22-000575-0005

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CRIM. CASE NO. A-16

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

NOTICE OF DECISION

DEXTER MAGTAAN y MASANGKAY,
Accused.

To:

DEXTER M. MAGTAAN
Bryg. Sta. Rosa
Binmaley, Pangasinan

RAGUDO LAW OFFICE
Unit 3, Ariel Apartment
Bonuan Tondaligan, Dagupan City

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village, Makati City

OFFICE OF THE PROVINCIAL PROSECUTOR
Lingayen, Pangasinan

ATTY. ELMA T. GUITIERREZ
Bureau of Internal Revenue
2nd Floor, BIR Building, Mc Arthur Highway
San Miguel, Calasiao, Pangasinan

HON. LORETO S. ALOG, JR.
Presiding Judge
Thru: Branch Clerk of Court
Regional Trial Court
First Judicial Region
Branch 69, Lingayen, Pangasinan

GREETINGS:

You are hereby notified by these presents that on **February 28, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **February 29, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appelle,*	**CTA Crim. Case No. A-16**
	Members:
-*versus*-	**DEL ROSARIO,** *P.J., Chairperson,* **MANAHAN,** *and* **REYES-FAJARDO,** *JJ.*
DEXTER MAGTAAN y MASANGKAY, *Accused-Appellant.*	Promulgated: FEB 2 8 2024 2:30PM

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D E C I S I O N

MANAHAN, *J.:*

This is an appeal by accused-appellant from the Decision dated August 30, 2022[1] and Resolution dated September 30, 2022[2] rendered by the Regional Trial Court - Branch 69, Lingayen, Pangasinan (RTC – Branch 69), in Crim. Case No. L-13865, entitled "*People of the Philippines, Plaintiff versus Dexter Masangkay Magtaan, Accused*", finding him guilty beyond reasonable doubt of the crime of violation of Section 255 of the 1997 National Internal Revenue Code (NIRC), as amended.

The dispositive portion of the assailed Decision reads as follows:

> "WHEREFORE, premises considered, the accused is found guilty beyond reasonable doubt of ***three (3) counts*** of violation of Section 255 of the National Internal Revenue Code – one for willful failure to pay income tax, the other for willful failure to pay percentage tax, and lastly for willful failure to pay value added tax, and is accordingly adjudged:

[1] Docket, pp. 267 to 280.
[2] Docket, pp. 321 to 323-a.

1. to suffer, ***for each count***, the penalty of imprisonment ranging from two (2) years, as minimum, to six (6) years, as maximum, and
2. to pay fine in the following amounts:

(a)	relative to income tax	- ₱ 1,682,061.32	
(b)	relative to percentage tax	- ₱ 10,000.00	and
(c)	relative to value-added tax	- ₱ 1,325,223.48	

subject to subsidiary imprisonment in case of failure, or incapacity, to pay the same at the rate of one (1) day for every eight (8) pesos and fifty (50) centavos but not to exceed one (1) year.

The accused is additionally adjudged liable to pay the total amount of P1,505,168.25 consisting of the deficiency income, value added and percentage taxes, plus the additions thereto, with the 12% interest; respectively imposed thereon continuing to run from March 26, 2020 until full payment.

SO ORDERED."

Anent the Resolution dated September 30, 2022, RTC – Branch 69 denies, in effect, the accused-appellant's *Motion for Reconsideration* of the assailed Decision.

ANTECEDENTS (ADMINISTRATIVE LEVEL)

Accused-appellant is the owner of Dex-Than Trading, a retail business, registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 5, Alaminos City, Pangasinan, as a non-VAT taxpayer under Tax Identification Number (TIN) 463-385-798-000 on January 30, 2015.[3]

Accused-appellant filed his *Annual Income Tax Return* (AITR) for taxable year (TY) 2016 on April 17, 2017,[4] while his *Monthly Percentage Tax Returns* for the same year were filed on the following dates:

[3] Exhibit "A", Docket, p. 31.
[4] Exhibit "1" to "1-j", Docket, pp. 225 to 235.

Period	Actual date of filing of Monthly Percentage Tax Returns
January 2016	February 19, 2016[5]
February 2016	March 21, 2016[6]
March 2016	April 20, 2016[7]
April 2016	May 20, 2016[8]
May 2016	June 20, 2016[9]
June 2016	No date of receipt[10]
July 2016	August 22, 2016[11]
August 2016	September 20, 2016[12]
September 2016	October 21, 2016[13]
October 2016	November 21, 2016[14]

On September 10, 2018, a *Letter of Authority*[15] (LOA) was issued by Ms. Clavelina S. Nacar, OIC Regional Director of RR1-Calasio, authorizing Revenue Officer (RO) Jonalyn Oviedo and Group Supervisor (GS) Imelda Rejano, to examine accused-appellant's books of accounts and other accounting records for internal revenue taxes, including documentary stamp tax, and other taxes (miscellaneous tax) for the period from January 1, 2016 to December 31, 2016. The said LOA was received by the accused-appellant himself on September 25, 2018.

Accused-appellant then received a *Notice of Informal Conference* dated May 15, 2019,[16] with attached *Computation of Deficiency Taxes*, on May 16, 2019. After which, accused-appellant received *an Amended Notice of Informal Conference* dated August 2, 2019,[17] with appended *Amended Computation of Deficiency Taxes* on August 7, 2019.

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[5] Exhibit "3-i", Docket, p. 246.
[6] Exhibit "3-h", Docket, p. 245.
[7] Exhibit "3-G", Docket, p. 244.
[8] Exhibit "3-F", Docket, p. 243.
[9] Exhibit "3-e", Docket, p. 242.
[10] Exhibit "3-d", Docket, p. 241.
[11] Exhibit "3-c", Docket, p. 240.
[12] Exhibit "3-b", Docket, p. 239
[13] Exhibit "3-a", Docket, p. 238.
[14] Exhibit "3", Docket, p. 237.
[15] Exhibit "B-1", Docket, p. 32.
[16] Exhibit "C", Docket, pp. 160 to 162.
[17] Exhibit "C-1", Docket, pp. 148 to 150. *om*

On February 7, 2020, accused-appellant received a copy of *Preliminary Assessment Notice* (PAN) dated January 20, 2020,[18] with *Details of Discrepancies*, issued by Regional Director Thelma S. Milabao, informing the accused-appellant that after investigation, there has been found due from him deficiency income tax, percentage tax, value-added tax (VAT), and miscellaneous taxes, for TY 2016, in the aggregate amount of ₱1,556,521.19, inclusive of interests and surcharge.

Thereafter, accused-appellant was notified of the *Formal Letter of Demand and Assessment Notices* (FLD/FANs) dated February 24, 2020[19] on February 28, 2020, which required him to pay deficiency income tax, percentage tax, VAT, and miscellaneous taxes, for TY 2016, in the total amount of ₱1,569,168.25, inclusive of interests and surcharge.

Accused-appellant, through his sister, Ms. Marissa Tadeo, was subsequently furnished with a copy of the *Warrant of Distraint and/or Levy* (WDL) dated November 25, 2020 on December 1, 2020.[20]

On April 8, 2021, then Officer-In-Charge (OIC)-Regional Director Josephine S. Virtucio wrote a letter to the Office of the Provincial Prosecutor of Lingayen Pangasinan,[21] referring the *Joint Complaint-Affidavit* dated April 8, 2021,[22] executed by Ms. Elma L. Gutierrez and Ms. Grace May DG. Pacanas, BIR officers assigned at the Collection Division, Revenue Region No. 1, Calasiao, Pangasinan, for preliminary investigation and the filing of the appropriate information in Court, if the evidence so warrants.

Senior Assistant Provincial Prosecutor Nicolas R. Reintar, Jr. issued the Resolution dated June 14, 2021,[23] which was approved by Senior Asst. Provincial Prosecutor Raul B. Campos, finding probable cause, and recommending the filing of information against the accused-appellant.

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[18] Exhibits "D" to "D-1", Docket, pp. 33 to 38.
[19] Exhibits "E" to "E-1" and "E-4", pp. 41 to 46, and 49 to 52.
[20] Exhibit "F", Docket, p. 53.
[21] Docket, pp. 24 to 25.
[22] Docket, pp. 26 to 30.
[23] Docket, p. 22.

PROCEEDINGS BEFORE THE COURT A *QUO* (RTC - Branch 69)

On February 4, 2022, the *Information* dated June 14, 2021[24] was filed against Mr. Dexter Magtaan y Masangkay, docketed as Crim. Case No. L-13865, charging him for violation of Section 255 of the 1997 NIRC, as amended. The said *Information* reads:

> "**INFORMATION**
>
> The undersigned accuses **DEXTER MAGTAAN y MASANGKAY** in the commission of **violation of the National Internal Revenue Code of 1997 as amended**, as follows:
>
> > 'That sometime in 2016 at Brgy. Sta. Rosa, Binmaley, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, while engaged in the business of retail sale in specialized stores under the trade name 'Dex-Than Trading' and required by law to pay income, value added and percentage taxes in the total amount of Php1,505,168.25 as per preliminary assessment notice, did, then and there, wilfully, unlawfully and feloniously commit an act in violation of Section 255 of the National Internal Revenue Code of 1997 as amended by failing to pay the above said taxes despite due receipt of the aforementioned notice, demand to pay and final notice to pay the said taxes.'
>
> Contrary to Section 255 of the National Internal Revenue Code of 1997 as amended.
>
> Lingayen, Pangasinan, June 14, 2021."

In the Order dated February 8, 2022,[25] the court a *quo* found probable cause. As such, Presiding Judge Loreto S. Alog, Jr. directed the issuance of a warrant of arrest against the accused-appellant and fixed the bail in the amount of ₱60,000.00.

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[24] Docket, p. 19.
[25] Docket, p. 86.

On February 9, 2022, accused-appellant filed a *Motion for Reduction of Bail Bond,* praying that the amount of bail be reduced from ₱60,000.00 to ₱30,000.00.[26] On even date, accused-appellant was arrested by PSSG Peter Carpizo and PCPI Florentino Delos Reyes,[27] and was detained at Pangasinan Maritime Police Station, Dagupan City.[28]

In the Order dated February 11, 2022,[29] the court a *quo* granted accused-appellant's *Motion for Reduction of Bail.* After posting a cash bail bond on even date, accused-appellant was granted provisional liberty.[30]

Thereafter, arraignment was held on February 22, 2022, and the accused-appellant pleaded not guilty of the crime charged.[31]

During trial, plaintiff-appellee presented documentary and testimonial evidence. It offered the testimonies of the following individuals, namely: (1) Ms. Elma L. Gutierrez,[32] Chief of the Arrears Management Section, Collection Division; (2) Ms. Grace May de Guzman Pacanas,[33] then Seizure Agent, Arrears Management Section, Collection Division, BIR Revenue Region 1; (3) Ms. Jonalyn A. Oviedo,[34] then RO, Assessment Section, RDO No. 5, Alaminos City, Pangasinan; (3) Ms. Imelda Rejano,[35] then RO V and Group Supervisor, Alaminos City; and (4) Ms. Kimberly Mae Alvendia,[36] then Reviewer, Review and Evaluation Section, Assessment Division, BIR Revenue Region 1.

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[26] Docket, p. 92.
[27] *Joint Affidavit of Arrest* dated February 9, 2022, Docket, pp. 100 to 101; *Memorandum* dated February 9, 2022 of Police Major Denny R. Torres, Docket, pp. 102 to 104.
[28] *Certificate of Detention* dated February 9, 2022, Docket, p. 105.
[29] Docket, p. 113.
[30] *Cash Bailbond Undertaking* dated February 11, 2022, Docket, p. 116.
[31] Minutes of the Session held on, and Order dated, February 22, 2022, Docket, pp. 127 and 123 to 125, respectively; *Certificate of Arraignment*, Docket, p. 126.
[32] Minutes of the Session held on, and Order dated, March 22, 2022, Docket, pp. 130 and 128, respectively; Minutes of the Session held on, and Order dated March 29, 2022, Docket, pp. 132 and 131, respectively; Minutes of the Session held on, and Order dated, April 12, 2022, Docket, pp. 134 and 133, respectively.
[33] Minutes of the Session held on, and Order dated, April 12, 2022, Docket, pp. 134 and 133, respectively.
[34] Minutes of the Session held on, and Order dated, April 19, 2022, Docket, pp. 165 and 164, respectively.
[35] Minutes of the Session held on, and Order dated, April 26, 2022, Docket, pp. 190 and 187, respectively.
[36] Minutes of the Session held on, and Order dated, May 31, 2022, 2022, Docket, pp. 213 and 211, respectively; Minutes of the Session held on, and Order dated, June 7, 2022, Docket, pp. 218 and 217, respectively.

During the hearing held on June 21, 2022, plaintiff-appellee formally offered its documentary evidence, which were all admitted by the Court *a quo*.[37] In the same hearing, accused-appellant appeared for himself as witness, and formally offered his documentary evidence, which were all admitted by the Court a *quo*. [38]

On July 1, 2022, the *Memorandum For the Plaintiff* was filed.[39]

Subsequently, RTC – Branch 69 issued the assailed Decision on August 30, 2022.[40]

In the Order dated August 30, 2022,[41] the Court a *quo*, upon motion of accused-appellant's counsel, with the conformity of the plaintiff-appellee, accused-appellant was allowed to post bail in the amount of ₱30,000.00 in each of the three (3) counts of violation of Section 255 of the 1997 NIRC, as amended, of which he was convicted under judgment. On the same day, he was granted provisional liberty after filing an additional cash bond in the total amount of ₱60,000.00.[42]

Thereafter, accused-appellant filed a *Motion for Reconsideration* on September 15, 2022,[43] which was denied by the Court a *quo* in its Resolution dated September 30, 2022.[44]

Undeterred, accused-appellant filed a *Notice of Appeal* before RTC – Branch 69 on October 12, 2022.[45]

In the Order dated October 13, 2022,[46] RTC-Branch 69 gave due course to the said *Notice of Appeal* and ordered that the entire records in Crim. Case No. L-13865 be forwarded to this Court.

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[37] Minutes of the Session held on, and Order dated, June 21, 2022, Docket, pp. 249 and 247 to 248, respectively.
[38] *Ibid.*
[39] Docket, pp. 250 to 266.
[40] Docket, pp. 267 to 280.
[41] Docket, p. 281.
[42] Order dated August 30, 2022, Docket, p. 301.
[43] Docket, pp. 310 to 315.
[44] Docket, pp. 321 to 323-a.
[45] Docket, p. 324.
[46] Docket, p. 329.

PROCEEDINGS BEFORE THIS COURT

Accused-Appellant filed his *Appellant's Brief* on February 23, 2023,[47] while plaintiff-appellee failed to file the required brief.[48]

On April 18, 2022,[49] the present appeal was deemed submitted for decision.

ASSIGNMENT OF ERRORS

In his *Brief*, the accused-appellant assigns the following error, to wit:

> "THE HONORABLE REGIONAL TRIAL COURT ERRED IN CONVICTING THE ACCUSED BEYOND REASONABLE DOUBT."[50]

Accused-appellant's arguments:

Accused-appellant argues that the institution of the criminal action against him and the issuance of the LOA were made without valid authority since the referral of the joint complaint-affidavit and the LOA were merely signed by the OIC-Regional Director, and not by the Commissioner of Internal Revenue (CIR). He likewise argues that the subject assessments had already prescribed as there was no valid waiver executed for failure to indicate the nature and the amount of tax, in violation of the provisions of Revenue Memorandum Order (RMO) No. 20-90, and Revenue Delegation Authority Order (RDAO) No. 05-01.

THE COURT'S RULING

For an orderly disposition of the present case, the Court shall first address the issues raised by accused-appellant relative to the authority of the OIC-Regional Director to

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[47] Docket, pp. 337 to 351.
[48] Records Verification dated April 11, 2023 issued by the Judicial Records Division this Court, Docket, p. 373.
[49] Minute Resolution dated April 18, 2022, Docket, p. 374.
[50] Assignment of Errors, *Appellant's Brief*, Docket p. 339.

approve and refer the filing of the criminal action and to issue an LOA, and the alleged invalidity of the *Waiver of the Defense of Prescription* due to its failure to state the particular taxes to be assessed and the amount thereof, before resolving the substantial aspect of the criminal charge filed against him.

The OIC-Regional Director has the authority to approve the filing of a criminal case and to issue an LOA.

Accused-appellant argues that Ms. Josephine S. Virtucio, OIC-Regional Director, has no authority to institute and approve the filing of the criminal action against him through the letter referral dated April 8, 2021. He further avers that even granting for the sake of argument that the Regional Director may exercise the power of the CIR by delegated authority, such power does not automatically extend to OIC-Regional Director.

The Court disagrees with accused-appellant.

The authority of the CIR to file a civil or criminal action for the recovery of taxes emanates from the provision of Section 220 of the 1997 NIRC, as amended, which states:

> "SEC. 220. *Form and Mode of Proceeding in Actions Arising under this Code.* — Civil and criminal actions and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and shall be conducted by legal officers of the Bureau of Internal Revenue but **no** civil or **criminal action for the recovery of taxes or the enforcement of any fine, penalty or forfeiture under this Code shall be filed in court without the approval of the Commissioner**." (*Emphases supplied*)

Relative to the foregoing provision, Section 7 of the NIRC of 1997 reads as follows:

> "SEC. 7. *Authority of the Commissioner to Delegate Power.* — **The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank**

> **equivalent to a division chief or higher**, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: *Provided, however,* **That the following powers of the Commissioner shall <u>not</u> be delegated**:
>
> (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
>
> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;
>
> (c) The power to compromise or abate, under Sec. 204 (A) and (B) of this Code, any tax liability: *Provided, however,* That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and
>
> (d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept." *(Emphases and underscoring added)*

Based on the foregoing provision, the general rule is that the CIR may delegate any power vested upon him by law to Division Chiefs or to officials of higher rank.[51] The CIR cannot, however, delegate the four (4) powers granted to him or her under the 1997 NIRC, as amended, enumerated in Section 7.[52] Notably, the approval of filing of a criminal action is not one of the non-delegable functions of the CIR.[53]

RDAO No. 02-07 dated March 1, 2007[54] specifically enumerates the officers authorize to approve and sign the

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[51] *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, et al.*, G.R. No. 148380, December 9, 2005.
[52] *Id.*
[53] *People of the Philippines vs. Tess S. Valeriano*, G.R. No. 199480, October 12, 2016.
[54] SUBJECT: Delegation of Authority with Regard to Institution of Civil and Criminal Actions/Cases to Effect Recovery of Taxes or the Enforcement of Any Fine, Penalty or Forfeiture Under the Tax Code, with Regard to the Defense/s of the Bureau of Internal Revenue in Cases/Actions Instituted Against it, and with Regard to Other Cases.

referral letters for the filing of civil, administrative and criminal actions/cases, and one of them is the Regional Director, *viz.*:

> "I. Delegated Authority
>
> **Pursuant to Section 7 of the Tax Reform Act of 1997 ('Tax Code') authorizing the Commissioner of Internal Revenue ('CIR') to delegate the powers vested in him under the Tax Code, his authority is hereby delegated to officials of the BIR, with regard to the institution** of civil, administrative and **criminal actions/cases** for among others, the recovery of taxes or the enforcement of any fine, penalty or forfeiture under the Tax Code, with regard to defenses of the Bureau of Internal Revenue ('BIR') with respect to cases instituted against it, and with regard to other cases, as follows:
>
> xxx xxx xxx
>
> B. **The <u>Regional Directors</u> are likewise authorized to approve and sign the same documents as mentioned above, with respect to** civil, administrative and **criminal actions**/cases and other cases of whatever kind and nature, emanating **from their respective Regional Offices, with the courts**, government agencies or quasi-judicial bodies, xxx." *(Emphases and underscoring added)*

Thus, the Regional Director is duly authorized to institute and approve the filing of a criminal action for the recovery of taxes.

Moreover, Section 10 of the NIRC of 1997 states as follows, to wit:

> "SEC. 10. *Revenue Regional Director.* — Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, **the Revenue Regional Director shall, within the region and district offices under his jurisdiction,** among others:
>
> xxx xxx xxx
>
> (c) **Issue Letters of Authority for the examination of taxpayers within the region**;
>
> xxx xxx xxx." *(Emphases added)*

Based on the foregoing provision, there is no doubt that the Revenue Regional Director is a BIR official who is authorized by law to issue an LOA.

This brings Us to this question: *Whether the power of the Regional Director to institute a criminal action and to issue an LOA extend to OIC-Regional Director?*

Such query is answered in the affirmative.

RMO No. 9-2016 dated March 10, 2016[55] categorically states the following, to wit:

> **"For the uniform understanding of all concerned, it is hereby reiterated and clarified that all internal revenue personnel holding positions in an OIC capacity shall exercise authority and discharge duties and assume responsibilities as if they are holding the employment item for the particular office**, subject to the limitations under the law and pertinent internal revenue issuances." *(Emphasis added)*

Correspondingly, as a rule, any internal revenue personnel holding position in an OIC capacity exercises authority, discharges duties, and assumes responsibilities, as if he or she is holding the employment item for the particular office.

Thus, considering that Ms. Josephine S. Virtucio and Ms. Clavelina S. Nacar were then holding the position of OIC-Regional Director when they respectively issued the subject *Referral Letter* dated April 8, 2021[56] and the *Letter of Authority* dated September 10, 2018,[57] it is only logical to conclude that they issued the same with full authority in the same way that they could have been performed by the Regional Director. Thus, the alleged lack of authority of the OIC-Regional Director to institute criminal action and to issue an LOA has no leg to stand on.

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[55] SUBJECT: Duties and Responsibilities of Personnel Holding Position in an Officer-In-Charged *(OIC)* Capacity
[56] Exhibit "G", Docket, pp. 55 to 56.
[57] Exhibit "B", Docket, p. 32.

The subject Waiver need not specify the particular taxes to be assessed nor the amount thereof.

The Court shall proceed to discuss the argument of the accused-appellant that the subject assessments had already prescribed as there was no valid waiver issued in the instant case.

Section 203 of the 1997 NIRC, as amended, reads as follows:

> "SEC. 203. *Period of Limitation upon Assessment and Collection.* — **Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return,** and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day." *(Emphases and underscoring added)*

Under the foregoing provision, internal revenue taxes must be assessed within three (3) years counted from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. This mandate governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation. Hence, an assessment notice issued after the three (3)-year prescriptive period is not valid and effective.[58]

However, an exception to the three (3)-year prescriptive period on the assessment of taxes is Section 222(b) of the NIRC of 1997, which provides as follows:

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[58] *Commissioner of Internal Revenue vs. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.)*, G.R. No. 212825, December 7, 2015.

"SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —

xxx xxx xxx

> (b) **If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.**" *(Emphasis added)*

The above provision authorizes the extension of the original three-year period by the execution of a valid waiver, where the taxpayer and the BIR agreed in writing that the period to issue an assessment and collection of taxes due is extended to an agreed upon date.[59] To be sure, it must be emphasized that a *Waiver of the Defense of Prescription* is a bilateral agreement between a taxpayer and the BIR to extend the period of assessment and collection to a certain date.[60]

Records show that accused-appellant executed a *Waiver of the Defense of Prescription*[61] on May 20, 2019, giving the BIR a period of assessment and/or collection until December 31, 2021, which was accepted by Revenue District Officer Tohammie L. Yahya of Revenue District No. 5 on May 21, 2019.[62]

Accused-appellant, however, argues that the said *Waiver of the Defense of Prescription* failed to indicate the nature and the amount of tax, in violation of the prescribed form in RMO No. 20-90 and RDAO No. 05-01. Such failure, accordingly, renders the waiver defective, citing the case of *Commissioner of Internal Revenue vs. Systems Technology Institute, Inc.*[63]

The Court does not agree.

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[59] *Commissioner of Internal Revenue vs. FMF Development Corporation*, G.R. No. 167765, June 30, 2008.
[60] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[61] See Note 1, p. 275; Docket, p. 180.
[62] Exhibit "H", Docket, p. 210.
[63] G.R. No. 220835, July 26, 2017.

It bears noting that, at time of the execution of the subject waiver on May 20, 2019, the relevant issuance of the BIR that is applicable is RMO No. 14-2016 dated April 4, 2016,[64] which revised the guidelines relative to the execution of the *Waiver of the Statute of Limitations* under Section 222, in relation to Section 203 of the 1997 NIRC, as amended, as prescribed by RMO No. 20-90 dated April 4, 1990 and RDAO No. 05-01. RMO No. 14-2016 states:

> "2. Except for waiver of collection of taxes which shall indicate the particular taxes assessed, **the waiver need <u>not</u> specify the particular taxes to be assessed nor the amount thereof, and it may simply state 'all internal revenue taxes' considering that during the assessment stage, the Commissioner of Internal Revenue or her duly authorized representative is still in the process of examining and determining the tax liability of the taxpayer.**
>
> xxx xxx xxx." *(Emphasis and underscoring added)*

Based on the foregoing provision, it is evident that the *Waiver* need *not* specify the particular taxes to be assessed and the amount thereof and may simply state *"all internal revenue taxes"*, as in the present case. Thus, the alleged invalidity of the subject *Waiver of the Defense of Prescription* due to failure to indicate the nature and the amount of tax due likewise holds no water.

Having settled the foregoing issues raised by accused-appellant, the Court shall now ascertain whether or not the Court *a quo* erred in convicting the accused-appellant of the crime charged.

Elements of the crime of willful failure to pay tax under Section 255 of the NIRC of 1997

To recall, accused-appellant was charged under Section 255 of the 1997 NIRC, as amended, for failure to pay the deficiency income tax, VAT and percentage tax, and

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[64] SUBJECT: Guidelines for the Execution of Waivers from the Defense of Prescription Pursuant to Section 222 of the National Internal Revenue Code of 1997, as Amended.

miscellaneous taxes, for TY 2016. The said section is reproduced as follows, to wit:

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

From the foregoing, to sustain a conviction for the offense of *Failure to Pay Tax* under Section 255 of the 1997 NIRC, as amended, the following elements must be established by the plaintiff-appellee beyond reasonable doubt:

1. Accused-appellant is required under the NIRC or its rules and regulations to pay any tax;

2. Accused-appellant failed to pay the required tax at the time required by law or rules and regulations; and,

3. Such failure is willful.

First Element: Accused-Appellant is required under the NIRC of 1997, as amended, or its rules and regulations to pay the deficiency income tax, VAT and percentage taxes.

Based on the *BIR Certificate of Registration* dated January 30, 2015,[65] accused-appellant is the owner or sole proprietor of Dex-Than Trading, engaged in retail sale in specialized stores under TIN No. 463-385-798-000; and that he is obligated to pay both income and percentage taxes for the said registered business activity.

Relative to the accused-appellant's income tax liability, Section 24 of the 1997 NIRC, as amended, by RA No. 9504,[66] reads as follows:

> "SEC. 24. *Income Tax Rates.* –
>
> (A) *Rates of Income Tax on Individual Citizen and Individual Resident Alien of the Philippines.* –
>
> (1) An income tax is hereby imposed;
>
> (a) On the taxable income defined in Section 31 of this Code, other than income subject to tax under Subsections (B), (C) and (D) of this Section, derived for each taxable year from all sources within and without the Philippines by every individual citizen of the Philippines residing therein;
>
> (b) On the taxable income defined in Section 31 of this Code, other than income subject to tax under Subsections (B), (C) and (D) of this Section, derived for each taxable year from all sources within the Philippines by an individual citizen of the Philippines who is residing outside of the Philippines including overseas contract workers referred to in Subsection (C) of Section 23 hereof; and
>
> (c) On the taxable income defined in Section 31 of this Code, other than income subject to tax under Subsections (B), (C) and (D) of this Section, derived for each taxable year from all sources within the Philippines by an individual alien who is a resident of the Philippines.

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[65] Exhibit "A", Docket, p. 31.
[66] AN ACT AMENDING SECTIONS 22, 24, 34, 35, 51, AND 79 OF REPUBLIC ACT NO. 8424, AS AMENDED OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, dated June 17, 2008.

(2) *Rates of Tax on Taxable Income of Individuals.* – The tax shall be computed in accordance with and at the rates established in the following schedule:

Not over P10,000	5%
Over P10,000 but not over P30,000	P500+10% of the excess over P10,000
Over P30,000 but not over P70,000	P2,500+15% of the excess over P30,000
Over P70,000 but not over P140,000	P8,500+20% of the excess over P70,000
Over P140,000 but not over P250,000	P22,500+25% of the excess over P140,000
Over 250,000 but not over P500,000	P50,000+30% of the excess over P250,000
Over P500,000	P125,000+32% of the excess over P500,000

xxx xxx xxx."

Moreover, as a non-VAT registered person, accused-appellant is required under Section 116 of the 1997 NIRC, as amended, by RA No. 9337, to pay percentage tax, to wit:

"SEC. 116. *Tax on Persons Exempt from Value-Added Tax (VAT).* — Any person whose sales or receipts are exempt under Section 109 (BB) of this Code from the payment of value-added tax and who is not a VAT-registered person shall pay a tax equivalent to three percent (3%) of his gross quarterly sales of receipts: *Provided,* That cooperatives shall be exempt from the three percent (3%) gross receipts tax herein imposed."

Accused-appellant was aware of the foregoing tax obligations and, in fact, presented Dex-Than Trading's 2016 AITR,[67] *1st Quarterly Income Tax Return* for TY 2016;[68] and *Monthly Percentage Tax Returns* from January to October 2016[69] to prove his compliance thereon.

However, as per report investigation of RO Jonalyn Oviedo, she discovered that Dex-Than Trading had total sales from different Local Government Units (LGUs), in the amount of ₱5,484,128.48, for the period from January to October 2016, which exceeded the then VAT threshold in the amount of ₱1,919,500.00, as shown in the below quoted *Schedule of*

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[67] Exhibits "1" to "1-j", Docket, pp. 225 to 235.
[68] Exhibit "2", Docket, p. 236.
[69] Exhibits "3" to "3-i", Docket, pp. 237 to 246.

Sales per Reconciliation of Third Party Information For TY 2016,[70] to wit:

TIN	CUSTOMER	PER BIR FORM NO. 2307/SAWT	PER TPI (RDC DATA)	WHICHEVER IS HIGHER
000631782	LGU-BINMALEY		73,410.00	73,410.00
004010058	BARANGAY COUNCIL OF SAN ISIDRO SUR BINMALEY		38,479.00	38,479.00
004010138	BARANGAY COUNCIL OF LOMBOY BINMALEY		387,252.49	387,252.49
004010218	LINOC BARANGAY COUNCIL	89,400.00	497,356.49	497,356.49
004010226	BARANGAY COUNCIL OF BIEC BINMALEY		40,000.00	40,000.00
004010362	BARANGAY COUNCIL OF BUENLAG BINMALEY		305,354.50	305,354.50
004010589	PARAYAO BARANGAY COUNCIL	84,500.00	99,992.00	99,992.00
004010636	PALLAS BARANGAY COUNCIL	144,850.00	397,494.00	397,494.00
004010716	BALAGAN BARANGAY COUNCIL	182,955.00	322,933.00	322,933.00
004011938	BASING BARANGAY COUNCIL	104,000.00	193,000.00	193,000.00
004011996	TOMBOR BARANGAY COUNCIL	309,743.00	359,469.00	359,469.00
004012001	PAPAGUEYAN BARANGAY COUNCIL	92,760.00	249,682.00	249,682.00
004012027	CAMALEY BARANGAY COUNCIL	99,165.00	208,665.00	208,665.00
004012035	DULAG BARANGAY COUNCIL	89,090.00	220,726.00	220,726.00
004012042	SABANGAN BARANGAY COUNCIL	85,995.00		85,995.00
004012549	STA. ROSA BARANGAY COUNCIL	154,600.00	249,698.00	249,698.00
004014526	BARANGAY COUNCIL CALOOCAN NORTE BINMALEY	40,000.00	69,300.00	69,300.00
004014702	MALINDONG BARANGAY COUNCIL	244,704.00		244,704.00
005573651	BARANGAY COUNCIL OF MANAT BINMALEY		40,000.00	40,000.00
005573694	BARANGAY COUNCIL OF BAYBAY LOPEZ BINMALEY		403,202.00	403,202.00
005575027	BARANGAY COUNCIL OF CANAOALAN BINMALEY		108,730.00	108,730.00
005575147	SALAPINGAO BARANGAY COUNCIL	184,100.00		184,100.00
005578334	BALOGO BARANGAY COUNCIL	64,890.00		64,890.00
006075663	BARANGAY COUNCIL OF NAGUILAYAN BINMALEY		87,000.00	87,000.00

[70] Exhibit "E-2", Docket, p. 47.

006077519	GAYAMAN BARANGAY COUNCIL	124,988.00		124,988.00
256334239	CALOOCAN DUPO BARANGAY COUNCIL	197,360.00		197,360.00
296463296	BARANGAY COUNCIL OF NAGPALANGAN BINMALEY		230,348.00	230,348.00
	TOTAL SALES PER AUDIT			**₱5,484,128.48**

In view of the foregoing, accused-appellant was not only assessed of deficiency income and percentage taxes, but was also subjected to VAT and miscellaneous taxes, as shown in the below quoted *Details of Discrepancies* attached to the FLD dated February 24, 2020,[71] to wit:

"Income Tax
Assessment No. IT-eLA30344-05-16-463385798

1. *Undeclared Gross Profit from Sales per Reconciliation of Third Party Information* -investigation report disclosed that reconciliation of sales on a per customer basis of the sales per Third Party Information vis-a-vis BIR Form Nos. 2307/2306 and Summary Alphalist of Withholding Taxes ('SAWT') resulted to total sales of ₱5,484,128.48. Since sales declared per Annual Income Tax Return is only ₱780,900.00, there is a total undeclared sale of ₱4,703,228.48. Such undeclared sales have related to undeclared gross profit of ₱1,679,918.05, which was computed using the gross profit ratio per Financial Statements pursuant to Sec. 6 of the 1997 NIRC, as amended. This was added to taxable net income and subject to income tax per audit pursuant to Sections 24(A) and 32(A) of the 1997 NIRC, as amended. (See Annex II-Schedule of Sales per Reconciliation of Third Party Information)

2. *Disallowed Deductions based on Best Evidence Obtainable Rule*- During investigation, you have failed to provide any supporting documents or evidence to support your claimed deductions in violation of Section 34B of the Tax Code. Since such costs and expenses constitute the deductions in conducting a business and there having been no means by which to ascertain the correctness and accuracy of the said deductions, fifty percent (50%) of such deductions claimed were disallowed pursuant to Section 2(2.4) (c) of Revenue Memorandum Circular No. 23-2000.

The assessment was based on **BEST EVIDENCE OBTAINABLE RULE** for your failure and refusal to make certain records available per issued Subpoena Duces Tecum (SDT No. RR1-05-2019-016) dated January 21, 2019 and resulted in the subsequent filing of criminal case pursuant to Sections 5 and 14, penalized under Section 266, in relation to Sections 253(D) and 256 of the National Internal Revenue Code ('NIRC'), as amended.

[71] Exhibit "E-1", Docket, pp. 44 to 46.

Account	Amount per Income Tax Return	50% Disallowance
Purchases	₱ 501,975.00	₱ 250,987.50
Salaries	113,000.00	56,500.00
Communication, Light and Water	8,480.00	4,240.00
Fuel & Oil	7,650.00	3,825.00
Taxes and Licenses	24,318.00	12,159.00
Transportation	2,930.00	1,465.00
Repairs and Maintenance	10,680.00	5,340.00
Miscellaneous	10,337.00	5,168.50
Total Disallowed		**₱ 339,685.00**

Percentage Tax
Assessment No.:PT-eLA30344-05-16-463385798

3. *Tax Credits Allowed* - during investigation tax credits duly supported by BIR Form No. 2306 only amounted to ₱66,257.50 while the amount claimed per percentage tax returns is ₱67,305.00. The difference of ₱1,047.50 was thus disallowed per audit for your failure to provide the necessary certificates to support such tax credits as required under Section 4.114 of Revenue Regulations No. 2-98, as amended.

Sales Subject to Percentage Tax

Month/s	Sales per Percentage Tax Returns Filed	Cumulative Sales Totals	
January	₱ 171,581.00	171,581.00	
February	212,985.00	384,566.00	
March	109,750.00	494,316.00	
April	186,900.00	681,216.00	
May	114,100.00	795,316.00	
June	298,300.00	1,093,616.00	
July	136,867.00	1,230,483.00	
August	369,112.00	1,599,595.00	
September	175,905.00	1,775,500.00	
October	468,000.00	2,243,500.00	*month ₱1,919.500 was exceeded*
November	-	no return filed	*month to update registration to VAT*

Value Added Tax
Assessment No. VT-eLA30344-05-16-463385798

4. *Vatable Sales* - investigation report disclosed that your accumulated sales for the months of January to October have exceeded the vat threshold of ₱1,919,500 therefore you are mandated to register as a VAT taxpayer. In accordance with Republic Act 7716 implemented by Revenue Regulations No. 7-1995, which states that *'Sec. 107(c) Persons becoming liable to value added tax- Any persons whose gross sales or receipts in any 12-month period exceeds the amount prescribed under section*

103(t) of this code for exemption from the value added tax shall register and pay the annual registration fee prescribed under paragraph (a) of this section within thirty (30) days after the end of the last month of that period, and shall be liable to the value added tax commencing from the first day of the month following his registration.' as amended by Revenue Regulations No. 6-1997 in relation to Sections 236 and 106 of the 1997 NIRC, as amended. Your sales for the month of December amounting to ₱3,240,628.48 is hereby subjected to value added tax per audit.

Sales Subject to Value Added Tax

Month/s	Sales per Percentage Tax Returns Filed	Cumulative Sales Totals
December	₱ -	no return filed *start of mandatory VAT liability*
Total Sales per Reconciliation of Third Party Information	₱ 5,484,128.48	
Sales Subject to Percentage Tax	2,243,500.00	
Sales Subject to VAT per Audit	₱ 3,240,628.48	

5. *Input Taxes* – No input tax was allowed as you failed to update your registration to value added tax pursuant to Section 236(G)(2) of the 1997 NIRC, as amended, and Section 4.110-1 and 2 of Revenue Regulations No. 16-2005, as amended.

Miscellaneous Tax

Assessment No. MC-eLA30344-05-16-463385798

6. *Failure to File Certain Information/Returns* - Penalties were imposed on failure to file/submit the disclosure requirements under Revenue Regulations No. 15-2010, Financial Statements failed to conform with Revenue Regulations No. 7-2007, Books of Accounts, Alphalist of Employees, 2nd and 3rd Qtrs. Income Tax Returns, Percentage Tax Returns for June, November and December and for failure to register as VAT taxpayer at the time prescribed by tax rules and regulations. Hence, compromise penalties were proposed, in relation and in addition to the violations penalized under Section 250 of the 1997 NIRC, as amended for non-filing of said schedules, lists, or information required under Section 255 of the NIRC, as amended. The compromise penalties imposed were based on RMO No. 7-2015, and are suggested to be paid in lieu of criminal prosecution.

Pursuant to the provisions of Section 228 of the National Internal Revenue Code of 1997, as amended, and its implementing revenue regulations, you are hereby given the opportunity to present your side of the case, through filing at this office a *valid* protest letter as defined under Revenue Regulations No. 18-2013, within *thirty (30)* calendar days from receipt of this Formal Letter of Demand. Otherwise, the internal revenue tax liabilities shall become *final, executory, and demandable."*

Since the accused-appellant had gross-sales of ₱5,484,128.48, which exceeded the then ₱1,919,500.00 VAT threshold, he should have, indeed, registered as a VAT taxpayer as early as December 2016, and be subjected to VAT, pursuant to Section 9.236-1 (b)(i) of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 16-2011, which reads:

> "SECTION 9.236-1. *Registration of VAT Taxpayers.* —
>
> (a) *In general.* — Any person who, in the course of trade or business, sells, barters, exchanges goods or properties, or engages in the sale of services subject to VAT imposed in Secs. 106 and 108 of the Tax Code shall register with the appropriate RDO using the appropriate BIR forms and pay an annual registration fee in the amount of Five Hundred Pesos (P500) using BIR Form No. 0605 for every separate or distinct establishment or place of business (save a warehouse without sale transactions) before the start of such business and every year thereafter on or before the 31st day of January.
>
> xxx xxx xxx
>
> *'VAT-registrable person'* refers to any person who is required to register under the provisions of this section but failed to register.
>
> ***(b) Mandatory***:
>
> Any person who, in the course of trade or business, sells, barters or exchanges goods or properties or engages in the sale or exchange of services shall be liable to register if:
>
> i. His gross sales or receipts for the past twelve (12) months, other than those that are exempt under Sec. 109 (1)(A) to (U) of the Tax Code, have exceeded One million five hundred thousand pesos (P1,500,000.00[72]); or
>
> xxx xxx xxx."

Thus, as for the *first* element, pursuant to the foregoing provisions and since the accused-appellant is the sole proprietor of Dex-Than Trading, which had gross sales of ₱5,484,128.48 for the period from January to October 2016, which he failed to declare in full in his 2016 AITR, he is deemed liable to pay the alleged deficiency income and percentage taxes. Further, he should have registered as a VAT

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[72] ₱1,919,500.00 starting January 1, 2012, as per Revenue Regulations No. 16-2011.

person, as his sales for TY 2016 exceeded the ₱1,919,500.00 VAT threshold, and is therefore required to file VAT returns and pay the corresponding VAT thereon which, unfortunately, he failed to do.

Consequently, the plaintiff-appellee has shown compliance with the said *first* element under Section 255 of the 1997 NIRC, as amended.

Second Element: Accused-appellant failed to pay the income tax, VAT and percentage taxes at the time required by law or rules and regulations.

As a consequence of his income and VAT liabilities, accused-appellant is mandated to file the pertinent tax returns and pay the corresponding taxes, pursuant to the following provisions of the 1997 NIRC, as amended, and implementing rules and regulations:

Income Tax:

> "SEC. 51. *Individual Return.* –
>
> (A) *Requirements.* –
>
> xxx xxx xxx
>
> (4) The income tax return shall be filed in duplicate by the following persons:
>
> (a) A resident citizen – on his income from all sources;
>
> (b) A nonresident citizen – on his income derived from sources within the Philippines;
>
> (c) A resident alien – on his income derived from sources within the Philippines; and
>
> (d) A nonresident alien engaged in trade or business in the Philippines – on his income derived from sources within the Philippines.
>
> xxx xxx xxx

an

(B) *Where to File.* – Except in cases where the Commissioner otherwise permits, the return shall be filed with an authorized agent bank, Revenue District Officer, Collection Agent or duly authorized Treasurer of the city or municipality in which such person has his legal residence or principal place of business in the Philippines, or if there be no legal residence or place of business in the Philippines, with the Office of the Commissioner.

(C) *When to File.* –

(1) The return of any individual specified above shall be filed on or before the fifteenth (15th) day of April of each year covering income for the preceding taxable year.

xxx xxx xxx."

VAT:

"SEC. 114. *Return and Payment of Value-Added Tax.* —

(A) *In General.* — Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis. xxx" *(Emphasis added)*

As pointed out earlier, accused-appellant failed to register as a VAT taxpayer and failed to pay the assessed deficiency taxes. And, his sole defense was that, he "did not earn that big amount during those times."[73] However, other than this bare allegation, records disclosed that he did not present any documentary evidence to prove the same. Surely, accused-appellant's bare allegation without corroborating evidence cannot overturn the presumption of the correctness of the subject assessments.[74]

Moreover, to prove accused-appellant's failure to pay the assessed deficiency income tax, VAT, and percentage taxes, at the time required by law or rules and regulations, plaintiff-

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[73] Transcript of Stenographic Notes (TSN) taken at the hearing held on June 21, 2022, Docket, p. 86.
[74] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, (Resolution),* G.R. No. 168498, April 24, 2007, citing *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.,* G.R. No. 136975, March 31, 2005.

appellee presented the following documents, which have been received by the accused-appellant himself, namely: (1) LOA dated September 10, 2018;[75] (2) *Notice of Informal Conference* dated May 15, 2019, with *Computation of Deficiency Taxes*;[76] (3) *Amended Notice of Informal Conference* dated May 15, 2019, with *Amended Computation of Deficiency Taxes*;[77] (4) PAN dated January 20, 2020,[78] with *Details of Discrepancies;* and (5) FLD/FANs dated February 24, 2020,[79] with *Details of Discrepancies.*

As to the collection efforts, plaintiff-appellee presented a copy of the WDL dated November 25, 2020,[80] which was received by the sister of accused-appellant, Ms. Marissa Tadeo, on December 1, 2020.

It can be inferred from the foregoing that accused-appellant had been duly notified of the assessment notices, and yet he did not file any protest against the subject tax assessments, pursuant to Section 228 of the 1997 NIRC, as amended.[81] It is already settled that failure to file an administrative protest within thirty (30) days from receipt of

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[75] Exhibit "B-1", Docket, p. 32.
[76] Annex "C", Docket, pp. 160 to 162.
[77] Exhibit "C-1", Docket, pp. 148 to 150.
[78] Exhibits "D" and "D-1", Docket, pp. 33 to 38.
[79] Exhibits "E" to "E-1" and "E-4", Docket, pp. 41 to 46, and 49 to 52.
[80] Exhibit "F", Docket, p. 53.
[81] "Section 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx

xxx xxx xxx

The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

the FLD/FAN will render the assessment final, executory, and demandable.[82]

Correspondingly, since accused-appellant failed to file a valid protest, the subject tax assessments have become final, executory and demandable and, thus, can no longer be contested.[83]

Moreover, accused-appellant was very much aware that the due date for payment of the assessed deficiency taxes was on March 25, 2020,[84] as stated in the subject FLD/FANs. But still, no payment was made by him.

Thus, based on foregoing pieces of evidence, plaintiff-appellee has sufficiently proven that accused-appellant failed and continuously fail to pay the alleged deficiency taxes at the time required by law or rules and regulations. Consequently, plaintiff-appellee's compliance with the *second* element of Section 255 of the 1997 NIRC, as amended, has been duly established.

<u>Third Element</u> – The accused-appellant's failure to pay the income tax, VAT and percentage taxes is willful.

The word "*willful*", or its variant "*wilful*", means premeditated; malicious; **done with intent**, or with bad motive or purpose, or **with indifference to the natural consequence**.[85]

Thus, to attribute to the 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 to pay the tax.

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[82] *Commissioner of Internal Revenue vs. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 22, 2017.
[83] *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, et al.*, G.R. No. 148380, December 9, 2005.
[84] Annex "D-4", Docket, p. 51.
[85] Refer to *Commissioner of Internal Revenue, et al. vs. The Honorable Court of Appeals, et al.*, G.R. No. 119322, June 4, 1996.

In this case, it has been duly established that upon learning that the BIR found discrepancies in his sales for taxable year 2016, accused-appellant immediately visited the assigned RO for a possible compromise agreement, and likewise offered to settle the same on installment basis, as shown in his testimony hereunder quoted for ready reference:

> "ATTY. JUAN:
>
> Q Now you testified that you received the Assessment Notices from the Bureau of Internal Revenue, did you exert any effort to communicate with the BIR as to the settlement of your levy notices?
> A Yes, sir.
>
> Q Do you remember having communicated with a specific Revenue Officer in the settlement of your tax levy notices?
> A In Calasiao Office sir?
>
> Q Yes in Calasiao.
> A There is someone whom I talked too, sir.
>
> Q How many times did you go to Calasiao?
> A For three (3) times, sir.
>
> Q In communicating with the BIR, you were made aware that you can apply for compromise settlement of your tax levy, is that correct?
> A Yes, sir.
>
> Q And despite having known such remedy that you can apply for compromise, you did not apply with the BIR for any compromise settlement, is that right Mr. Dexter?
> A Yes, sir.
>
> Q You did apply?
> A Yes before, sir.
>
> Q Do you have any proof of your application for compromise settlement?
> A I do not have any as of now, sir."[86]

Notably, the foregoing facts were even confirmed by no less than the plaintiff-appellee's own witness, Ms. Imelda Rejano, in her testimony during the cross-examination. The following are the excerpts of Ms. Rejano's testimony, *viz.*:

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[86] TSN taken at the hearing held on June 21, 2022, RTC Docket (Crim. Case No. L-13865), pp. 96 to 97.

"Q This Notice of Informal Conference is principally an invitation for the accused to settle his claim with the BIR, is that correct?
A The Notice of Informal Conference is the result of the audit and then binibigyan namin within thirty (30) days ang taxpayer to give him time to protest kung tama po ang Assessment, sir.

Q But in this case, the accused did not protest?
A Yes, sir.

Q But when you invited him for the Notice of Informal Conference, he tried to settle his alleged liabilities, is that correct?
A Wala nga po sir, kasi wala siyang pambayad, sir.

Q But he tried?
A Yes we explained sa kanya para matulungan naman siyang magbayad, sir.

Q So according to you, wala nga po sir because wala po siyang pambayad, meaning to say, he tried to settle this tax liabilities as early as during the sending of the Notice of Informal Conference only that his financial status permitted him to do so?
A Yes, sir.

Q So to be clear, as early as this Notice of Informal Conference, the accused is already manifesting his willingness to pay?
A Yes, sir.

Q And this allowed under the National Internal Revenue Code, correct?
A Yes, sir.

Q Then again, because of the none payment, you proceeded with the Preliminary Assessment Notice, correct?
A Yes, sir.

Q And, I'm also correct to tell that again, the accused is really desirous to settle his tax liabilities only that again, he is prevented by his financial capacity?
A Yes, sir.

Q And because the BIR is asking the payment of the full amount, the BIR is not allowing the accused to pay this liabilities on installment basis?
A Sir we are allowing the tax payer to have an installment, but you said earlier that we have a prescription period, so kami naman and mababalikan pag hindi namin ginawa yong mga

procedures at the end of our Assessment Section, so hindi po mag push through doon sa kanyang installment, efoforward pa rin namin po and then after na mag bayad po sya efoforward din namin po yong payment, sir.

Q That installment madam witness, what could be the possible terms?
A Depende po yon kasi syempre sa laki ng Assessment sa kanya, kaya ang ginawa namin para hindi naman kami po yong kasi diba may administratively liable din kasi kami once na hindi namin na aksiyunan yong docket, meron syang intention to pay an installment pero hindi naman nag push through doon, sir.

Q This Notice of Informal Conference madam witness was send to the accused on May 15, 2019?
A Yes, sir.

Q So in other words madam witness, you affirm before this Honorable Court that there was really this intention of the accused to pay the taxes even on installment basis, but only that is not permitted by his pocket and the case that you filed before this Honorable Court is willful non payment of tax cases, is that correct, are you familiar with that willful?
A Yes, sir."[87]

It cannot be denied from the foregoing that the accused-appellant **attempted to settle the subject deficiency taxes** through possible compromise agreement, and to pay the supposed compromise amount by installment. But he was prevented from doing so due to his financial incapacity, as he was still required by RO Rejano to pay the full amount of the assessed deficiency taxes, on the ground that they were bound by the prescriptive period given to them to act on the case docket. Failure on their part to do so shall, accordingly, make them administratively liable for inaction thereon. For this Court, however, this creates a reasonable doubt as to the *indicia* of willfulness on the part of the accused-appellant not to pay his tax liabilities, since it is evident that accused-appellant merely failed to pay the subject tax assessments due to his financial incapacity.

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[87] TSN taken at the hearing held on April 26, 2022, RTC Docket (Crim. Case No. L-13865), pp. 55 to 57.

Consequently, plaintiff-appellee **failed to present sufficient evidence to prove beyond reasonable doubt that the accused-appellant willfully failed to pay** the deficiency income tax, VAT, percentage tax, and miscellaneous taxes for TY 2016. Such being the case, accused-appellant must perforce be acquitted.

However, accused-appellant is civilly liable to pay the assessed deficiency taxes.

In *Nuguid vs. Nicdao*,[88] the Supreme Court ruled as follows:

> "...the basic principle in civil liability *ex delicto* is that every person criminally liable is also civilly liable, crime being one of the five sources of obligations under the Civil Code. A person acquitted of a criminal charge, however, is not necessarily civilly free because the quantum of proof required in criminal prosecution (proof beyond reasonable doubt) is greater than that required for civil liability (mere preponderance of evidence). In order to be completely free from civil liability, a person's acquittal must be based on the fact that he did not commit the offense. If the acquittal is based merely on reasonable doubt, the accused may still be held civilly liable since this does not mean he did not commit the act complained of. It may only be that the facts proved did not constitute the offense charged."

Thus, it is already settled that an accused acquitted of a criminal charge may, nevertheless, be held in the same case civilly liable, where the facts established by the evidence so warrants.

As pointed out earlier, considering that accused-appellant failed to protest the subject assessment within thirty (30) days from receipt of the FLD/FANs[89] on February 28, 2020, the subject assessments had become final, executory and demandable on March 29, 2020. Thus, despite of the acquittal herein decreed, accused-appellant is still civilly liable for the subject deficiency taxes, as stated in the aforementioned FLD/FANs, plus any surcharge and interests that have accrued thereon.

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[88] G.R. No. 150785, September 15, 2006.
[89] Exhibits "E" to "E-4", Docket, pp. 41 to 52.

WHEREFORE, finding merit on accused-appellant's appeal, the assailed August 30, 2022 Decision and September 30, 2022 Resolution of the RTC, Branch 69, Lingayen, Pangasinan, in Crim. Case No. L-13865 are hereby **PARTIALLY REVERSED AND SET ASIDE**. Accused-appellant Dexter Magtaan y Masangkay is **ACQUITTED** of the offense of violation of Section 255 of the 1997 NIRC, as amended, his guilt not having been established beyond reasonable doubt.

However, accused-appellant is **ORDERED TO PAY** the aggregate amount of **₱1,718,861.77**, representing basic deficiency income tax, VAT and percentage taxes, plus 50% surcharge imposed under Section 248(B) of the 1997 NIRC, as amended, the 20% deficiency interest, and the 20% delinquency interest imposed under Section 249(A) and (C) of the same Code, respectively, computed as follows:

	Income Tax	**Percentage Tax**	**VAT**	**Miscellaneous Taxes**	**Total**
Basic Tax Due	₱ 596,440.88	₱ 1,047.50	₱ 388,875.42	₱ 64,000.00	₱ 1,050,363.80
Add: 25% Surcharge	149,110.22	261.88	97,218.86		246,590.96
Income Tax: 20% Deficiency Interest from April 16, 2017 to December 31, 2017 *[₱596,440.88 x 20% x 260/365 days]*	84,972.40				84,972.40
12% Deficiency Interest from January 1, 2018 to March 25, 2020 *[₱596,440.88 x 12% x 815/365 days]*	159,813.47				159,813.47
Percentage Tax: 20% Deficiency Interest from January 26, 2017 to December 31, 2017 *[₱1,047.50 x 20% x 340/365 days]*		195.15			195.15
12% Deficiency Interest from January 1, 2018 to March 25, 2020 *[₱1,047.50 x 12% x 815/365 days]*		280.67			280.67
VAT: 20% Deficiency Interest from January 26, 2017 to December 31, 2017 *[₱388,875.42 x 20% x 340/365 days]*			72,448.02		72,448.02
12% Deficiency Interest from January 1, 2018 to March 25, 2020 *[₱388,875.42 x 12% x 815/365 days]*			104,197.30		104,197.30
Total Amount Due, March 25, 2020	**₱990,336.97**	**₱1,785.20**	**₱662,739.60**	**₱64,000.00**	**₱1,718,861.77**

In addition, accused-appellant is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%) on the unpaid deficiency taxes due as of March 25, 2020 in the amount of ₱1,718,861.77 for TY 2016, or equivalent to ₱565.11[90] per day, computed from March 26, 2020 until full payment thereof pursuant to Section 249(C) of the 1997 NIRC, as amended, by RA No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by RR No. 21-2018.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

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[90] ₱1,718,861.77 x 12% / 365 days.