40] Exhibits "P-44" and "P-44-a".
[41] Exhibit "P-45".
[42] Docket, pp. 486-496.
[43] *Id.*, pp. 566-567.
[44] *Id.*, pp. 609-610.
[45] *Id.*, p. 624.
[46] Testified on February 01, 2017.

owned by her family with a few employees, the main business of which is general electric contractor. Its principal place of business is 1331 Burgos St., Paco, Manila. GECC was ran by his father Roger Gernale who oversaw almost all of the operations of the corporation. She was a former employee of GECC but even though she was in charge of purchasing in GECC, it was his father who told him what to purchase. Moreover, even though she was GECC's corporate secretary, she just signed all the needed Secretary's Certificate given to him by his father. The treasury and accounting operations of GECC was ran by his father and their accountant Julio Basilio, the latter handling all affairs with BIR. Her mother, accused Gernale, was the Treasurer on paper and did not actively participate with the management and operations of GECC. Instead she worked as a housewife, a businesswoman and was also elected as a Barangay Chairman and later as City Councilor. As such she was very busy and was not involved in the affairs of GECC.

She identified her Judicial Affidavit marked as Exhibit "A-27."

On cross examination, she testified that as Treasurer of GECC, accused Gernale signed documents for and in behalf of the corporation; that 1384 Gomez St., Paco, Manila is a residential address owned by her family; that 1331 Burgos St., Paco, Manila is owned by her sister who is also part of the corporation; that 1384 Gomez St., Paco, Manila and 1331 Burgos St., Paco, Manila are parallel with each other and is three hundred (300) meters away from each other; and that the educational attainment of her mother accused Gernale is Business Administration.

Accused ***Gernale***[47], the defense' last witness, testified that she is seventy-seven (77) years old, presently residing at 1384 Gomez St., Paco, Manila. She finished fourth year college. GECC is the family's business, the core business of which is installing and maintaining electrical facilities of its clients. When his late husband Roger Gernale incorporated GECC, she was designated as the company's Treasurer. Her son Reo and daughter Gaye also worked at GECC, the former in operations, the latter in logistics and purchasing. She insisted that she did not have any actual participation in the company, being busy in the running of his husband's office as Councilor of the 5th District of Manila. Julio Basilio ran the accounting department of GECC and prepared the Financial Statements of the company which was handed over her for signature. Julio Basilio never consulted her on the Financial Statements, in the same way she never inquired the documents given to her for signature for she fully trusted her husband who reviews them first.

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[47] Testified on July 05, 2017.

Based on her personal knowledge, GECC did not receive any notice from BIR regarding its supposed tax liabilities. Her husband nor her family members made no mention to her of such fact. It was only when her husband died that a certain Noli Almazan, her husband's good friend and confidant, informed her of the tax liability of GECC. They heeded his advice to avail of a tax amnesty, and money was coursed to him monthly in payment of the said amnesty, totalling to almost One Million Pesos (Php1,000,000.00). In exchange, Noli Almazan gave her copies of BIR forms and bank deposit slips. To her great surprise, a criminal complaint was lodged against her for failure to pay taxes. She then consulted a new lawyer and it was found out upon verification that Noli Almazan defrauded her. He was not a lawyer nor a certified public accountant. There was no tax amnesty application filed for and in behalf of GECC. There were no payments made to BIR. Lastly, all the documents and receipts (*i.e.,* tax amnesty return and deposit slips) given to her in relation to the said tax amnesty application were all counterfeit.

She identified her Judicial Affidavit marked as Exhibit "A-28."

On cross examination, she testified that she was aware of affixing her signature in her capacity as Treasurer of the corporation in every document of GECC she signed; that upon knowing of the tax liability of GECC, she instructed Noli Almazan to transact with BIR on GECC's behalf without any written authority; and that upon discovery that the tax amnesty was fake, the fact remains that the tax deficiency with the BIR was not paid by GECC.

The defense filed its Formal Offer of Evidence *via* registered mail on February 15, 2018[48] and rested its case with the admission of some of its documentary evidence on March 21, 2018.[49]

The defense submitted its Memorandum *via* registered mail on May 11, 2018,[50] while the plaintiff filed its Memorandum on May 18, 2018 *via* registered mail.[51] The case was submitted for decision in the Resolution dated June 19, 2018.[52]

<u>The Issues</u>

This Court is confronted with these main issues:[53]

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48 Docket, pp. 757-758.
49 *Id.,* pp. 763-764.
50 *Id.,* pp. 777-789.
51 *Id.,* p. 790-801.
52 *Id.,* p. 803.
53 *Id.,* Pre-Trial Order, Issues, p. 164.

1. Whether or not the accused failed to pay the alleged deficiency income tax and VAT liabilities of GECC; and

2. Whether or not accused is guilty of the crime charged in the Information.

The Arguments

The prosecution claims that it was able to establish the guilt of the accused beyond reasonable doubt on the crime charged:

1) First, GECC as a juridical person is required to pay tax under Section 23(E) of the NIRC of 1997, as amended. The penal liability for violation of Section 255 of the Code is pinned upon its responsible officer as provided in Section 256. Accused Gernale being GECC's Treasurer is liable for violation of Section 255;

2) Second, the plaintiff has sufficiently established through evidence that GECC has deficiency income tax and VAT for taxable year 2003. The plaintiff has also proven that the assessment notices and formal letters of demand were served upon GECC through registered mail. GECC's failure to file a protest thereto within the prescribed period made the assessment final and executory pursuant to Section 228 of the NIRC of 1997, as amended; and

3) Third, the failure to pay the tax was willful. GECC and accused Gernale had knowledge of the assessment and/or unpaid taxes with the BIR when they availed of the tax amnesty program, which was later on found to be counterfeit.

On the other hand, accused Gernale argue that the third element – willful failure to pay the deficiency tax is lacking for her conviction. The plaintiff failed to prove that she was aware of GECC's tax liability and intended to evade such tax liability for the following reasons:

1) The plaintiff failed to prove that GECC received a copy of BIR's Letter Notice L.N. No. 034-R-03-00-S00009 dated

October 27, 2004, failing to prove that the person who allegedly received such notice is an authorized agent of GECC;

2) All the BIR notices were addressed and sent to 1384 Gomez St., Paco, Manila which is not GECC's official place of business. GECC's registered business address is 1331 Burgos St., Paco, Manila;

3) Accused had no knowledge of GECC's financial matter, much more its tax liability or its intention to willfully pay them. If at all, accused may be considered negligent of her duties as Treasurer because she merely relied on what Julio Basilio told her and she signed all the accounting documents he prepared. Following *People v. Judy Anne Santos*[54], negligence is not equivalent to fraud with intent to evade the tax contemplated by the law; and

4) Accused acted in good faith. She merely learned of GECC's tax liability after her husband's death when her late husband's friend, Noli Almazan, whom she believed a CPA-Lawyer, informed her about it.

<u>The Ruling of the Court</u>

Accused Gernale was charged in the present case with violation of Section 255 of the NIRC of 1997, as amended, as follows:

> "**Sec. 255. Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.** – Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply any 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 laws 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

[54] CTA Crim Case No. O-012, January 16, 2013.

> thousand pesos (P10,000.00) and suffer imprisonment of not less than one (1) year but not more than ten (10) years."

For juridical entities however, penal liability for violations of Section 255 are imposed on the responsible officer of the corporation, to wit:

> "**Sec. 253. General Provisions.** – x x x
>
> (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 the employees responsible for the violation."

In addition, Section 256 of the NIRC of 1997, as amended, penalizes the corporation of a fine for any violation of the Code, *viz*:

> "**Sec. 256. Penal Liability of Corporation.** – 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 (P50,000.00) but not more than One hundred thousand pesos (P100,000.00)."

Following above, the plaintiff must prove beyond reasonable doubt the following three (3) essential elements before a taxpayer can be held liable under Section 255 of the NIRC of 1997, as amended:

1. The accused is the person required under the Tax Code or by rules and regulations to file a return, to pay the tax and supply correct and accurate information;

2. The accused failed to file a return, to pay the tax and supply correct and accurate information at the time required by law; and

3. Such failure was willful.

It is thus necessary for the plaintiff to prove that (1) GECC was a registered taxpayer in 2003, (2) the BIR validly issued the subject assessment notices pursuant to Section 228 of the NIRC and (3) the accused had knowledge of such assessment and willfully failed to pay the same.

GECC is a juridical person required to pay its taxes

GECC is a registered corporate taxpayer with Tax Identification Number (TIN) 213-053-940-000.[55] There is no question that GECC as a juridical person is required to pay its taxes under Section 23(E) of the NIRC of 1997, as amended, to wit:

> "SEC. 23. **General Principles of Income Taxation in the Philippines.** - Except when otherwise provided in this Code:
>
> x x x
>
> (E) A domestic corporation is taxable on all income derived from sources within and without the Philippines; x x x"

GECC was charged of violating Section 255 of the NIRC, as amended for non-payment of income tax and VAT. Based on GECC's AITR for taxable 2003[56], the corporation had gross sales amounting to Php4,805,280.90. However, according to the BIR, GECC did not declare all of its sales nor paid the correct taxes due. Through third-party matching, the BIR found out that GECC had a total of Php43,825,123.70 in sales for taxable year 2003 based on the Summary List of Purchases (SLP) submitted by GECC's customers.[57] Hence, GECC was notified by the BIR through a Letter Notice giving it the opportunity to reconcile the discrepancies.

Under Section 256 of the NIRC of 1997, as amended, which we previously quoted, the penal liability for violations of Section 255 is pinned upon the responsible officer of the corporation. In the case at bar, accused Gernale, admitted during the Pre-Trial Conference[58] and during her testimony[59] that she was the Treasurer of GECC.

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[55] Docket, Pre-Trial Order, Parties' Stipulation, Facts, p. 164.
[56] Exhibits "P-1" and "P-2".
[57] Exhibits "P-3" and "P-4".
[58] Docket, Pre-Trial Order, Parties' Stipulation, Facts, p. 164; Amended Judicial Affidavit, p. 701.
[59] *Id.*, Amended Judicial Affidavit, p. 701.

That GECC failed to pay taxes at the time required by law was not proven

Accused Gernale, being the Treasurer of GECC, was charged of willful failure to pay deficiency income tax and VAT for taxable year 2003 arising from BIR Assessment/Demand Notice No. 34-2003. Inasmuch as the alleged deficiency income and VAT arose from an assessment, as stated in the Information, it becomes necessary for the plaintiff to prove that it issued the subject assessment notices pursuant to Section 228 of the NIRC of 1997, as amended.

Section 228, in relation to Section 3 of Revenue Regulations ("RR") No. 12-99, provides the due process requirement in an assessment:

> "SEC. 228. ***Protesting of Assessment*** – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall notify first the taxpayer of his findings: *Provided, however,* That a pre-assessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> **<u>The taxpayer shall be informed in writing of the law and facts on which the assessment is made; otherwise, the assessment shall be void.</u>**
>
> 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 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."[60]

In the case of *Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue*[61], the Supreme Court held that it is a requirement of due process that the taxpayer must actually receive the assessment.

"Respondent argues that an assessment is deemed made for the purpose of giving effect to such assessment when the notice is released, mailed or sent to the taxpayer to effectuate the assessment, and there is no legal requirement that the taxpayer receive said notice xxx Although there is no specific requirement that the taxpayer should receive the notice within 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.

In *Republic v. De le Rama*...We said:

> The notice was not sent to the taxpayer for the purpose of giving effect to the assessment, and said notice could not produce any effect. In the case of Bautista and Corrales Tan v. Collector of Internal Revenue ... this Court had occasion to state that 'the assessment is deemed made when the notice to this effect is released, mailed or sent to the taxpayer for the purpose of giving effect to said assessment.' It

60 *Emphasis and underscoring supplied.*
61 G.R. No. 155541, January 27, 2004.

> appearing that the person liable for the payment of the tax did not receive the assessment, the assessment could not become final and executory. (*Citations omitted, emphasis supplied.*)"

To prove that GECC was properly assessed for deficiency taxes and that notices were issued, sent and received by the company, the BIR presented the following documents: Letter Notice L.N. No. 034-R-03-00-S00009[62] dated October 27, 2004, Follow-up Letter[63], Notice of Informal Conference[64], Post Reporting Notice on August 18, 2005 with attached Revised Computation Sheets (BIR Form No. 2112-A)[65], PAN[66] with Details of Discrepancy dated November May 03, 2006, assessment notices and FLD[67], Transmittal Slip[68] with Post Office Registry Receipt No. 220597[69], registry return card[70], PCL[71] dated November 23, 2006, FNBS[72], and undated WDL[73].

Accused however, avers that she did not receive any notice issued by the BIR. Plaintiff's witnesses[74] testified that all notices were served at 1384 Gomez St., Paco, Manila despite the fact that GECC's principal place of business is in 1331 Burgos St., Paco, Manila, the address indicated in GECC's AITR for taxable 2003.[75]

Considering that accused denied having received the assessment notices from the BIR, it is incumbent upon the latter to prove by competent evidence that the notices were indeed received by GECC. Thus, the burden of proof is shifted to the BIR to prove by contrary evidence that GECC received the assessment notices in the due course of mail.

In *Barcelon Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue,*[76] the Supreme Court held:

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62 Exhibits "P-3" and "P-4".
63 Exhibit "P-5".
64 Exhibit "P-7".
65 Exhibits "P-34" , and "P-35".
66 Exhibit "P-39".
67 Exhibit "P-40", "P-41", "P-42" and "P-50".
68 Exhibits "P-46" and "P-46-a".
69 Exhibit "P-47".
70 Exhibit "P-57".
71 Exhibits "P-43" and "P-43-a".
72 Exhibits "P-43" and "P-43-a".
73 Exhibits "P-44" and "P-44-a".
74 Testimonies of Anita T. Mariñas, Gloria S. Maliwanag, Ma. Paz Arcilla, Armando C. Macatangay and Zaldy A. Dancel.
75 Exhibits "P-1" and "P-2".
76 G.R. No. 157064, August 07, 2006.

"In its Decision, the CTA resolved the issues raised by the parties thus:

> Jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The onus probandi was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail. The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee (*Republic vs. Court of Appeals, 149 SCRA 351*). Thus as held by the Supreme Court in *Gonzalo P. Nava vs. Commissioner of Internal Revenue, 13 SCRA 104, January 30, 1965:*
>
> 'The facts to be proved to raise this presumption are (a) that the letter was properly addressed with postage prepaid, and (b) that it was mailed. Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail. But if one of the said facts fails to appear, the presumption does not lie. (VI, Moran, Comments on the Rules of Court, 1963 ed, 56-57 citing *Enriquez vs. Sunlife Assurance of Canada, 41 Phil 269*).'
>
> xxx xxx xxx
>
> x x x. What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized representative. And if said documents cannot be located, Respondent at the very least, should have submitted to the Court a certification issued by the

> Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts. x x x"

Meanwhile, in the case of *Protector's Services, Inc. vs. Court of Appeals*,[77] the Supreme Court ruled that:

> "**When a mail matter is sent by registered mail, there exists a presumption**, set forth under Section 3 (v), Rule 131 of the Rules of Court, **that it was received in the regular course of mail**. <u>The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed.</u> While a mailed letter is deemed received by the addressee in the ordinary course of mail, **this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favoured by the presumption to prove that the mailed letter was indeed received by the addressee**."[78]

The plaintiff claims that the PAN[79] with Details of Discrepancy dated November May 03, 2006 was validly served to GECC because they were sent *via* registered mail. However, it was not able to prove whether the said PAN was truly mailed. It must be noted that in her Judicial Affidavit[80], Revenue Officer-Reviewer Gloria S. Maliwanag testified that she prepared the PAN dated May 03, 2006 and then transmitted the same to the Administrative Division, BIR Manila, for mailing to GECC. And yet, the plaintiff did not present any registry return receipt or registry return card to prove mailing of the said PAN to GECC. Nor was there any person called on the witness stand to testify as to the fact of mailing of the PAN.

In other words, from the totality of the evidence presented by the plaintiff, the two facts to be proved in order to raise the presumption in Section 3(v), Rule 131 of the Rules of Court (*i.e.* that the letter was properly addressed with postage prepaid and was sent), were not properly proven in this case. Plaintiff was able to establish that the BIR issued the PAN to GECC according to the testimony of Revenue Officer-Reviewer Gloria S. Maliwanag. However, that the said PAN was mailed to the registered address of GECC and the same was received by GECC and/or accused was not proven by any testimonial or documentary evidence.

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77 G.R. No. 118176. April 12, 2000.
78 *Emphasis and underscoring supplied.*
79 Exhibit "P-39".
80 Docket, pp. 395-363.

Section 228 of the NIRC of 1997, as amended, and Section 3 of RR No. 12-99, clearly state that the taxpayer shall be informed in writing of the law and the facts on which the assessment is based and it should be given the opportunity to respond to the PAN. It further provides that in the event that the taxpayer fails to respond to the PAN, the corresponding assessment will be issued.

The Supreme Court has already ruled that failure to strictly comply with the notice requirements prescribed under Section 228 of the NIRC of 1997, as amended, and RR No. 12-99, is a denial of due process. In the case of *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*[81], it was held:

> "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 first 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.
>
> xxx xxx xxx
>
> From the provision quoted above, it is clear that **the sending of a PAN to taxpayer to inform him of the assessment made is but part of the due process requirement in the issuance of a deficiency tax assessment, the absence of which renders nugatory any assessment made by the tax authorities**. The use of the word shall in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process. Thus, **for 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.**"

Applying the above Supreme Court ruling in the case at bar, this Court finds that the evidence of the plaintiff failed to satisfactorily prove that GECC or any of its authorized representatives actually received the PAN. The plaintiff's

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

witnesses could not positively testify that the PAN was actually received by GECC. Hence, the failure of the BIR to prove receipt of the PAN by GECC leads to the conclusion that no assessment was validly issued.

And since the subject assessment is deemed null and void, it follows therefore that the PCL, FNBS and WDL issued to GCC are void as well. As held in *Commissioner of Internal Revenue vs. Reyes*,[82] a void assessment bears no fruit.

That the accused willfully failed to pay GECC's assessed tax liabilities was not proven

An act or omission is "willfully" done, if done voluntarily and intentionally and with specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to obey or to disregard the law.[83]

Therefore, to attribute to accused a "willful failure to pay" the tax, it must be shown that such failure or omission by accused was done knowingly, intentionally and with the specific intent not pay the tax. In other words, it must be shown that accused was aware of his obligation to pay the tax, but he nevertheless voluntarily, knowingly and intentionally failed to pay it.

Considering that the plaintiff failed to prove the fact of mailing of the PAN, and no evidence was presented to prove that GECC or any of its authorized representative actually received the PAN, BIR Assessment/Demand Notice No. 34-2003 (which is the basis of the criminal complaint and Information for willful failure to pay tax under Section 255 of the 1997 NIRC, as amended) cannot be considered a valid assessment which would give rise to an obligation to pay the alleged assessed deficiency taxes of GECC.

There being no valid assessment, accused Gernale, therefore, cannot be made liable for non-payment of deficiency taxes as alleged in the Information.

CONCLUSION

An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process

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[82] G.R. No. 159694, January 27, 2006.
[83] Black's Law Dictionary, 6th Edition, p. 1599.

clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged.[84]

In all criminal prosecutions, the burden of proof is on the prosecution to establish the guilt of the accused beyond reasonable doubt. It has the duty to prove each and every element of the crime charged in the Information to warrant a finding of guilt for the said crime or for any other crime necessarily included therein.[85]

In the appreciation of evidence in criminal cases, it is a basic tenet that the prosecution has the burden of proof in establishing the guilt of the accused for the offense with which he is charged. *Ei incumbit probation qui dicit non qui negat; i.e.*, "he who asserts, not he who denies, must prove." The conviction of appellant must rest not on the weakness of his defense, but on the strength of the prosecution's evidence.[86]

After careful consideration of the testimonial and documentary evidence presented by both parties, the Court finds that the plaintiff failed to prove that there is any tax due from accused Gernale, creating reasonable doubt as to her guilt. Accordingly, the Court finds that the plaintiff failed to discharge the burden to prove all the essential elements of the crime attributed to accused. Accused Gernale should be acquitted of the offense charged.

With regard to the civil aspect of this case, the same is deemed simultaneously instituted pursuant to Section 7(b)(1) of Republic Act No. 9282, which provides that "criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of 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."

While an assessment is not required in the prosecution of a criminal case, the final determination of the BIR as to the tax liability is necessary in order for the Court to rule on the civil liability. As painstakingly discussed above, the assessment in the case at bar is void. Thus, the same cannot be a basis for GECC's alleged civil tax liability.

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[84] Boac, et al. v. People of the Philippines, G.R. No. 180597, November 07, 2008 *citing* People of the Philippines v. Ganguso, G.R. No. 115430, November 23, 1995.

[85] Leonila Batulanon v. People of the Philippines, G.R. No. 139857, September 16, 2006.

[86] People of the Philippines v. Nenita B. Hu, G.R. No. 182232, October 06, 2008 *citing* People of the Philippines v. Corpuz, G.R. No. 148198, October 01, 2003.

WHEREFORE, premises considered, this case is **DISMISSED** for failure of plaintiff to prove beyond reasonable doubt the guilt of accused. Therefore, accused **CORAZON C. GERNALE** is hereby **ACQUITTED** of the crime charged.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

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

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice