REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PEOPLE OF THE PHILIPPINES,	**CTA Crim Case No. O-891**
Plaintiff,	Members: **RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
-versus-	
LA CHILO CHINESE CUISINE, INC., LALAINE P. ORTEGA AND GENEROSA P. ORTEGA, *Accused.*	Promulgated: DEC 20 2022 8:22 a.m.

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RESOLUTION

MODESTO-SAN PEDRO, JJ.

For this Court's resolution is Accused's Demurrer to Evidence with Leave of Court ("Demurrer"), filed on 23 May 2022,[1] with plaintiff's Comment (Demurrer to Evidence with Leave of Court) ("Comment"), filed on 8 June 2022.[2]

In the Demurrer, the accused pray that the Court dismiss the herein case for insufficiency of evidence.

Antecedents

As culled from the records, the prosecution, on 30 June 2021, filed before the Court of Tax Appeals ("CTA") an Information indicting La Chilo Chinese Cuisine, Inc. ("La Chilo"), Lalaine P. Ortega and Generosa P. Ortega for violation of ***Section 255, in relation to Sections 253 and 256 of the National Internal Revenue Code, as amended ("NIRC")***.[3]

The prosecution alleged that La Chilo, and Lalaine P. Ortega and Generosa P. Ortega, President and Treasurer of La Chilo, respectively, and as

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1 Records.
2 *Ibid.*
3 Information, *id.,* pp. 5-17.

such its responsible corporate officers, willfully and unlawfully failed to pay deficiency Income Tax ("IT") for taxable year ("TY") 2010, in the amount of Twelve Million Three Hundred Ninety Three Thousand Seven Hundred Sixty Two and 87/100 Pesos (Php12,393,762.87), exclusive of interest and surcharges, despite the Bureau of Internal Revenue's ("BIR") issuance of the Final Assessment Notice ("FAN"), including prior and post notices, and final notices before seizure on 2 June 2014, to the damage and prejudice of the government.[4]

The Court found probable cause and ordered the issuance of Warrants of Arrest against Lalaine P. Ortega and Generosa P. Ortega on 14 July 2021.[5] The corresponding Warrants of Arrest against the accused were then issued on 5 October 2021.[6]

On 23 November 2021, Generosa P. Ortega and Lalaine P. Ortega posted bail, depositing cash bonds of P60,000.00 each for the cases covered by Official Receipt Nos. 8982159[7] and 8982160,[8] respectively. Accordingly, this Court issued Resolutions lifting and setting aside the Warrants of Arrest issued against the accused.[9]

On 7 December 2021, the accused filed their Pre-Trial Brief.[10] Likewise, the accused submitted the Judicial Affidavits of Generosa P. Ortega[11] and Lalaine P. Ortega.[12]

During the 9 December 2021 hearing, both Generosa P. Ortega and Lalaine P. Ortega pleaded **NOT GUILTY** to the crimes charged against them.[13]

Thereafter, the Pre-Trial Conference ensued where the parties stipulated on the following facts:

(a) The jurisdiction of the Court, as well as the identities and addresses of all parties; and

(b) That the BIR issued the Preliminary Assessment Notice ("PAN") on 27 December 2013 while it issued the FAN on 15 January 2015. ✓

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[4] Information, *id.*, p. 5.
[5] Records, pp. 112-114.
[6] *Id.*, pp. 115-118.
[7] *Id.*, p. 128.
[8] *Id.*, p. 142.
[9] *Id.*, pp. 119-123.
[10] *Id.*, pp. 148-150.
[11] Exhibit "3", *id.*, pp. 161-165.
[12] Exhibit "4", *id.*, pp. 166-170.
[13] *Id.*, pp. 174-196.

Meanwhile, on 14 December 2021, plaintiff filed its Pre-Trial Brief,[14] while the prosecution filed its Authority to Prosecute on even date.[15]

On 14 December 2021, the accused filed a Manifestation that they are waiving their appearance in the criminal proceedings.[16]

On 21 February 2022, the prosecution submitted the Judicial Affidavit of Revenue Officer ("RO") Ella D. Solon.[17]

On 28 February 2022, this Court issued a Pre-Trial Order.[18]

On 2 March 2022, the prosecution presented its lone witness, RO Solon.[19]

On 17 March 2022, the prosecution filed its Formal Offer of Evidence, offering the following exhibits as its evidence:[20]

Exhibits	Description
P-1	Letter of Authority ("LOA"), dated 21 September 2011
P-2	First Notice for Presentation of Records, dated 23 September 2011
P-3	Second Request for Presentation of Records, dated 18 October 2011
P-4	Third and Final Request for Presentation of Records
P-5	Recommendation for Issuance of Subpoena Duces Tecum ("SDT")
P-6	SDT, dated 25 June 2012
P-7	Notice of Informal Conference ("NIC"), dated 29 January 2013
P-8	PAN, dated 27 December 2013, with Details of Discrepancies
P-9	Copy of the envelope (front and dorsal) with note, "REFUSED TO RECD BY MGT OF LA CHILO CHINESE CUISINE, INC."
P-10	Formal Letter of Demand ("FLD"), dated 15 January 2014, with Details of Discrepancies

[14] *Id.*, pp. 204-207.
[15] *Id.*, pp. 208-210.
[16] *Id.*, pp. 211-213.
[17] *Id.*, pp. 217-226.
[18] *Id.*, pp. 228-234.
[19] *Id.*, p. 236.
[20] Records.

P-11 to P-11-c	Assessment Notice, dated 15 January 2014
P-12	Copy of the envelope (front and dorsal portion) with note, "REFUSED TO RECD BY MGT OF LA CHILO CHINESE CUISINE, INC."
P-13	Preliminary Collection Letter ("PCL")
P-14 to P-14-a	Final Notice Before Seizure ("FNBS")
P-15	Warrant of Distraint and/or Levy ("WDL")
P-16 to P-16-h	Warrant of Garnishment ("WOG")
P-17	Demand Before Suit
P-18	Investigation Data Form
P-19	Referral Letter
P-20	Joint Complaint Affidavit
P-21	Judicial Affidavit of RO Solon
P-21-a	Signature of RO Solon on her Judicial Affidavit

The accused filed their Comment on the Formal Offer of Evidence and Motion to File Demurrer to Evidence with Leave of Court on 22 March 2022.[21]

In a Resolution, dated 19 May 2022, this Court admitted **Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11" to "P-11-3", "P-12", "P-13", "P-14" to "P-14-1", "P-15", "P-16" to "P-16-6", "P-17", "P-18", "P-19", "P-20", "P-22"**, and **"P-22-1"**, but denied admission of **Exhibits "P-16-g"** and **"P-16-h",** as these could not be found in the Court's records. Likewise, the Court granted the accused's Motion to File Demurrer to Evidence with Leave of Court.[22]

On 23 May 2022, the accused filed the Demurrer,[23] while the prosecution filed their Comment on the Demurrer on 8 June 2022.[24]

Evidence presented by the prosecution[25]

The prosecution presented as its lone witness, RO Solon, by way of direct examination. She explained that she was assigned, through a LOA, to handle the audit of La Chilo's books of accounts and other accounting records

[21] *Ibid.*
[22] *Ibid.*
[23] *Ibid.*
[24] *Ibid.*
[25] *Id.*, pp. 219-226.

for TY 2010. She further testified that she was the one who served the LOA, the First Notice for Presentation of Records, the Second Request for Presentation of Records, and the Third and Final Request for Presentation of Records to La Chilo. RO Solon then testified that a SDT and a NIC were issued against La Chilo.

RO Solon then testified that on 27 December 2013, a PAN was issued and served, through registered mail, upon La Chilo. She mentioned that the management of La Chilo refused to receive the PAN. Meanwhile, RO Solon stated that, on 15 January 2014, the FLD/FAN were issued and served, personally and through registered mail, to La Chilo. For the personal service of the FLD/FAN, the same was served upon a duly authorized representative of La Chilo. On the other hand, for the service through registered mail of the FLD/FAN, management refused to receive the same. RO Solon further testified that no Protest was filed on the FLD/FAN.

As a result of this, RO Solon remarked that collection proceedings were then instituted by the BIR. A PCL, FNBS, WDL and WOG were then issued to collect the deficiency taxes. Thereafter, RO Solon mentioned that the case was referred to the BIR's Legal Division, which then issued a Demand Before Suit against the accused. Finally, RO Solon testified that the BIR filed a criminal complaint before the Department of Justice against the accused.

During her testimony, she also identified exhibits offered by respondent.

Allegations of the Accused[26]

In the Demurrer, the accused alleged that other than the uncorroborated and unsubstantiated self-serving testimony of BIR's lone witness, there has been no other evidence that the PAN was supposedly sent by registered mail on 27 December 2013; hence, the disputable presumption under ***Rule (v) of Section 131 of the Rules of Court*** does not apply. Aside from the self-serving testimony of RO Solon, there was no registry receipt or certification from the postmaster formally offered in evidence proving such fact of mailing. In the other instances where the notice from the BIR was sent through registered mail, registry receipts were always conspicuously intact.[27] Absent the said registry receipt, the accused alleges that the prosecution should have obtained a certification from the Postmaster that the PAN was indeed sent via registered mail and received by the accused.

Further, the accused argued that the evidence that the accused refused to receive the PAN is pure conjecture, hearsay, and inadmissible. The statements made by RO Solon in her Judicial Affidavit that La Chilo's

[26] Demurrer, Records.
[27] See Exhibit "P-13", "P-14" and "P-17".

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management refused to receive the PAN was exposed during cross-examination as based on pure conjecture and hearsay. During cross-examination, RO Solon testified that her claim that La Chilo's management refused to receive the PAN was merely based on the handwritten notation "REFUSED TO RECD BY MANAGEMENT OF LA CHILO CHINESE CUISINE, INC." on the envelope. RO Solon even testified that she does not know whose handwriting it was.

The accused further alleged that the notation "1/6/12" written above the "REFUSED TO RECD" notation was deliberately suppressed from the testimony of RO Solon. This allegedly shows that the theory of the prosecution that the accused refused to receive the PAN is a mere concoction. It certainly is impossible for mail matters allegedly sent on 27 December 2013 by registered mail to be refused receipt by the addressee a year before, or on 6 January 2012 as the notation on the envelope provides.[28] Even if it is assumed that the accused actually refused to receive the PAN on 6 January 2014, as what the prosecution might be alluding to when it submitted the envelope as Exhibit "P-9", the actual or constructive receipt of the accused remains unproven as the prosecution failed to submit evidence thereon such as the First Notice from the Postmaster. Hence, the doctrine enunciated in ***Joven Yuki, Jr. v. Wellington Co.***,[29] that if the addressee refuses to accept delivery, service by registered mail is deemed complete if the addressee fails to claim the mail from the postal office after five (5) days from the date of First Notice of the Postmaster, cannot be applied in the case at bar.

Moreover, even if the First Notice of the Postmaster was submitted in evidence, the earliest date the Accused could have been considered to have "received" the PAN should be five (5) days after from the alleged refusal to receive (*i.e.*, 6 January 2014), or on 11 January 2014. Given this, when the FAN/FLD was issued on 15 January 2014, only four (4) days had lapsed from the constructive receipt of the PAN. Hence, the accused was not given the full fifteen (15) days to file a Protest to the PAN. This violates the accused's right to due process. For the FAN/FLD to be considered as validly issued on 15 January 2014, the prosecution should have presented evidence that the PAN was received on or before 31 December 2013. As no evidence on this matter was presented by the prosecution, the FLD/FAN was prematurely issued, thus rendering the subject tax assessments void.

The Ruling of the Court

The Supreme Court in ***Jalandoni v. The Office of the Ombudsman, et. al.***,[30] defined Demurrer to Evidence as "an action to the effect that the evidence his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue" in short "the party filing the

[28] Exhibit "P-9".
[29] G.R. No. 178527, 27 November 2009.
[30] G.R. Nos. 211751, 217212-80, 244467-535 & 245546-614, 10 May 2021.

demurrer challenges the sufficiency of the whole evidence to sustain a verdict."

In criminal cases, the rule governing Demurrer to Evidence is found under ***Section 23, Rule 119 of the Rules of Court***, which provides:

> "Section 23. Demurrer to evidence. — **After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence** (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) **upon demurrer to evidence filed by the accused with or without leave of court.**
>
> If the court denies the demurred to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution. (15a)
>
> The motion for leave of court to file demurred to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.
>
> If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.
>
> The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by certiorari before judgment."
> (Emphasis and underscoring, Ours.)

Based on the foregoing, when the accused files a Demurrer to Evidence, the role of the courts is to "ascertain whether there is competent or sufficient evidence to issue a judgment" against the accused and to dismiss the case if it finds none.[31]

In this case, accused Generosa P. Ortega and Lalaine P. Ortega are indicted for violation of ***Section 255, in relation to Sections 253 and 256 of the NIRC.*** The said sections of the ***NIRC*** are here reproduced:

> "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 the accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time**

[31] *Ibid.*

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.

Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of internal revenue office wherein the same was actually filed shall, upon conviction therefore, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years."

"SEC. 253. General Provisions. -

(a) Any person convicted of a crime penalized by this Code shall, in addition to being liable for the payment of the tax, be subject to the penalties imposed herein: Provided, That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution for violation of any provision of this Code or in any action for the forfeiture of untaxed articles.

(b) Any person who willfully aids or abets in the commission of a crime penalized herein or who causes the commission of any such offense by another shall be liable in the same manner as the principal.

(c) If the offender is not a citizen of the Philippines, he shall be deported immediately after serving the sentence without further proceedings for deportation. If he is a public officer or employee, the maximum penalty prescribed for the offense shall be imposed and, in addition, he shall be dismissed from the public service and perpetually disqualified from holding any public office, to vote and to participate in any election. If the offender is a Certified Public Accountant, his certificate as a Certified Public Accountant shall, upon conviction, be automatically revoked or cancelled.

(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.**

(e) The fines to be imposed for any violation of the provisions of this Code shall not be lower than the fines imposed herein or twice the amount of taxes, interest and surcharges due from the taxpayer, whichever is higher."

"SEC. 256. **Penal Liability of Corporations. - Any corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000)."** 4
(Emphasis and underscoring, Ours.)

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In order for an accused to be liable under ***Section 255 of the NIRC,*** the following elements must all be proven by the prosecution, to wit:

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.

After a careful perusal of the documents presented as well as of the testimony of its witness, the Court finds the pieces of evidence offered by the prosecution to be insufficient to sustain a judgment against the accused.

The prosecution failed to adduce competent evidence to convict the accused.

In ***People v. Cross Country Oil & Petroleum Corp. et. al.,***[32] the CTA identified the instances where a taxpayer is legally obligated to pay taxes under the Tax Code. The first is when the law specifically requires the payment of a particular tax or when the taxpayer is compelled to make a self-assessment of its own tax liability; the second is when the BIR issues a tax assessment demanding the payment of deficiency taxes. The relevant discussion of the Court is hereby quoted, to wit:

> "For purposes of the first element, We are guided by the provisions of Section 56 of the NIRC of 1997, as amended. Said provision reads:
>
> > 'SEC. 56. Payment and Assessment of Income Tax for Individuals and Corporations. —
> >
> > (A) Payment of Tax. —
> >
> > (1) In General. — The total amount of tax imposed by this Title shall be paid by the person subject thereto at the time the return is filed.
> > XXX XXX XXX.
> >
> > (B) Assessment and Payment of Deficiency Tax. - After the return is filed, the Commissioner shall examine it and assess the correct amount of the tax. The tax or deficiency income tax so discovered shall be paid upon notice and demand from the Commissioner.'
>
> Based on the foregoing, the legal obligation to pay tax under the NIRC of 1997, as amended, arises from two (2) specific instances: first, at

[32] C.T.A. Crim. Case No. O-620, 19 May 2021.

the time required by the law to pay a particular tax; or second, **upon being informed of a tax assessment issued by the BIR, requiring the taxpayer to pay the assessed tax or deficiency tax within a specific period, as set forth in the assessment.**

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

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

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

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

The second instance finds ground not only in ***Section 56 of the NIRC*** but also in ***Section 6 of the NIRC***, which requires the taxpayer to pay the assessed deficiency tax upon notice and demand of the CIR or his authorized representative, to wit:

> "SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. -
>
> (A) Examination of Return 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.**
>
> **The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.**
>
> Any return, statement of declaration filed in any office authorized to receive the same shall not be withdrawn: Provided, That within three (3) years from the date of such filing, the same may be modified, changed, or amended: Provided, further, That no notice for audit or investigation of such

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return, statement or declaration has in the meantime been actually served upon the taxpayer. xxx"
(Emphasis and underscoring, Ours.)

The instant criminal charges against the accused are based under the second instance, or to be more specific, on the failure of the accused to pay the deficiency taxes assessed by the BIR despite notice and demand to pay the same.

Accordingly, before such criminal charges can prosper, it must first be established by the prosecution, through competent evidence, the existence of a valid assessment, notice, and demand from the BIR to pay the deficiency taxes.[33]

In the case at bar, the prosecution failed to prove that the PAN was properly served upon the accused and that the latter were given the period allowed for accused to file a Reply to the PAN. Both of these infractions are fatal to the prosecution's cause considering that these instances negate the validity of the assessment. Without a valid assessment, the criminal charges against the accused have no leg to stand on.

The prosecution failed to adduce evidence that the PAN was indeed mailed by the BIR and was actually received by the accused.

The prosecution argues that it presented sufficient evidence that the PAN was properly served upon the accused. For the prosecution, the testimony of RO Solon, as corroborated by the entries in the official records of the docket of the BIR, sufficiently proved the following facts: a) the PAN was served through registered mail; and b) that the same was denied receipt by La Chilo's management. Accordingly, from its point of view, it has already sufficiently proven that the PAN was properly served to the accused.[34]

The prosecution is mistaken. The prosecution failed to adduce evidence that the BIR indeed mailed a copy of the PAN to herein accused and that the latter received the same.

In ***Commissioner of Internal Revenue v. Metro Star Superama***,[35] the Supreme Court ruled that the best evidence of mailing is the registry receipt, or in its absence, the certification from the postmaster, *viz.*:

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[33] People of the Philippines v. Grand East Empire Corporation and Solania G. Ong, CTA Crim. Case Nos. O-779, O-780 & O-781, 24 January 2022.
[34] Comment, Records.
[35] G.R. No. 185371, 8 December 2010, *citing* Gonzalo P. Nava v. Commissioner of Internal Revenue, 13 SCRA 104, 30 January 1965.

> "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."

In the case at bar, the prosecution neither offered the registry receipt pertaining to the alleged mailing of the PAN nor a certification from the postmaster detailing the mailing and the receipt of the PAN as evidence of the mailing of the PAN. Instead, the prosecution merely offered the testimony of RO Solon in evidence as proof of the mailing of the PAN and La Chilo's alleged refusal to receive the same.[36]

This evidence is insufficient to prove that the PAN was actually mailed by the BIR. It should be noted that in ***Commissioner of Internal Revenue v. Metro Star Superama***,[37] the Supreme Court declared that "[t]his Court does not put much credence to the self-serving documentations made by the BIR personnel especially if they are unsupported by substantial evidence establishing the fact of mailing."

In ***Spouses Aguilar, et al. v. Hon. Court of Appeals***,[38] the Supreme Court ruled that "[t]he best evidence to prove that notice was sent would be **a certification from the postmaster, who should certify** not only that the notice was issued or sent but also **as to how, when and to whom the delivery thereof was made**. The mailman may also testify that the notice was actually delivered." Accordingly, the best evidence to prove that the accused indeed received the PAN is the certification from the postmaster pertaining to this matter.

As mentioned, however, the prosecution merely offered the testimony of RO Solon in evidence as proof of both the mailing of the PAN and La Chilo's alleged refusal to receive the same.[39] To reiterate, this evidence is insufficient to prove that the PAN was actually mailed and that the same was received by the accused.

Since the prosecution failed to present the registry receipt pertaining to the alleged mailing of the PAN, even the presumption under ***Section 3 (v) of the Rules of Court*** that "a letter duly directed and mailed was received in the regular course of the mail" in relation to the receipt of the PAN cannot apply. This is due to the fact that there was no proof of the mailing of the PAN that was offered.

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[36] See Exhibit "P-22", Records, pp. 219-225.
[37] G.R. No. 185371, 8 December 2010, *citing* Gonzalo P. Nava v. Commissioner of Internal Revenue, 13 SCRA 104, 30 January 1965.
[38] G.R. No. 120972, 19 July 1999.
[39] Exhibit "P-22", Records, pp. 219-225.

Assuming *arguendo* that the prosecution was able to prove that it did mail the PAN through registered mail, the accused still denied the receipt of the PAN. By virtue of this denial, it became incumbent upon the prosecution to prove that the PAN was actually received by the accused.

Once receipt of assessment notices is denied and controverted by the taxpayer, the burden of proof is shifted to the BIR to prove that the taxpayer, or his or her authorized representative, indeed received the subject assessment notices. This was categorically declared by the Supreme Court in ***Commissioner of Internal Revenue v. T Shuttle Services, Inc.***,[40] to wit:

> "Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, requires the assessment to inform the taxpayer in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void. Section 228 pertinently provides:
>
> > SEC. 228. Protesting of Assessment. – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:
> >
> > x x x x
> >
> > 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.
> >
> > x x x x
> >
> > (Emphasis supplied)
>
> To highlight the due process requirement in Section 228 of the NIRC, Section 3 of Revenue Regulations (RR) 12-99 dated September 6, 1999 provides:
>
> > 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:
> >
> > 3.1.1 Notice for informal conference. — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for

[40] Resolution, G.R. No. 240729, 24 August 2020.

deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the tax payer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

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 x x x. 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.

x x x x

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 x x x. 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.

x x x x

As can be gleaned from the above provisions, **service of the PAN or the FAN to the taxpayer may be made by registered mail. Under Section 3(v), Rule 131 of the Rules of Court, there is a disputable presumption that 'a letter duly directed and mailed was received in the regular course of the mail.' However, the presumption is subject to controversion and direct denial, in which case the burden is shifted to the party favored by the presumption to establish that the subject mailed letter was actually received by the addressee.**

In view of respondent's categorical denial of due receipt of the PAN and the FAN, the burden was shifted to the CIR to prove that the mailed assessment notices were indeed received by respondent or by its authorized representative."
(Emphasis and underscoring, Ours.)

Here, the accused unequivocally denied receipt of the PAN. The burden to prove that the PAN was received by the accused is accordingly shifted to the BIR, which it failed to discharge, considering that it merely offered in evidence the self-serving testimony of RO Solon on La Chilo's alleged refusal to receive the PAN.

Moreover, the prosecution's argument that the receipt of the PAN can likewise be proven by the alleged refusal of La Chilo's management to receive the PAN is without merit. First and foremost, this alleged refusal to receive the PAN can only be proven by the certification from the postmaster. Without such, this factual matter cannot be proven. Moreover, the prosecution is trying to prove this alleged refusal to receive the PAN through the notation "REFUSED TO RECD" in the alleged envelope that enclosed the PAN. A more circumspect inspection of the alleged envelope would show that there is a "1/6/12" written above the notation "REFUSED TO RECD". Hence, assuming that La Chilo's management indeed refused to receive the PAN, the said notation would show that such refusal (6 January 2012) occurred one (1) year prior to the actual mailing of the PAN (27 December 2013) which is contrary to the laws of time and logic. Thus, the prosecution's argument is flawed.

Failure to prove that the PAN was indeed mailed by the BIR and that it was actually received by the accused renders the instant assessment null and void. Without proof of mailing and receipt, the PAN is deemed not received by the accused, who were thus not notified and informed of the deficiency tax assessment issued against it. Consequently, petitioner was not able to avail of the remedies allowed under the ***Section 228 of the NIRC*** in protesting deficiency tax assessments. Accused's right to due process in assessment proceedings, particularly the right to be informed of the deficiency tax assessments issued against it, has thus been violated. On this score alone, the instant criminal charges against the accused, which have as its foundation the validity of the present deficiency tax assessments, have no leg to stand on and must be dismissed outright.

Assuming that the PAN was actually mailed by the BIR and received by the accused, the accused were still denied the full fifteen (15) day period to file a Reply to the PAN.

Assuming arguendo that the PAN was indeed mailed by the BIR and was actually received by the accused, it remains that the accused were denied the full fifteen (15) day period to file a Reply to the PAN.

Due process in tax assessment proceedings comprise of various factors. Having the factual and legal bases stated in the assessment notices is one, but giving the taxpayer the right to respond to an assessment and actually considering such response along with the pieces of evidence adduced in deciding a reply to an assessment equally indispensable requisites to comply with due process in tax assessment proceedings.

Indeed, the right to Reply to a PAN has been recently reiterated in ***Commissioner of Internal Revenue v. Nippon Metal Tech Phils. Inc.***:[41]

> "Clearly, due process demands that the taxpayer receives the PAN and that he is given the opportunity to respond thereto. Moreover, in CIR v. Avon Products Manufacturing, Inc., the Court even went beyond 'opportunity to be heard' as an aspect of due process. In said case, the Court, reiterating Ang Tibay v. The Court of Industrial Relations, held that '[n]ot only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the [CIR] must consider the evidence presented.'
>
> In this case, the records show that respondent received the PAN on February 5, 2009. However, without waiting for the lapse of the 15-day period, the CIR already issued the FLD/FAN. **By disregarding the 15-day period provided by law, the CIR utterly deprived respondent of the opportunity to contest the PAN and present evidence in support thereto before an FLD/FAN was issued."**
> (Emphasis and underscoring, Ours.)

Indisputably, the BIR should allow a taxpayer the opportunity to contest a PAN within fifteen (15) days from receipt thereto. The BIR should wait until such period expires before it issues a FLD/FAN. Failing this would mean that it has prematurely decided on or, worse, did not consider the taxpayer's response to the PAN at all, which are clear violations of due process in tax assessment proceedings.

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[41] G.R. No. 227616, 19 June 2019.

Further, it is important to note that the fifteen (15) day period starts to run from the taxpayer's receipt of the PAN and not from its date of issuance.[42]

In the case at bar, the prosecution insists that the PAN was served upon the accused through registered mail on 27 December 2013, while the FLD/FAN was served personally and through registered mail on 15 January 2014. Accordingly, the fifteen (15) day period was complied with.[43] This is terribly misplaced.

As stated, the fifteen (15) day period given to a taxpayer to respond to a PAN starts from the date of the taxpayer's actual receipt of the PAN and not from the date of its mailing or issuance.[44] As such, the prosecution's stance is wholly erroneous. The latest date that the PAN should have been actually received by the accused to lend credence to the prosecution's insistence that it gave the accused the full fifteen (15) day period to file a Reply to the PAN is 31 December 2013. Unfortunately, this cannot be proven as the prosecution failed to present a certification from the postmaster with respect to the details of the alleged mailing and receipt of the PAN.

Even assuming that receipt of the PAN was refused on 6 January 2014 (as implied by the handwritten date "1/6/12" above the notation "REFUSED TO RECD" found in the PAN's alleged mailing envelope), the latest date that the PAN can actually be considered as received by the accused is on 11 January 2014, based on the doctrine enunciated in ***Joven Yuki, Jr. v. Wellington Co.***,[45] which states:

> "[I]f the addressee refuses to accept delivery, service by registered mail is deemed complete if the addressee fails to claim the mail from the postal office after five days from the date of first notice of the postmaster."

This can only be considered true if the first notice of the postmaster was also given to the accused on the same day that they refused to receive the PAN. Considering the foregoing, the accused had until 26 January 2014 within which to file a Reply to the PAN, before which the BIR was not allowed to issue a FLD/FAN. Otherwise, to reiterate, the BIR is deemed to have prematurely decided on or, worse, not considered the accused's response to the PAN at all.

As the BIR failed to observe this period as it issued the FLD/FAN on 15 January 2014, it consequently violated the accused's right to due process, rendering the present deficiency tax assessment null and void.

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[42] Commissioner of Internal Revenue v. Linde Philippines, Inc. (formerly, Consolidated Industrial Gases, Inc.), CTA EB No. 1515 (CTA Case No. 8724), 7 March 2018.
[43] Comment, Records.
[44] Commissioner of Internal Revenue v. Linde Philippines, Inc. (formerly, Consolidated Industrial Gases, Inc.), CTA EB No. 1515 (CTA Case No. 8724), 7 March 2018.
[45] G.R. No. 178527, 27 November 2009.

Considering the above, the accused cannot be held liable for violation of ***Section 255 in relation to Sections 253 and 256 of the Tax Code.***

In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proven. At this juncture, the prosecution is burdened not only to prove the guilt of the accused based on proof beyond reasonable doubt, but to ensure that the accused persons' constitutional rights to due process are at all times upheld. As for the Courts, they are expected to zealously guard against the curtailment of the accused person's constitutional rights.

WHEREFORE, premises considered, the Demurrer to Evidence with Leave of Court is hereby **GRANTED.**

Accordingly, CTA Criminal Case No. O-891 is **DISMISSED** on the ground of insufficiency of evidence.

The cash bond filed by Lalaine P. Ortega and Generosa P. Ortega is **CANCELLED** and ordered **RELEASED** to them upon presentation of proper documents, in accordance with the usual accounting rules and regulations.

SO ORDERED.

MA. BELEN M RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(On Leave)
CORAZON G. FERRER-FLORES
Associate Justice

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