REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

PEOPLE OF THE PHILIPPINES, *as represented by the Solicitor General through the Bureau of Internal Revenue,* Petitioner,	**CTA EB CRIM. NO. 157** (CTA Crim. Case Nos. O-823 & O-824)
	Present:
- versus -	**RINGPIS-LIBAN,** *P.J.*, **BACORRO-VILLENA, MODESTO-SAN PEDRO REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
ANNE GIL RACHEL LABAO y KUAN, Proprietor of SAN MIGUEL SECURITY AGENCY and **COURT OF TAX APPEALS, SECOND DIVISION,** Respondents.	Promulgated: APR 10 2026 4:12

x - - -

amended.[3] It seeks the reversal and setting aside of the Resolution dated 14 March 2024[4] (**first assailed Resolution**) and Resolution dated 31 May 2024[5] (**second assailed Resolution**) of the Court's Second Division[6] (**public respondent**) in CTA Crim. Case Nos. O-823 and O-824, both entitled *People of the Philippines v. Anne Gil Rachel K. Labao, Proprietor of San Miguel Security Agency.*

The first assailed Resolution granted herein private respondent Anne Gil Rachel Labao y Kuan's (**private respondent**'s/**Labao**'s) "Demurrer to Evidence"[7] (**Demurrer**). In granting the Demurrer, public respondent dismissed the subject criminal cases for insufficiency of evidence, as well as discharged and ordered the release of private respondent's cash bail bond. The second assailed Resolution, on the other hand, denied petitioner's "Motion for Reconsideration (of the [first assailed Resolution])"[8] (**MR**) for lack of merit. The dispositive portions of the first and second assailed Resolutions read as follows:

First Assailed Resolution dated 14 March 2024

...

WHEREFORE, the accused's Demurrer to Evidence filed on 27 February 2023 is hereby **GRANTED**. Accordingly, CTA Crim. Case Nos. O-823 & O-824 are hereby dismissed for insufficiency of evidence.

The cash bail bond of accused **ANNE GIL RACHEL K. LABAO** is hereby **DISCHARGED** and to be **RELEASED** to her upon presentation of proper documents, in accordance with the usual accounting rules and regulations.

SO ORDERED.

...

---

3 A.M. No. 19-10-20-SC, otherwise known as the 2019 Amendments to the 1997 Rules of Civil Procedure.

4 Division Docket (CTA Crim. Case No. O-823), Volume II, pp. 916-932.

5 Id., Volume III, pp. 1027-1028.

6 The Second Division is composed of then Associate Justice (now Presiding Justice) Ma. Belen M. Ringpis-Liban, as Chairperson, Associate Justice Maria Rowena Modesto-San Pedro and Associate Justice Corazon G. Ferrer-Flores, as Members.

7 Division Docket (CTA Crim. Case No. O-823), Volume II, pp. 772-857.

8 Id., Volume III, pp. 965-977.

Second Assailed Resolution dated 31 May 2024

...

ACCORDINGLY, plaintiff's Motion for Reconsideration (of the Resolution dated March 14, 2024) is hereby **DENIED** for lack of merit.

SO ORDERED.

...

PARTIES OF THE CASE

Petitioner is represented by the Bureau of Internal Revenue (**BIR**), the government agency mandated to collect national revenue taxes. Petitioner, through the deputized special prosecutors from the BIR, may be served with notices and processes of this Court at its office address at the Prosecution Division, Room 704, 7th Floor, BIR National Office Building, Senator Miriam P. Defensor-Santiago Road, Diliman, Quezon City.[9]

Private respondent is the accused natural person registered with BIR Revenue District Office (**RDO**) No. 101, Iligan City under Tax Identification Number (**TIN**) 196-393-586. She is the registered owner of San Miguel Protective Security Agency (**SMPSA**), Janitorial, Messengerial and Allied Services or San Miguel Security Agency (**SMSA**). Her registered address is at Don Pedro Celdran Avenue, Corpus Christi Village, Tubod, Iligan City, where she may be served with summons, notices and other legal processes of this Court.[10]

Public respondent issued the assailed Resolutions in CTA Case Crim. Nos. O-823 and O-824.

FACTS OF THE CASE

On 04 March 2020, petitioner filed two (2) Informations[11] against private respondent for violation of Section 255[12] of the National Internal

---

9 Paragraph 25, THE PARTIES, Petition for Certiorari, supra at note 1, pp. 8-10.
10 Par. 27, id., p. 10.
11 Division Docket (CTA Crim. Case No. O-823), Volume I, pp. 5-6; Division Docket (CTA Crim. Case No. O-824), pp. 5-6.
12 **SEC. 255.** *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.*

Revenue Code (**NIRC**) of 1997, as amended. Each Information charged private respondent with failure to pay tax under the said provision. Accusatory portions of the Informations read as follows:

CTA Crim. Case No. O-823

...

That on or about May 15, 2018 and thereafter, in Iligan City, and within the jurisdiction of this Honorable Court, accused Anne Gil Rachel K. Labao, a registered taxpayer engaged in the business of security agency with obligation under the law to pay correct value-added tax, did then and there, willfully, unlawfully, and feloniously fail to pay deficiency value-added tax for the taxable year 2010 in the amount of One Million Two Hundred Forty Three Thousand One Hundred Twenty Five and 51/100 Pesos only (Php1,243,125.51), exclusive of surcharges and interest, despite final assessment and formal demand to pay and the services of several prior and post notices and demands, to the damage and prejudice of the Government[.]

CONTRARY TO LAW.

...

CTA Crim. Case No. O-824

...

That on or about May 15, 2018 and thereafter, in Iligan City, and within the jurisdiction of this Honorable Court, accused Anne Gil Rachel K. Labao, a registered taxpayer engaged in the business of security agency with obligation under the law to pay correct income tax, did then and there, willfully, unlawfully, and feloniously fail to pay deficiency income tax for the taxable year 2010 in the amount of Two Million Six Hundred Eighty Seven Thousand Two Hundred Thirty Three and 19/100 Pesos only (Php2,687,233.19), exclusive of surcharges and interest, despite final assessment and formal demand to pay and the services of several prior and post notices and demands, to the damage and prejudice of the Government.

CONTRARY TO LAW.

...

DECISION
CTA EB CRIM. NO. **157** (CTA Crim. Case Nos. O-823 and O-824)
People of the Philippines, as represented by the Solicitor General through the Bureau of Internal Revenue **v.** Anne Gil Rachel Labao *y* Kuan, Proprietor of San Miguel Security Agency and Court of Tax Appeals, Second Division
Page **5** of 37
x - - -

In the Resolutions dated 13 March 2020 and 26 June 2020,[19] the Third Division ordered the issuance of Warrants of Arrest (**WOAs**) against private respondent (as then accused) and fixed bail for her provisional liberty at ₱60,000.00 pursuant to the 2018 Bail Bond Guide.[20] Accordingly, the Third Division issued the WOAs for the respective cases on 03 June 2020 and 02 July 2020, respectively.[21]

Subsequently, in the Resolution dated 21 October 2020,[22] the Third Division noted the Return of WOA dated 25 September 2020,[23] as well as documents relating to the cash bond posted by private respondent for her provisional liberty, all filed under CTA Crim. Case No. O-823. In the same Resolution, the Third Division set the arraignment and pre-trial conference on 18 November 2020 and the preliminary conference on 19 November 2020.

J and J-2	Final Assessment Notice (**FAN**) and Formal Letter of Demand (**FLD**) dated 04 March 2014
K	Waiver of the Statute of Limitations dated 29 April 2014
L	Revenue District Officer's (**RDO**'s) Letter dated 30 June 2014
M	Final Notice dated 22 July 2014
N	MOA No. 5981 dated 30 June 2014
O	Final Decision on Disputed Assessment (**FDDA**) 18 September 2014
P	Registry Return Receipt (**RRR**), received and signed by Karla Grace C. Baje of San Miguel Protective & Security Agency on 04 November 2014
Q	Preliminary Collection Notice dated 23 February 2015
R	Offer for Compromise Settlement dated 27 April 2015
S	Reply to the Offer of Compromise Settlement dated 14 May 2015
T	Summary of Payments
U	Certification from the Office of the Provincial Assessor
V	Certification of the City Assessor's Office
W	Warrant of Distraint and/or Levy (**WDL**) No. AMS-RR16-101-10-0163
X and X-1	Warrant of Garnishment (**WoG**) Nos. AMS-RR16-WG-101-02-0047 and AMS-RR16-WG-101-02-0048
Y	Metropolitan Bank & Trust Company's (**MBTC**'s) response dated 08 February 2018
Z	WoG No. AMS-RR16-WG-101-02-0049
AA	BDO Unibank Inc.'s Letter dated 13 February 2018
BB	Final Collection Letter dated 15 May 2018

19 Division Docket (CTA Crim. Case No. O-823), Volume I, pp. 57-58; Division Docket (CTA Crim. Case No. O-824), pp. 57-58.
20 DOJ Department Circular No. 013-18.
21 Division Docket (CTA Crim. Case No. O-823), Volume I, pp. 59-60; Division Docket (CTA Crim. Case No. O-824), pp. 59-60.
22 Division Docket (CTA Crim. Case No. O-823), Volume I, pp. 82-83.
23 Id., p. 61.

However, upon private respondent's motion for a resetting,[24] the Third Division cancelled said settings. The arraignment and the pre-trial conference were then moved to 27 January 2021 and the preliminary conference to 28 January 2021.[25]

After the Third Division granted the three (3) additional motions for resetting filed by private respondent due to quarantine protocols imposed during the COVID-19 pandemic,[26] the arraignment and pre-trial conference finally proceeded on 28 July 2021 *via* videoconference.[27]

Meanwhile, in the Resolution dated 16 June 2021[28] issued in CTA Crim. Case No. O-824, the Third Division set the arraignment and the pre-trial conference on 30 June 2021, likewise to be conducted *via* videoconference. However, upon another motion of private respondent for resetting,[29] the Third Division cancelled said setting and reset the arraignment and the pre-trial conference to 28 July 2021, thereby aligning the schedule with the setting earlier fixed in CTA Crim. Case No. O-823.[30]

Prior to the pre-trial conference scheduled on 30 June 2021, the parties filed their respective pre-trial briefs. For both cases, petitioner filed its Pre-Trial Briefs[31] on 22 July 2021, while private respondent filed her Pre-Trial Briefs[32] on 23 July 2021.

At the arraignment and pre-trial conference for CTA Crim. Case Nos. O-823 and O-824, private respondent entered a plea of "not guilty" to the charges in these two (2) consolidated cases.[33]

---

24 See Motion to Reset Arraignment, Pre-Trial and Preliminary Conference dated 10 November 2020, id., pp. 104-123, with annexes.

25 See Resolution dated 18 November 2020, id., pp. 126-127.

26 See Resolutions dated 20 January 2021, 27 May 2021 and 14 July 2021, id., pp. 146, 162 and 202, respectively.

27 See Minutes of the Hearing and Order, both dated 28 July 2021, id., pp. 325 and 325-1-325-3, respectively.

28 Division Docket (CTA Crim. Case No. O-824), pp. 88-89.

29 See Motion to Reset Arraignment and Pre-Trial Conference dated 24 June 2021, id., pp. 90-93.

30 See Resolution dated 29 June 2021, id., p. 95.

31 Division Docket (CTA Crim. Case No. O-823), Volume I, pp. 203-208; Division Docket (CTA Crim. Case No. O-824), pp. 103-108.

32 Division Docket (CTA Crim. Case No. O-823), Volume I, pp. 311-319; Division Docket (CTA Crim. Case No. O-824), pp. 111-119.

33 See Minutes of the Hearing and Order, both dated 28 July 2021, supra at note 27; Division Docket (CTA Crim. Case No. O-824), p. 122.

In the Resolution dated 27 October 2021,[34] the Third Division reset the preliminary conference to 23 November 2021 and rescheduled the presentation of petitioner's witnesses to 16 February 2022. On 26 November 2021, the parties filed their Joint Stipulation of Facts and Issues (**JSFI**).[35] Thereafter, on 21 February 2022, the Third Division issued a Pre-Trial Order,[36] thereby approving the JSFI and formally declaring the pre-trial proceedings terminated.

In the trial that ensued subsequently, petitioner presented the following witnesses who all testified *via* their respective judicial affidavits, namely: (1) SI Gemina; (2) RO Macarambon; and (3) Collection Division Chief Estela M. Laga-Ac (**Chief Laga-Ac**).

During the videoconference hearing on 16 February 2022, petitioner presented the testimony of its witness, SI Gemina. On the witness stand, she declared that: (1) she serves as an SI of the Regional Investigation Division (**RID**), BIR-Revenue Region No. 16-Cagayan de Oro City, and formed part of the team that conducted the investigation on private respondent for violation of Section 255[37] of the NIRC of 1997, as amended; (2) she conducted said investigation by virtue of the authority granted under the Memorandum of Assignment (**MOA**), Control No. RID-06-53-2018 dated 04 June 2018,[38] which she received on the same date; (3) she investigated private respondent for the taxable years (**TYs**) 2010 and 2011, in relation to the Letter of Authority (**LOA**) No. 101-2011-00000181 dated 08 November 2011;[39] (4) after reviewing case docket, she recommended filing of criminal complaint for willful failure to pay tax for TY 2010; and (5) the JCA,[40] of which she is one of the affiants, was filed with the DOJ on 16 May 2019.[41]

On cross-examination, SI Gemina confirmed that the MOA tasked her to investigate private respondent for TYs 2010 and 2011. She clarified that her participation in this case remained limited to the evaluation of the possible filing of a criminal complaint against private respondent for

---

34 Division Docket (CTA Crim. Case No. O-823), Volume I, p. 332.
35 Id., pp. 398-408.
36 Id., Volume II, pp. 477-493.
37 Supra at note 12.
38 Exhibit "P-4", Division Docket (CTA Crim. Case No. O-823), Volume I, p. 257.
39 Exhibit "P-5", id., p. 258.
40 Supra at note 17.
41 See Judicial Affidavit of Ivy Rose T. Gemina, Exhibit "P-33", Division Docket (CTA Crim. Case No. O-823), Volume I, pp. 250-297, with attached exhibits.

said TYs. She further attested that she had no personal knowledge of the events that transpired during the assessment stage prior to the said MOA's receipt.[42]

SI Gemina also confirmed that the LOA authorized Revenue Officer Saniarah Diangca (**RO Diangca**) and Group Supervisor Yahya Bantuas (**GS Bantuas**) and not her, to conduct the examination of private respondent's tax liabilities. She explained that she became aware of the LOA's existence only when private respondent's case folder was turned over to her (together with the MOA). Finally, she acknowledged that she had no personal knowledge about the execution and veracity of the LOA's contents and of other BIR issuances or documents allegedly prepared and served upon private respondent prior to her assignment in June 2018.[43]

SI Gemina further confirmed that petitioner filed the subject criminal cases against private respondent solely on the basis that she is the registered taxpayer and the sole proprietor of SMSA.[44]

On redirect examination, SI Gemina affirmed that the transfer or resignation of ROs commonly occurs within the BIR. With respect to RO Diangca and GS Bantuas, both had already resigned from the service. She explained that when such circumstances arise, case records are turned over to another RO for further action. According to SI Gemina, the documents presented before the Third Division are public documents.[45]

Private respondent did not conduct any re-cross examination.[46]

In response to the Third Division's questions, SI Gemina clarified that she did not participate in the issuance or preparation of documents contained in the case folder turned over to her for purposes of investigation. She further confirmed that her role related solely to the

---

42 TSN dated 16 February 2022, Division Docket (CTA Crim. Case No. O-823), Volume II, pp. 429-432.
43 Id., pp. 432-445.
44 Id., pp. 446-447.
45 Id., pp. 448-450
46 Id., p. 451.

evaluation and filing of the criminal complaint, and that she had no participation in the audit or assessment stage of the proceedings.[47]

During the videoconference hearing on 16 March 2022, petitioner continued the presentation of its witness, RO Macarambon.

RO Macarambon testified as follows: (**1**) she holds the position of RO IV assigned at RDO No. 101-Iligan City and formed part of the team that conducted the investigation on private respondent for violation of Section 255[48] of the NIRC of 1997, as amended, together with SI Gemina; (**2**) she is one of the affiants in the JCA[49] filed with the DOJ on 16 May 2019 for willful failure to pay tax liabilities for TY 2010 with total income tax (**IT**) and value-added tax (**VAT**) deficiencies amounting to ₱6,376,576.95; (**3**) she conducted said investigation by virtue of the authority granted under the MOA No. 5981 dated 30 June 2014 (Control No. 101 2014),[50] which she received on 02 July 2014; (**4**) she investigated private respondent for TY 2010, in relation to the LOA No. 101-2011-00000181 dated 08 November 2011;[51] (**5**) after reviewing the case docket and determining that a Formal Letter of Demand[52] (**FLD**) was already issued, she prepared the Final Notice dated 22 July 2014[53] (**Final Notice**), which Revenue District Officer Lordel T. Monteclaro (**RDOr Monteclaro**) signed; (**6**) after private respondent failed to respond, she prepared the Final Decision on Disputed Assessment dated 18 September 2014[54] (**FDDA**); (**7**) the BIR sent the FDDA to private respondent *via* registered mail, as evidenced by the Registry Return Receipt (**RRR**)[55] indicating receipt by a certain Karla Grace C. Baje (**Baje**) on 04 November 2014; (**8**) after private respondent again failed to respond, the BIR issued the Preliminary Collection Notice dated 23 February 2015[56] (**PCN**), which RDOr Monteclaro also signed; (**9**) the BIR subsequently received the Letter dated 27 April 2015[57] from private respondent acknowledging receipt of the Preliminary Assessment Notice (**PAN**) issued pursuant to LOA No. 101-2011-00000181 dated

---

47 Id., pp. 451-453
48 Supra at note 12.
49 Supra at note 17.
50 Exhibit "P-18", Division Docket (CTA Crim. Case No. O-823), Volume I, p. 273.
51 Exhibit "P-5", id., p. 258.
52 Exhibit "P-14", id., p. 269.
53 Exhibit "P-17", id., p. 272.
54 Exhibit "P-19", id., p. 274.
55 Exhibit "P-19-a", id., p. 275.
56 Exhibit "P-20", id., p. 276.
57 Exhibit "P-21", id., p. 277.

08 November 2011 and the PCN, and requesting compromise settlement of IT and VAT deficiencies; (**10**) the BIR thereafter issued the Letter-Reply dated 14 May 2015[58] (**Letter-Reply**), which RDOr Monteclaro likewise signed; (**11**) the Delinquent Accounts Section subsequently prepared private respondent's Summary of Payments;[59] (**12**) upon the BIR's request, the Provincial Assessor of Lanao del Norte and the City Assessor of Iligan City issued separate Letter-Replies[60] indicating that no real properties are declared in private respondent's name; (**13**) she thereafter endorsed the case to the Collection Division for the issuance of a Warrant of Distraint and/or Levy (**WDL**); and (**14**) after the Collection Division failed to attach any of private respondent's property, she prepared a Final Collection Letter dated 15 May 2018[61] (**FCL**), which then Regional Director Hermeno A. Palamine (**RD Palamine**) signed.[62]

On cross-examination, RO Macarambon confirmed that the MOA tasked her to investigate the possibility of filing a criminal case against private respondent. She further stated that the MOA included one (1) folder containing the case docket of private respondent for TY 2010.[63]

When asked whether private respondent received personally the BIR issuances contained in said case docket, RO Macarambon answered in negative. Nevertheless, she maintained that private respondent authorized her staff and employees to receive the said documents.[64]

RO Macarambon also admitted that she did not personally meet private respondent during the investigation and it was her representatives who appeared on her behalf. She further confirmed that she never saw private respondent sign any document and that she is not familiar with her signature.[65]

On redirect examination, RO Macarambon testified that private respondent's staff, Baje, received RDOr Monteclaro's Letter dated

---

58 Exhibit "P-22", id., p. 278.
59 Exhibit "P-23", id., p. 279.
60 Exhibits "P-24" and "25", id., pp. 280 and 281, respectively.
61 Exhibit "P-31", id., p. 288.
62 See Judicial Affidavit of Hidjarah B. Macarambon, Exhibit "P-34", id., pp. 209-249, with attached exhibits.
63 TSN dated 16 March 2022, Division Docket (CTA Crim. Case No. O-823), Volume II, pp. 530-531.
64 Id., pp. 543-548.
65 Id., pp. 548-551.

30 June 2014, the FDDA, the PCN, and the Letter-Reply. With respect to the Final Notice, she likewise stated that a certain Maria Chalebon A. Cabangahan (**Cabangahan**), also private respondent's staff, received the said document.[66]

When asked about her authority to appear and testify in this case, RO Macarambon explained that she serves as the examiner and the RO authorized to handle the case pursuant to the MOA issued in November 2011.[67]

Upon the Court's further questioning, RO Macarambon stated that she could not recall whether she attended an informal conference with private respondent. She reiterated that she never personally met private respondent at any time during her investigation. RO Macarambon, however, claimed that she met her representatives who received the three (3) notices she personally served at private respondent's office. According to her, said representatives presented identification cards, which allegedly indicated that they were office staff of private respondent.[68]

When asked to present proof of authority of the representatives to receive communications on private respondent's behalf, RO Macarambon merely asserted that they were employees of private respondent based on the identification cards shown to her upon request. She nevertheless admitted that she could not present copies of said identification cards for the Court's verification. And when further asked whether she met the father of private respondent, RO Macarambon replied that she could not recall meeting him.[69]

On 19 April 2022, *via* videoconferencing, Chief Laga-Ac also took the witness stand where she declared that: (1) she holds the position of Chief RO IV; (2) private respondent is the sole proprietor of SMSA; (2) she issued the WDL No. AMS-RR16-101-10-0163[70] addressed to Seizure Agent Jacinto Justiniane (**SA Justiniane**) to collect from private respondent IT and VAT deficiencies totalling ₱6,376,576.95; (3) she also

---

66 Id., pp. 563-565.
67 Id., p. 565.
68 Id., pp. 566-572.
69 Id.
70 Exhibit "P-26", Division Docket (CTA Crim. Case No. O-823), Volume I, p. 282.

issued the Warrant of Garnishment (**WoG**) No. AMS-RR16-WG-101-02-0047 dated 05 February 2018[71] addressed to Metropolitan Bank & Trust Company (**MBTC**) Roxas Avenue, Iligan City, and the WoG No. AMS-RR16-WG-101-02-0048 dated 05 February 2018[72] addressed to MBTC Aguinaldo St., Iligan City, both intended to collect IT and VAT deficiencies of private respondent totalling ₱6,376,576.95; (**4**) thereafter, she received a Letter-Reply dated 08 February 2018[73] from MBTC's main branch, informing the BIR that private respondent has no deposit, credits or money under its possession or control; (**5**) she likewise issued the WoG No. AMS-RR16-WG-101-02-0049 dated 05 February 2018[74] addressed to BDO Unibank, Inc. (**BDO**), Del Pilar St., Iligan City, to collect from private respondent IT and VAT deficiencies totalling ₱6,376,576.95; and (**6**) the Collection Division subsequently received a Letter-Reply dated 13 February 2018[75] noting that private respondent does not maintain any deposit account with BDO.[76]

On cross-examination, Chief Laga-Ac confirmed that, since she is from the Collection Division, she had no personal knowledge of what transpired during the assessment stage. Her knowledge of the case arose only after the assessment reached the Collection Division and was tagged as delinquent. Nonetheless, she stated that the Collection Division treated private respondent as having outstanding tax liabilities because the assessment records were forwarded for collection purposes.[77]

When asked whether private respondent personally received the WDL No. AMS-RR16-101-10-0163,[78] Chief Laga-Ac replied that Baje, private respondent's secretary, received said WDL at private respondent's office. She further clarified that she based this information on the Memorandum Report prepared by the Seizure Agent, who personally served said WDL at private respondent's office.[79]

---

71 Exhibit "P-27", id., p. 283.
72 Exhibit "P-28", id., p. 284.
73 Exhibit "P-29", id., p. 285.
74 Exhibit "P-30", id., p. 286.
75 Exhibit "P-31", id., p. 287.
76 See Judicial Affidavit of Estela M. Laga-Ac, Exhibit "P-35", id., pp. 298-308, with attached exhibits.
77 TSN dated 19 April 2022, pp. 8-14.
78 Exhibit "P-26", supra at note 70.
79 Id.

On redirect examination, Chief Laga-Ac testified that, in the "Service of the Warrant" portion of the WDL No. AMS-RR16-101-10-0163,[80] Baje affixed her signature above her handwritten name and indicated beside it her position as secretary of SMSA.[81]

On re-cross examination, Chief Laga-Ac declared that Baje acted as private respondent's authorized representative who could receive the WDL on private respondent's behalf. She recalled that, according to statements contained in the Seizure Agent's Memorandum, Baje informed the Seizure Agent that she served as secretary assigned to receive documents, including a WDL, for private respondent.[82]

When counsel for private respondent asked of the Memorandum's location or where it was being kept, Chief Laga-Ac replied that the Collection Division keeps said document in its docket. According to her, it is not among the documents she identified in her Judicial Affidavit.[83]

Responding to further queries from the Court, Chief Laga-Ac explained that the Collection Division issued the WDL since private respondent's assessment had already been tagged as delinquent after completion of the investigation and the subsequent forwarding of case records to the Collection Division. The collection efforts that followed were pursuant to Operations Memorandum No. 13-003-001, which prompted the Collection Division's evaluation of the case docket. After finding that the assessment had become delinquent, the WDL was issued to enforce payment of the taxpayer's outstanding tax liabilities.[84]

Meanwhile, on 08 April 2022, private respondent filed a "Request for Issuance of *Subpoena Ad Testificandum*",[85] seeking the issuance of subpoenas requiring witnesses Lope Bato, Jr. (**Bato, Jr.**), Jennilyn Gepituan (**Gepituan**), Christine Lorejo (**Lorejo**) and a PAGASA personnel or any authorized representative thereof to attend and testify at the hearing of this case. On 26 April 2022, the Third Division granted said request and issued *subpoenas ad testificandum* to Bato, Jr.,

---

80 Exhibit "P-26", supra at note 70.
81 TSN dated 19 April 2022, pp. 15-16.
82 Id., pp. 17-19.
83 Id., p. 19.
84 Id., p. 21.
85 Division Docket (CTA Crim. Case No. O-823), Volume II, pp. 586-589.

Gepituan, Lorejo and PAGASA personnel or any authorized representative thereof, directing them to appear before the Third Division on 26 July 2022, 17 August 2022 and 14 September 2022, the dates sets for the presentation of evidence for the defense.[86]

On 11 May 2022, after completing the presentation of its testimonial evidence, petitioner filed *via* registered mail its Formal Offer of Evidence[87] (**FOE**) consisting of Exhibits "P-1" to "P-35-a", inclusive of sub-markings. On 02 June 2022, private respondent filed her Comment/Opposition[88] thereto.

In the Resolution dated 02 August 2022,[89] the Third Division admitted all of petitioner's exhibits and set the hearing on 17 August 2022 for the initial presentation of private respondent's witnesses and evidence.

Ahead of the aforesaid setting, private respondent filed a "Motion for Leave of Court to File Demurrer to Evidence [**Demurrer**]".[90] Thereafter, in compliance with the Third Division's directive[91] (although beyond the five [5]-day period from notice granted), petitioner filed its "Motion for Leave to File Embodied Motion to Admit Opposition to [Demurrer]".[92] Upon the Third Division's order,[93] on 23 November 2022, private respondent filed *via* registered mail her Comment/Opposition[94] thereto.

In the Resolution dated 01 February 2023,[95] the Third Division granted the respective motions for leave filed by the parties, thereby admitting petitioner's "Motion to Admit Opposition to [Demurrer]" and the corresponding "Opposition to [Demurrer]", and directing private respondent to file her Demurrer within ten (10) days from notice.

---

86 Id., pp. 615-618.
87 Id., pp. 619-642.
88 Id., pp. 646-687.
89 Id., pp. 697-698.
90 Id., pp. 699-708.
91 See Resolution dated 15 August 2022, id., pp. 713-714.
92 Id., pp. 715-733.
93 See Resolution dated 10 October 2022, id., p. 738.
94 Id., pp. 755-764.
95 Id., pp. 770-771.

Accordingly, on 27 February 2023, private respondent filed the Demurrer[96] seeking dismissal of the subject Informations filed against her in its entirety pursuant to Section 23,[97] Rule 119 of the Revised Rules of Criminal Procedure (**RRCP**) on the ground of insufficiency of evidence.

Subsequently, in view of the reorganization of the Court's three (3) divisions, this case was transferred to the Second Division[98] in accordance with Administrative Circular No. 01-2023 dated 23 May 2023.

On 05 March 2024, prior to the resolution of her Demurrer, private respondent filed a Manifestation[99] requesting the Third Division to take judicial notice of the Decision dated 07 February 2024[100] in CTA Crim. Case No. O-834, to admit said Decision as part of the case records, and to consider the same in rendering judgment in these consolidated cases. The Second Division later noted private respondent's Manifestation in the Minute Resolution dated 02 April 2024.[101]

On 14 March 2024, public respondent rendered the first assailed Resolution,[102] granting private respondent's Demurrer and, thereby, dismissing the case for insufficiency of evidence. Petitioner filed, *via* registered mail, an MR[103] thereto on 08 April 2024 (with private respondent's Comment/Opposition[104] thereto filed on 02 May 2024). Public respondent denied the same for lack of merit in the second assailed Resolution.[105]

---

96 Id., pp. 772-857.

97 SEC. 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**. (Emphasis supplied)

98 The Second Division was then composed of Associate Justice Ma. Belen M. Ringpis-Liban, as Chairperson, Associate Justice Maria Rowena Modesto-San Pedro and Associate Justice Corazon G. Ferrer-Flores, as Members.

99 Division Docket (CTA Crim. Case No. O-823), Volume II, pp. 861-914, with Annex "1" (Certified True Copy of Decision dated 07 February 2024 in CTA Crim. Case No. O-834).

100 See Annex "1" (Certified True Copy of Decision dated 07 February 2024 in CTA Crim. Case No. O-834) attached to Private Respondent's Manifestation, id., pp. 874-914; The Decision dated 07 February 2024 acquitted Anne Gil Rachel Labao y Kuan in CTA Crim. Case No. O-834 for failure of the prosecution to establish her guilt beyond reasonable doubt and declared her free from any civil liability.

101 Id., Volume III, p. 936.

102 Supra at note 4.

103 Supra at note 8.

104 Division Docket (CTA Crim. Case No. O-823), Volume III, pp. 984-1018.

105 Supra at note 5.

Prior to the resolution of petitioner's MR on the first assailed Resolution, on 15 April 2024, private respondent filed an "Ex Parte Motion to Release Cash Bail Bond"[106] (***Ex Parte* Motion**). In the Resolution dated 23 April 2024,[107] public respondent partially granted said *Ex Parte* Motion and required private respondent to submit a certified true copy of the official receipt (**OR**) corresponding to the cash bail bond. Upon receipt of the required OR, public respondent deemed private respondent to have complied with its directive and accordingly ordered the release of the cash bail bond to private respondent or any of her authorized representatives.

PROCEEDINGS BEFORE THE COURT *EN BANC*

Unsatisfied with public respondent's rulings, on 05 August 2024, petitioner filed the present Petition for *Certiorari*[108] before the Court *En Banc*, docketed as CTA EB Crim. No. 157.

In a Minute Resolution dated 18 September 2024[109] (**returned Minute Resolution**), the Court *En Banc* directed private respondent to file a Comment on the Petition for *Certiorari* within ten (10) days from notice.

After an unsuccessful attempt to serve the returned Minute Resolution, the Court *En Banc*, in a Minute Resolution dated 08 January 2025,[110] noted the Records Verification dated 25 November 2024[111] issued by the Judicial Records Division (**JRD**). In the same Minute Resolution, the Court *En Banc* directed petitioner to provide the Court with the current and updated address of private respondent's counsel, Atty. Melissa P. Alvarez (**Atty. Alvarez**), within five (5) days from notice. The Court *En Banc* likewise directed petitioner to furnish a copy of the Petition for *Certiorari* to counsel for private respondent at the updated mailing address within 10 days from notice.

---

106 Division Docket (CTA Crim. Case No. O-823), Volume III, pp. 937-964, with annexes.
107 Id., pp. 981-982, with annexes.
108 Supra at note 1.
109 *Rollo*, p. 86.
110 Id., p. 88.
111 Id., p. 87; The Records Verification dated 25 November 2024 states that the Minute Resolution dated 18 September 2024, which the Court sent by registered mail to counsel for private respondent, Atty. Melissa P. Alvarez, on 03 October 2024, was returned to the Court with the notation "RTS moved out."

In compliance with the Court's directive, on 14 January 2025, petitioner filed a "Manifestation and Compliance"[112] informing the Court of Atty. Alvarez's current and updated address. Pursuant to the Court's order,[113] petitioner also transmitted *via* email[114] a soft copy thereof in accordance with *En Banc* Resolution 8-2024[115] on 21 February 2025. The Court *En Banc* noted both the "Manifestation and Compliance" and the corresponding email transmittal in the Minute Resolution dated 12 March 2025.[116]

On 30 January 2025, private respondent filed her "Comment/ Opposition (Re: [Petition for *Certiorari*])",[117] which the Court *En Banc* noted in its Minute Resolution dated 17 February 2025.[118] Accordingly, on 12 March 2025, the Court *En Banc* submitted the case for decision.[119]

ISSUES

In the present Petition for *Certiorari*[120] before the Court *En Banc*, petitioner assigns the following issues for Our resolution —

> I.
>
> WHETHER PUBLIC RESPONDENT COURT OF TAX APPEALS - SECOND DIVISION COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT RESOLVED TO GRANT PRIVATE RESPONDENT'S DEMURRER TO EVIDENCE FILED ON 27 FEBRUARY 2023, DISMISSING CTA CRIM. CASE NOS. O-823 AND O-824 FOR INSUFFICIENCY OF EVIDENCE, DISCHARGING AND RELEASING HER CASH BAIL BOND UPON PRESENTATION OF PROPER DOCUMENTS, IN ACCORDANCE WITH THE USUAL ACCOUNTING RULES AND REGULATIONS.

---

112 Id., pp. 89-176, with annexes.
113 See Minute Resolution dated 17 February 2025, id., p. 213.
114 Id., p. 214.
115 Guidelines on Submission of Electronic Copies of Pleadings and Other Court Submissions Before the Court of Tax Appeals Pursuant to A.M. No. 10-3-7-SC and A.M. No. 11-9-4-SC.
116 *Rollo*, p. 215.
117 Id., pp. 179-210.
118 Supra at note 113.
119 See Minute Resolution dated 12 March 2025, supra at note 116.
120 Supra at note 1.

II.

WHETHER PUBLIC RESPONDENT COURT OF TAX APPEALS - SECOND DIVISION COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT RESOLVED TO EXTINGUISH PRIVATE RESPONDENT'S CIVIL LIABILTY.

ARGUMENTS

Petitioner raises the following arguments in support of the present Petition for *Certiorari*:[121]

1. Public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction, so grave as to divest it of authority to dispense justice, when it granted private respondent's Demurrer, dismissed the consolidated cases for insufficiency of evidence, and ordered the discharge and release of her cash bail bond. In so ruling, public respondent allegedly disregarded the evidence presented by petitioner that sufficiently established the existence of the essential elements of the offenses charged against private respondent; and

2. Petitioner sufficiently established the existence of all elements of violation of Section 255[122] of the NIRC of 1997, as amended, namely: (**a**) private respondent is required under the NIRC of 1997, as amended, to pay deficiency tax at times prescribed by law and regulations; (**b**) private respondent failed to pay deficiency IT and VAT for TY 2010; and (**c**) private respondent willfully failed to pay said deficiency IT and VAT for TY 2010;

3. Private respondent committed tax evasion because she deliberately and knowingly refused to pay deficiency IT and VAT liabilities for TY 2010 despite receipt of assessment notices issued by the BIR; and

---

121 Supra at note 1.
122 Supra at note 12.

4. Private respondent likewise incurs civil liability for violation of Section 255[123] of the NIRC of 1997, as amended, because petitioner established by preponderance of evidence that she failed to pay required deficiency taxes.

On the other hand, private respondent forwards the following counterarguments:

1. Public respondent did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in rendering the assailed Resolutions. Public respondent reached its conclusions after due notice and hearing and after judicious evaluation of the cumulative evidence presented by petitioner. Its findings rested on petitioner's failure to establish the existence of all elements necessary to hold private respondent liable for violation of Section 255 of the NIRC of 1997, as amended.

2. Public respondent correctly acquitted private respondent and ruled that petitioner failed to properly serve the assessment notices upon private respondent. Such failure constituted a violation of private respondent's right to due process and, consequently, rendered the IT and VAT assessments void.

3. Public respondent likewise correctly ruled that private respondent does not incur civil liability for alleged violation of Section 255 of the NIRC of 1997, as amended, because no civil liability may arise from a void assessment.

RULING OF THE COURT *EN BANC*

Before going into the merits of the case, We shall first determine the timeliness of the filing of the present petition.

---

[123] Supra at note 12.

THE PETITION FOR *CERTIORARI* WAS TIMELY FILED.

Section 4, Rule 65 of the Rules of Court (**ROC**), as amended,[124] states:

> ...
> Sec. 4. *When and where to file the petition.* – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion.
> ...

The case records confirm that petitioner, through the BIR Prosecution Division, received the second assailed Resolution[125] on 05 June 2024.[126] From such date, petitioner had sixty (60) days, or until 04 August 2024, within which to file the Petition for *Certiorari*. Considering that 04 August 2024 fell on a Sunday, petitioner filed the instant Petition for *Certiorari*[127] *via* registered mail on 05 August 2024, which was the next working day. Petitioner therefore filed the present Petition within the reglementary period.

Despite the timely filing of the present Petition for *Certiorari*, the Court *En Banc* is constrained to dismiss the case outright because petitioner's counsel lacked the requisite authority to file said Petition and to represent the State in this proceeding.

PETITIONER'S COUNSEL LACKS LEGAL PERSONALITY TO FILE THE INSTANT PETITION FOR *CERTIORARI*.

---

124 A.M. No. 19-10-20-SC or the 2019 Amendments to the 1997 Rules of Civil Procedure.
125 Supra at note 5.
126 Division Docket (CTA Crim. Case No. O-823), Volume III, p. 1026.
127 Supra at note 1.

At the outset, Rule 117,[128] Section 7[129] of the RRCP provides that when an accused has been acquitted, or the case against him or her is dismissed by a court of competent jurisdiction, upon a valid complaint or information, and after the accused had pleaded to the charge, the acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged. This principle is also known as double jeopardy. The existence of double jeopardy calls for the application of the "finality-of-acquittal" rule, which makes a judgment of acquittal unappealable and immediately executory upon its promulgation.[130]

Here, while petitioner is questioning the non-imposition of civil liability for violation of Section 255[131] of the NIRC of 1997, as amended, for failure to pay deficiency IT and VAT, it is questioning essentially the criminal aspect of the case, and corollarily private respondent's acquittal *via* demurrer. Although a Rule 65 petition for *certiorari* is allowed to question such a dismissal if committed with grave abuse of discretion, such action may *only* be filed by the Office of the Solicitor General (**OSG**) on behalf of petitioner, the People of the Philippines.

In *Mamerto Austria v. AAA and BBB*[132] (**Austria**), the Supreme Court held:

> ...
>
> In any criminal case or proceeding, only the OSG may bring or defend actions on behalf of the Republic of the Philippines, or represent the People or State before the Supreme Court (SC) and the CA. This is explicitly provided under Section 35(1), Chapter 12, Title III, Book III of the 1987 Administrative Code of the Philippines, thus:

---

128 Motion to Quash.

129 Section 7. *Former conviction or acquittal; double jeopardy.* — When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

130 *People of the Philippines v. Honorable Sandiganbayan (Fourth Division) and Benjamin S. Abalos*, G.R. No. 228281, 14 June 2021, citing *Wilfred N. Chiok v. People of the Philippines and Rufina Chua*, G.R. Nos. 179814 & 180021, 07 December 2015.

131 Supra at note 12.

132 G.R. No. 205275, 28 June 2022; Citations omitted, emphasis in the original text, italics and underscoring supplied.

> Section 35. *Power and Functions.* — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the service of a lawyer. It shall have the following specific power and functions:
>
> (1) **Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings**; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.

The rationale behind this rule is that in a criminal case, the state is the party affected by the dismissal of the criminal action and not the private complainant. The interest of the private offended party is restricted only to the civil liability of the accused. In the prosecution of the offense, the complainant's role is limited to that of a witness for the prosecution such that when a criminal case is dismissed by the trial court or if there is an acquittal, an appeal on the criminal aspect may be undertaken only by the State through the OSG. The private offended party may not take such appeal, but may only do so as to the civil aspect of the case. Differently stated, the private offended party may file an appeal without the intervention of the OSG, but only insofar as the civil liability of the accused is concerned. Also, the *private complainant* may file a special civil action for *certiorari* even without the intervention of the OSG, but only to the end of preserving his or her interest in the *civil aspect of the case*. Hence, the Court dismissed for lack of legal standing or personality the appeals or petitions for *certiorari* filed by the private offended parties *before the SC and CA, without the consent or conformity of the OSG*, questioning the dismissal of the criminal case or acquittal of the accused.

...

The same is likewise provided in Section 10, Rule 9 of the Revised Rules of the Court of Tax Appeals (**RRCTA**):[133]

---

[133] A.M. No. 05-11-07-CTA.

> ...
> SEC 10. *Solicitor General as counsel for the People and government officials sued in their official capacity.* — The Solicitor General shall represent the People of the Philippines and government officials sued in their official capacity in all cases brought to the Court in the exercise of its appellate jurisdiction. The former may deputize the legal officers of the Bureau of Internal Revenue in cases brought under the National Internal Revenue Code or other laws enforced by the Bureau of Internal Revenue, or the legal officers of the Bureau of Customs in cases brought under the Tariff and Customs Code of the Philippines or other laws enforced by the Bureau of Customs, to appear in behalf of the officials of said agencies sued in their official capacity: *Provided, however,* such duly deputized legal officers shall remain at all times under the direct control and supervision of the Solicitor General.
> ...

The *Austria* guidelines can be summarized as follows:[134]

1. The private complainant has the legal personality to appeal the civil liability of the accused or to file a petition for *certiorari* to preserve his or her interest in the civil aspect of the criminal case. The appeal or petition for *certiorari* must allege the specific pecuniary interest of the private offended party. The failure to comply with this requirement may result in the denial or dismissal of the remedy.

   The reviewing court shall require the OSG to file comment within a non-extendible period of thirty (30) days from notice if it appears that the resolution of the private complainant's appeal or petition for *certiorari* will necessarily affect the criminal aspect of the case or the right to prosecute (*i.e.*, existence of probable cause, venue or territorial jurisdiction, elements of the offense, prescription, admissibility of evidence, identity of the perpetrator of the crime, modification of penalty, and other questions that will require a review of the substantive merits of the criminal proceedings, or the nullification/reversal of the entire ruling, or cause the reinstatement of the criminal action or meddle with the prosecution of the offense, among other things). The comment of the OSG must state whether it conforms or concurs with the

---

134 *AAA261422, a minor and represented by YYY261422 v. XXX261422*, G.R. No. 261422 (Formerly UDK-17206), 13 November 2023.

remedy of the private offended party. The judgment or order of the reviewing court granting the private complainant's relief may be set aside if rendered without affording the People, through the OSG, the opportunity to file a comment.

2. The private complainant has no legal personality to appeal or file a **petition for *certiorari*** to question the judgments or orders involving **the criminal aspect of the case or the right to prosecute, unless made with the OSG's conformity**.

   The private complainant must request the OSG's conformity within the reglementary period to appeal or file a petition for *certiorari*. The private complainant must attach the original copy of the OSG's conformity as proof in case the request is granted within the reglementary period. Otherwise, the private complainant must allege in the appeal or petition for *certiorari* the fact of pendency of the request. If the OSG denied the request for conformity, **the Court shall dismiss the appeal or petition for *certiorari* for lack of legal personality of the private complainant.**

3. The reviewing court shall require the OSG to file comment within a non-extendible period of 30 days from notice on the private complainant's petition for *certiorari* questioning the acquittal of the accused, the dismissal of the criminal case, and the interlocutory orders in criminal proceedings on the ground of grave abuse of discretion or denial of due process.

In this case, as previously noted, the BIR raises two (2) issues for resolution in the present Petition for *Certiorari*[135] before the Court *En Banc*. *First*, petitioner contends that public respondent committed grave abuse of discretion when it granted private respondent's Demurrer. *Second*, petitioner asserts that public respondent likewise committed grave abuse of discretion when it ruled to extinguish the civil liability of private respondent arising from alleged tax violations.

These issues clearly challenge the dismissal of the criminal cases and the consequent extinguishment of civil liability arising from alleged

---

135 Supra at note 1.

tax offenses. Such matters necessarily involve the exercise of the State's authority to prosecute criminal actions. Accordingly, the filing of the present Petition *Certiorari* requires the conformity of the OSG, which represents the State in criminal proceedings before appellate courts.

While the records do not show the OSG's participation in these proceedings, or even its conformity through the submission of a comment on the present Petition for *Certiorari*, the OSG was nevertheless aware of the proceedings in these consolidated cases. Such non-participation appears to stem from the OSG's express refusal to represent the State in criminal proceedings against private respondent, as evidenced by the OSG Letter dated 04 July 2024[136] (**OSG Letter**), addressed to the Officer-in-Chief (**OIC**)-Chief of the BIR Prosecution Division, Catherine Rose R. Tortoles (**OIC-Chief Tortoles**). Associate Solicitor Monica Anne T. Yap (**AS Yap**) signed the said letter, which was noted by Assistant Solicitor General Marissa B. Dela Cruz-Galandines (**ASG Galandines**). The OSG Letter expressly states that the OSG was "unable to represent BIR," explaining that its authority in criminal cases is limited to representing the People of Philippines before the Court of Appeals and the Supreme Court and does not extend to proceedings before the Court of Tax Appeals (**CTA**). The OSG Letter further states that the BIR possesses the necessary expertise and authority to handle the case effectively before the CTA.

There is no gainsaying that the BIR possesses a clear interest in the prosecution of violations of the NIRC of 1997, as amended. Section 220[137] of the NIRC of 1997, as amended, expressly provides that "[c]ivil 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** ..." This provision recognizes the authority of BIR legal officers to institute and prosecute tax-related actions on behalf of Government.

---

136 Attached as Annex "E" to the Petition for *Certiorari*, supra at note 1, pp. 78-79.

137 **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.

However, in the case of *People of the Philippines v. Court of Tax Appeals-Third Division, L.M. Camus Engineering Corporation, and Lino D. Mendoza*,[138] the Supreme Court made it abundantly clear that the NIRC of 1997, as amended, did not dispense with the requirement that the OSG represent the Republic in appellate proceedings before this Court. Thus, while the BIR may prosecute tax violations at the trial level, representation of the State in appellate proceedings remains vested in the OSG.

A perspicacious review of the present Petition for *Certiorari*[139] and its attachments reveals no such participation on the part of the OSG. The OSG was neither a signatory nor even furnished a copy of the Petition for *Certiorari*. While the caption reads "PEOPLE OF THE PHILIPPINES, as represented by the Solicitor General through the [BIR]," and a Memorandum of Agreement[140] (**MOA**) between the OSG and the BIR was annexed, these are insufficient to confer standing absent actual deputation.

The act of deputation is an exception to the general rule that the OSG shall represent the government in criminal proceedings. Such exception operates only upon compliance with certain conditions. ***First***, the OSG must issue an express authorization **identifying the legal officers who are being deputized**. ***Second***, the cases involved must fall within the official functions or jurisdiction of offices to which the deputized legal officers belong. ***Finally***, even after deputization, the OSG must retain supervision and control over the deputized legal officers with respect to the conduct of cases.[141]

In fact, Paragraph B(2)(b)[142] of Revenue Memorandum Circular (**RMC**) No. 025-10,[143] which circularizes the MOA between the BIR and

---

138 G.R. Nos. 251270 and 251291-301, 05 September 2022.

139 Supra at note 1.

140 Annex "F" attached to the Petition for *Certiorari*, supra at note 1, pp. 80-84.

141 *Republic of the Philippines, represented by Philippine Economic Zone Authority v. Heirs of Cecilio and Moises Cuizon*, G.R. No. 191531, 06 March 2013.

142 B. *Handling Cases*

...

2. Cases appealed before the Regional Trial Courts, Court of Appeals and the **Court of Tax Appeals *En Banc*.**

...

b. **The BIR shall periodically submit a list of handling lawyers to the OSG for purposes of deputation.** (Emphasis and underscoring supplied)

143 Publishing the Full Text of the Memorandum of Agreement Between the Bureau of Internal Revenue (BIR) and the Office of the Solicitor General.

the OSG, mandates that for appealed cases before this Court, the BIR must submit the name of the lawyer to be deputized, with the OSG retaining direct control and supervision throughout the proceedings. The mere assertion that the BIR acts "through the Solicitor General" in the caption of the Petition does not suffice to confer legal standing in the absence of actual deputation.

Here, no such deputation appears on record. The Petition for *Certiorari*[144] was signed by Attys. Jamaica Kay S. Dela Cruz (**Dela Cruz**) and Maica P. Pineda (**Pineda**), yet nothing in the records shows that the OSG deputized them to appear and act on its behalf in this case. Even more telling is the BIR's failure to furnish the OSG with a copy of the Petition — a procedural lapse that betrays the absence of coordination, and more gravely, the absence of authority to represent the State in these proceedings.

Even assuming *arguendo* that the BIR's legal officers possessed the requisite authority to file the present Petition for *Certiorari* or that the OSG can be deemed to have participated in these proceedings, the Petition would nevertheless fail for lack of merit because the records do not show that public respondent committed grave abuse of discretion.

PUBLIC RESPONDENT COMMITTED NO GRAVE ABUSE OF DISCRETION.

In a Rule 65 petition, it is incumbent upon petitioner to establish that respondent court or tribunal acted in a capricious, whimsical, or arbitrary manner in the exercise of its jurisdiction.[145] The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility."[146] Further, a special civil action of *certiorari* under Rule 65 can only strike

---

144 Supra at note 1.
145 *Yokohama Tire Philippines, Inc. v. Sandra Reyes and Jocelyn Reyes*, G.R. No. 236686, 05 February 2020.
146 *Poro Exim Corporation, represented by Jaime Vicente v. Office of the Ombudsman and Felix S. Racadio*, G.R. Nos. 256060-61, 27 June 2023.

an act down if petitioner could manifestly show that the abuse of discretion was in fact patent and gross.[147]

In criminal cases, it must be shown that petitioner (or the prosecution) was denied the opportunity to present its case or that the trial was a sham. It is the burden of petitioner to clearly demonstrate that respondent court blatantly abused its authority.

Here, the Court *En Banc* finds that petitioner failed to prove such gross and patent abuse. Public respondent's ruling granting private respondent's Demurrer does not appear capricious, whimsical, or arbitrary. In *Republic of the Philippines v. Fe Roa Gimenez and Ignacio B. Gimenez,*[148] the Supreme Court has laid down the guidelines in resolving a demurrer to evidence:

> ...
>
> A demurrer to evidence may be issued when, upon the facts and the law, the plaintiff has shown no right to relief. Where the plaintiff's evidence together with such inferences and conclusions as may reasonably be drawn therefrom does not warrant recovery against the defendant, a demurrer to evidence should be sustained. A demurrer to evidence is likewise sustainable when, admitting every proven fact favorable to the plaintiff and indulging in his favor all conclusions fairly and reasonably inferable therefrom, the plaintiff has failed to make out one or more of the material elements of his case, or when there is no evidence to support an allegation necessary to his claim. It should be sustained where the plaintiff's evidence is *prima facie* insufficient for a recovery.
>
> ...

Public respondent's first assailed Resolution[149] granting the Demurrer explained the basis for its conclusion that petitioner failed to prove the elements of the offenses charged, entitling private respondent to an acquittal, *viz*:

> ...
>
> After careful evaluation of the pieces of documentary and testimonial evidence presented by the prosecution, this Court finds

---

147 Id.
148 G.R. No. 174673, 11 January 2016.
149 Supra at note 4; Citations omitted, emphasis and italics in the original text, and underscoring supplied.

the same to be insufficient to secure a judgment of conviction against the accused.

...

A perusal of the two Informations, both dated 5 August 2019, filed against the accused reveals that the alleged legal obligation of the accused to pay taxes under the ***NIRC*** was derived from the second instance, *i.e.*, upon being informed of a deficiency tax assessment issued by the BIR requiring the taxpayer to pay the same within a specified period, as indicated in a final assessment with formal demand to pay. Accordingly, to satisfy the first element of the crime charged, the prosecution must be able to establish the existence of a valid assessment notice and demand duly issued to the accused thereby legally obligating the latter to pay deficiency taxes. The validity of the assessment would, in turn, depend on whether the same was issued strictly in accordance with the requirements of the **NIRC** and its relevant rules and regulations.

...

In ***Commissioner of Internal Revenue vs. Metro Star Superama, Inc.***, the Supreme Court categorically held that failure to strictly comply with the notice requirements prescribed under ***Section 228 of the NIRC*** and ***RR 12-99***, as amended, is tantamount to denial of due process. It further stressed the need to fully inform a taxpayer of the facts and laws upon which an assessment issued against him or her is based[.]

...

... [Any] failure to fully inform a taxpayer, as required, renders nugatory any assessment made by the tax authorities.

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

...

Thus, it is not simply a question of whether the assessment notices were sent to respondent by petitioner. It is imperative that the taxpayer actually received such tax assessment notices.

Finally, in the case of ***Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*** (***"GJM Philippines"***) the Supreme Court enunciated the rule to be observed in cases where the taxpayer denies the receipt of assessment notices. ...

...

... [The] rule is that in case the taxpayer denies the receipt of the assessment notices from the BIR, the latter has the burden to prove by competent evidence that the required notices were actually received by the taxpayer.

The prosecution failed to prove actual receipt by the accused of the PAN and FLD/FAN.

Accused in the case at bar denies actual receipt of the one pager PAN, dated 8 January 2014, the one pager FLD, dated 4 March 2014 which was signed by Regional Director Alberto Olasiman, and the FAN, which were all dated 4 March 2014.

Accused insists that she never actually received a copy of the PAN. Accused further alleged that although a Letter Protest, dated 14 January 2014, was sent to the BIR to refute the contents of the PAN, the same was drafted and signed entirely by her father, Francisco Labao. Accused explained that she never had any participation in the drafting of such Letter Protest in the same way that she never took part in the affairs of SMSA. Further, accused posited that the person who supposedly received the PAN, Ms. Cristine B. Lorejo is not her duly authorized representative.

Moreover, accused argues that she never actually received the FLD/FAN, considering that neither her signature nor that of a duly authorized representative is present therein indicating her actual receipt of such documents.

Following the accused's denial of actual receipt of the PAN, FAN and FLD, it becomes incumbent upon the prosecution to prove beyond reasonable doubt that the accused actually received such documents. As provided by ***GJM Philippines***, the burden of proof is shifted to the prosecution to prove that the taxpayer actually received the assessment notices whenever the latter denies receiving the assessment notices.

Particularly, for the PAN, the prosecution should have adduced evidence proving beyond reasonable doubt that the person who supposedly received such document, Ms. Lorejo, is a duly authorized representative of the accused who is authorized to receive correspondences on her behalf (*i.e.*, the testimony of Ms. Lorejo), and that, as such, Ms. Lorejo's receipt of the PAN is deemed receipt by accused.

For the FAN/FLD, the prosecution should have presented the actual receiving copy showing accused's receiving signature if the mode of service was through personal service or the actual registry

receipt indicating actual receipt by accused of the mailed copy of the FAN/FLD if the mode of service was through registered mail.

However, the prosecution failed to adduce any of these or similar pieces of evidence which would prove beyond reasonable doubt that the accused actually received copies of the PAN, FAN, and FLD.

...

Accordingly, the accused is deemed not to have been served a PAN, FAN and FLD. Without a PAN, FAN, or FLD, accused had no way of determining the facts and laws upon which the assessment issued against her was based and thus cannot intelligently address such assessment — a clear violation of her right to due process. The present income tax and VAT assessment is consequently void.

...

A taxpayer who has not received a valid FLD/FAN is under no obligation to pay the deficiency taxes assessed thereon. It necessarily cannot commit any violation of ***Section 255 of the NIRC*** for refusal to pay said assessed deficiency taxes without receiving the valid FLD/FAN.

The PAN and FLD/FAN failed to state the factual and legal bases of the assessment.

In addition to the findings that the accused failed to actually receive a copy of the PAN, FLD, and FAN, the instant assessment is likewise void considering that PAN, FLD, and FAN failed to provide the factual and legal bases of the present assessment.

To reiterate, under ***Section 228 of the NIRC***, "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." Even ***Section 3.1.4 of RR 12-99*** requires that the assessment notices "shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based"; otherwise, the assessment is void.

The requirement that the taxpayer be informed of the factual and legal bases of the assessment is mandatory. It cannot be presumed. As a requirement of due process, this rule allows the taxpayer to protest effectively.

Given the foregoing, the assessment notices (*i.e.*, PAN and FAN/FLD) must be accompanied by complete details, *i.e.*, facts, law, rules and regulations, or jurisprudence on which the assessment is based. Otherwise, it is void.

A perusal of the one pager PAN, dated 8 January 2014, shows that the BIR simply stated that there is deficiency income tax and VAT due from SMSA in the total amount of Php6,183,106.35 but did not provide the legal and factual bases as to how such amount was determined to be due from SMSA. The PAN did not present complete details covering the discrepancies established during the investigation. In other words, there is nothing in the PAN that would show the factual and legal bases on which the assessments were made.

The same is equally true with the one pager FLD, dated 4 March 2014, which was signed by Regional Director Alberto Olasiman, and the FAN, which were all dated 4 March 2014. These also failed to sufficiently present complete details which would identify the discrepancies determined during investigation and show the factual and legal bases of the assessment.

In fact, the FLD and the FAN simply reiterated the Php6,183,106.35 income tax and VAT assessment contained in the PAN without even explaining as to how such amount was retained. Simply put, the FLD/FAN just demanded the payment of alleged deficiency income tax and VAT in the amount of Php6,183,106.35 without any details or particulars of how they were arrived at or why SMSA's arguments in its 2-page Protest to the PAN were rejected by the BIR.

Moreover, while the FLD provided that the discrepancies found during investigation were further explained in an Annex, such Annex was not presented in evidence before this Court. The existence of such Annex cannot be presumed considering that the prosecution must establish its case beyond reasonable doubt. This Court must thus deem the Annex absent from the FLD, which consequently lacked any further explanations for the discrepancies allegedly found during investigation.

This Court thus finds the PAN and FLD/FAN void for failure to state the factual and legal bases of the assessment, further proving that the present criminal cases are without any basis.

Second and Third Element: Failure to pay the required tax at the time required by law, or the rules and regulations; Such failure to pay the required tax is willful.

The showing of failure to pay the pertinent tax and the willfulness of such failure rests on whether the taxpayer is required to pay said tax in the first place. Accordingly, the second and third

> elements can arise only when the first element actually exists. There can be no willful failure to pay tax at all if there is no requirement to pay the same.
>
> Since the subject assessments are void, accused was not required to pay tax. Accordingly, accused cannot be said to have failed to pay the deficiency taxes (*i.e.*, second element), much more to have done so willfully (*i.e.*, third element).
>
> In sum, the prosecution failed to prove any of the elements in the offense charged, entitling accused to an acquittal.
>
> ...

Clearly from the foregoing, public respondent carefully examined the testimonial and documentary evidence presented by petitioner and explained in detail why such evidence failed to establish the elements of a violation of Section 255[150] of the NIRC of 1997, as amended. In particular, public respondent relied on prevailing jurisprudence requiring strict compliance with due process requirements governing the issuance and service of tax assessments. It found that petitioner failed to prove that private respondent actually received the PAN and FLD/FAN and further determined that said notices did not state the factual and legal bases of the assessment, as required under Section 228[151] of the NIRC of 1997 and Revenue Regulations (**RR**) No. 12-99.[152]

These conclusions rested on the evaluation of the evidence and the application of settled jurisprudence, including *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*,[153] *Estate of the Late Juliana Diez Vda. De Gabriel v. Commissioner of Internal Revenue*,[154] and *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*[155] Nothing in the records shows that public respondent acted arbitrarily or whimsically in applying these doctrines. Rather, the assailed Resolutions[156] demonstrate that public respondent exercised

---

150 Supra at note 12.
151 **SEC. 228.** *Protesting of Assessment.*
152 Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.
153 G.R. No. 185371, 08 December 2010.
154 G.R. No. 155541, 27 January 2004.
155 G.R. No. 202695, 29 February 2016.
156 Supra at notes 4 and 5.

judicial judgment after due consideration of the parties' arguments and the evidence presented.

As aptly pointed out by private respondent in her Comment/ Opposition,[157] petitioner's assertion that public respondent disregarded its evidence and the existence of the elements of offense charged against private respondent lacks factual and legal basis.

The records show that public respondent evaluated the testimonial and documentary evidence before concluding that petitioner failed to establish the elements of a violation of Section 255[158] of the NIRC of 1997, as amended. Likewise, petitioner failed to demonstrate that public respondent acted in a capricious, whimsical, or arbitrary manner amounting to grave abuse of discretion. Nothing in the records indicates that the proceedings before public respondent violated due process or that any irregularity attended the conduct of the trial, such as suppression of evidence, harassment of witnesses, deviation from regular raffle procedures, or secret meetings during the pendency of the proceedings.

It must be stressed that for a Petition for *Certiorari* under Rule 65 to prosper, more than mere "abuse of discretion" must be shown.[159] Petitioner must demonstrate that grave abuse of discretion tainted the questioned act or proceeding.[160] In this case, records reveal no such grave abuse.

After evaluating the evidence presented by petitioner, public respondent found such evidence insufficient to establish the elements in the commission of the offense punished under Section 255[161] of NIRC of 1997, as amended, or the failure to pay deficiency IT and VAT (which constitutes proper ground for granting a demurrer). Any alleged mistake, if at all, constitutes merely an error of judgment and not an

---

157 Supra at note 117.
158 Supra at note 12.
159 *Marilao Medical and Diagnostic, Inc. v. Dr. Jovith Royales*, G.R. No. 265152 (Resolution), 29 October 2025.
160 Id.
161 Supra at note 12.

error of jurisdiction correctible by *certiorari*.[162] Absent grave abuse of discretion, acquittal of private respondent cannot be disturbed without violating the constitutional protection against double jeopardy.

In fine, aside from petitioner's lack of legal personality to file the present Petition for *Certiorari*, the Court *En Banc* likewise finds, on the merits of the case, no error or grave abuse of discretion on part of public respondent in granting private respondent's Demurrer.

WHEREFORE, with the foregoing considerations, the present "Petition for Certiorari (of the Resolution dated May 31, 2024)" filed by petitioner People of the Philippines on 05 August 2024 is hereby **DISMISSED** for lack of authority to file and **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

---

162 *Commissioner of Internal Revenue v. Robinsons Convenience Stores, Inc.*, G.R. No. 259968, 27 August 2025, citing *People of the Philippines v. The Honorable Court of Appeals, Fourth Division and Julieta G. Ando*, G.R. No. 198589 (Resolution), 25 July 2012, and *Triplex Enterprises, Inc. v. PNB-Republic Bank and Solid Builders, Inc.*, G.R. No. 151007, 17 July 2006.

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice