REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ROGELIO A. TAN,
Petitioner,

-versus -

PEOPLE OF THE PHILIPPINES ,
Respondent.

C.T.A. EB CRIM. NO. 022
(C.T.A. Crim. Case Nos. O-064 and O-065)

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PEOPLE OF THE PHILIPPINES ,
Petitioner,

-versus -

ROGELIO A. TAN,
Respondent.

C.T.A. EB CRIM. NO. 023
(C.T.A. Crim. Case Nos. O-064 and O-065)

Present:

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

Promulgated:

NOV 18 2014
~~AM~~ 3:50 p.m.

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DECISION

Fabon-Victorino, J.:

Before the Court *En Banc* are the Petitions for Review[1] separately filed by Rogelio A. Tan and the People of the

[1] Docket, CTA EB Crim. No. 022, pp. 5-61; Docket, CTA EB Crim. No. 023, pp. 5-20.

Philippines, assailing the Decision[2] dated June 27, 2012, which convicted accused Rogelio A. Tan on two (2) counts of violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, as charged in the consolidated CTA Crim. Case Nos. O-064 and O-065, which was effectively affirmed in the similarly assailed Resolution[3] dated November 7, 2012.

The facts as culled from the records are as follows:

During the relevant time, accused was the President and General Manager of Jadewell Parking Systems Corporation (Jadewell), a Philippine corporation registered with the Securities and Exchange Commission (SEC) on October 21, 1987. Jadewell was incorporated to manage and operate parking areas anywhere in the Philippines or abroad by providing its latest generation advance in technology products, systems and services related to the measurement of time, fluids, communication and motion in land, sea, air transportation and aerospace industries.

On June 26, 2000 and January 25, 2001, Jadewell entered into a Memorandum of Agreement with the Cities of Baguio and Caloocan, where it agreed to install, manage and operate a parking system in the designated city streets and parking spaces for a minimum guaranteed period of five (5) years against rescission and with a term of twelve (12) years. In return the cities would receive twenty percent (20%) of the gross profit of the operation or fifty percent (50%) of the net profit, whichever was higher.

Sometime in 2005, a confidential information about Jadewell's tax evasion scheme triggered an investigation by the Special Investigation Division (SID) of the BIR Region 2 - Baguio City. The same was subsequently transferred to BIR's SID in Manila where Jadewell had its office. The investigation resulted in a finding that Jadewell had undeclared gross profit/income of Php18,655,430.45.

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[2] Docket, pp. 69-90.
[3] Docket, pp. 91-98.

Consequently, a Letter of Authority (LOA) dated February 28, 2006 for taxable years 2002 to 2004 was issued. This was followed by a Second Notice sent to Jadewell on March 9, 2006 and a Final Notice sent on March 24, 2006. Unable to secure positive reaction, the BIR, on May 25, 2006, issued Summons and/or *Subpoena Duces Tecum* addressed to Jadewell.

The investigation unearthed discrepancies in the income reported by Jadewell for taxable years 2002, 2003 and 2004 in the respective amounts of Php5,082,425.46, Php86,884,170.86 and Php79,161,659.69, computed as follows:

Total Revenue per Information	2002	2003	2004
Baguio City	P 13,734,449.11	P 90,463,263.80	P 76,874,792.49
Caloocan City	12,437,097.68	47,064,337.47	26,795,381.31
Total Inclusive of VAT	26,171,596.79	137,527,601.27	103,670,173.80
Divided by	110%	110%	110%
Total Revenue per Info exclusive of VAT	23,792,360.72	125,025,092.06	94,245,612.55
Less: Total Revenue/Sales per Return (F/S)	18,709,935.26	38,140,921.20	15,083,952.86
Undeclared Income	P 5,082,425.46	P 86,884,170.86	P 79,161,659.69

The undeclared income resulted in deficiency income tax and VAT as follows:

	2002	2003	2004
Deficiency Income Tax Due	P 3,524,112.05	P 54,684,183.03	P 44,757,351.74
Deficiency VAT due	1,123,564.15	17,469,669.30	14,333,682.44
Total	P 4,647,676.20	P 72,153,852.33	P 59,091,034.18

However, the BIR filed only two complaints with the Department of Justice (DOJ) on October 27, 2006 for taxable years 2003 and 2004 after finding that the under-declaration of income for taxable year 2002 was less than thirty (30%) percent of the income/sales per Jadewell's Income Tax Return (ITR).

On September 28, 2007, the DOJ filed with the Court in Division the corresponding Informations against accused, as President and General Manager of Jadewell docketed as Criminal Case Nos. 0-064 and 0-065. On November 29, 2007, the Information in Criminal Case No. 0-064 for taxable year 2004 was amended.

The two Informations basically state that accused, being the President and General Manager of Jadewell, willfully and feloniously failed to supply correct and accurate information in Jadewell's ITRs for taxable year 2003 and 2004. The said ITRs reflected an income of only Php38,140,921.00 for 2003 and Php15,083,952.86 for 2004 when its respective actual income based on the records of the Office of the Treasurer of the Cities of Baguio and Caloocan were Php125,025,092.00 and Php94,245,612.55. Due to under-declaration of income for said taxable years by 228% and 525%, respectively, the government was prejudiced to the tune of Php104,608,873.25 in taxes due it, exclusive of interests.

When arraigned, accused pleaded "Not Guilty" of the crimes charged. Thereafter, the two cases were consolidated at the instance of accused and jointly heard by the Court in Division.

On June 27, 2012, the Court in division rendered the verdict convicting accused on two counts of violation of Section 255 of the NIRC of 1997, in this wise:

> WHEREFORE, premises considered, judgment is hereby rendered:
>
> 1. In Criminal Case No. O-064, finding the accused Rogelio A. Tan GUILTY beyond reasonable doubt for violation of Section 255 of the National Internal Revenue Code of 1997, as amended, and is hereby SENTENCED to suffer an indeterminate penalty of one (1) year, as minimum, to two (2) years, as maximum, and is ORDERED TO

PAY a fine in the amount of P50,000.00, with subsidiary imprisonment in case accused has no property with which to meet such fine pursuant to Section 280 of the NIRC of 1997, as amended.

Jadewell Parking Systems Corporation is further ORDERED TO PAY a fine of P100,000.00, pursuant to Section 256 of the NIRC of 1997, as amended; and

2. In Criminal Case No. O-065, finding the accused Rogelio A. Tan GUILTY beyond reasonable doubt for violation of Section 255 of the National Internal Revenue Code of 1997, as amended, and is hereby SENTENCED to suffer an indeterminate penalty of one (1) year, as minimum, to two (2) years, as maximum, and is ORDERED TO PAY a fine in the amount of P50,000.00, with subsidiary imprisonment in case accused has no property with which to meet such fine pursuant to Section 280 of the NIRC of 1997, as amended.

   Jadewell Parking Systems Corporation is further ORDERED TO PAY a fine of P100,000.00, pursuant to Section 256 of the NIRC of 1997, as amended.

   SO ORDERED.

The accused and the prosecution moved for the reconsideration of the foregoing decision. Both were denied for lack of merit in the similarly assailed Resolution of November 7, 2012. Hence, this appeal.

In his Petition for Review, accused assigned the following errors allegedly committed by the Court in Division:

First Assignment of Error

THE THIRD DIVISION ERRED WHEN IT CONVICTED THE PETITIONER ON THE BASIS OF THE UNIDENTIFIED AND HEARSAY SIGNATURE OF A THIRD PERSON WHO REPRESENTED HERSELF AS THE BOOKKEEPER OF THE CORPORATION HE HEAD DESPITE THE FACT THAT THE COMMISSION OF THE CRIME CHARGED AS DECREED BY THE THIRD DIVISION THAT IT WAS IMPERATIVE "FOR THE PROSECUTION TO CONVINCINGLY SHOW A DIRECT LINK OR CONNECTION OF THE FILING AND/OR PREPARATION OF THE ALLEGED FALLACIOUS RETURN TO THE ACCUSED; THAT IS, THAT HE PARTICIPATED IN OR WAS RESPONSIBLE FOR THE PREPARATION AND FILING THEREOF, OR AT LEAST ORDERED THE COMMISSION THEREOF.

Second Assignment of Error

THE THIRD DIVISION ERRED IN CONVICTING HIM OF VIOLATIONS OF SECTION 255 OF THE TAX REFORM CODE FOR ALLEGED INCORRECT INCOME REFLECTED BY JADEWELL PARKING SYSTEMS CORPORATION IN ITS INCOME TAX RETURNS FOR 2003 AND 2004 DESPITE THE FACT THAT THE PROSECUTION FAILED TO PRESENT PROOF BEYOND REASONABLE DOUBT THAT:

A. THE COMPUTATION MADE BY THE BUREAU OF INTERNAL REVENUE ON THE ALLEGED UNDERDECLARED INCOME OF JADEWELL FOR 2003 AND 2004 WAS CORRECT AND ACCURATE;

B. THE ASSAILED DECISION HAS NO BASIS TO CONCLUDE THAT THERE ARE UNDER-DECLARATIONS IN JADEWELL'S INCOME TAX RETURNS FOR 2003 AND 2004.

In the first assignment of error, accused claims that the Court in Division erred in convicting him since the prosecution failed to establish that he directly participated in or was responsible for the preparation or filing of the alleged fallacious ITRs. Under the principle of *res inter alios acta,* the alleged signing of payment forms for Jadewell by Via Aguas, claimed to be its bookkeeper, is her personal act and should not prejudice him in the absence of evidence that conspiracy exists between them. Besides, there is no showing that Via Aguas was duly authorized by the Board of Directors to sign the payment forms for and in behalf of Jadewell.

The non-presentation of Via Aguas in Court to identify her alleged signature on the subject payment forms and the unsigned ITRs on which her name appeared also deprived him of the opportunity to confront during the cross-examination, hence, the said documents are at best hearsay.

His being the president of Jadewell during the relevant periods is as well not sufficient to justify his conviction for the crimes charged. Attribution of criminal liability by reason of the accused' position is not sanctioned in this jurisdiction.

The application of the principle of willful blindness in the instant cases is also flawed as it is not applicable in cases of failure to supply correct and accurate information in the tax return wherein the prosecution has to prove that the information in the tax return was incorrect or false and accused knew it to be such. The doctrine of willful blindness cannot supplant the constitutional requirement in criminal cases of proof beyond reasonable doubt, which burden the prosecution failed to discharge.

Much more, there was no proof that he was aware of Jadewell's tax liabilities for the years 2003 and 2004. The LOA or notice of tax deficiencies were not served upon him but allegedly upon Via Aguas who was not called to the witness stand to confirm it. In any event, his act of offering Jadewell's books of account for BIR reinvestigation while the cases were pending before the DOJ, negates his alleged willfulness to violate Section 255 of the NIRC, as amended.

Anent, the second assignment of error, accused claims that there was no assessment issued against Jadewell. Without such assessment required under Section 72 of the Tax Code, the BIR has no basis to claim that Jadewell under-declared its income from its operation of parking facilities during the taxable years 2003 and 2004. Neither was there a pronouncement in the assailed Decision that the BIR correctly computed the alleged under-declaration. The Court in Division only made, albeit erroneously, an approximation of the alleged under-declaration of income by Jadewell based on the limited evidence he presented during the trial of the cases.

Accused also gives premium on the alleged admission of BIR employee John Abris that he erroneously computed the 20% shares of the Cities of Baguio and Caloocan in the operation of Jadewell's parking facilities. This notwithstanding and solely on the basis of the Certification of Total Remittances issued by the City Treasurer of Caloocan indicating receipts of Caloocan City of its share, the Court in Division convicted him. For accused, the said certification is not the best proof that the income reflected in Jadewell's ITRs were incorrect or inaccurate. The total collection indicated in the said certification is not equivalent to taxable income for purposes of filing income tax return.

Accused also faults the Court in Division for ignoring his explanation that the BIR failed to factor in operational and miscellaneous expenses and other allowable deductions.

The conclusion that Jadewell failed to supply correct information is also infirm given that Jadewell's ITRs were certified correct by its external auditor, who enjoys the presumption of regularity in the performance of her duty. The said certification disproved the contention that Jadewell's ITRs were inaccurate. Further, the tax returns are public documents, hence, *prima facie* correct with respect to the entries therein.

While accused assails his conviction, he agrees with the Court that he is not civilly liable for lack of evidence showing issuance and service of notices of assessment.

On this regard, the prosecution claims in its own petition that:

I. THE THIRD DIVISION OF THE HONORABLE CTA ERRED IN RULING THAT AN ASSESSMENT IS NECESSARY TO IMPOSE THE CIVIL LIABILITIES PRAYED FOR BY PETITIONER.

II. THE THIRD DIVISION OF THE HONORABLE CTA ERRED IN RULING THAT THE COMPUTATION MADE BY THE REVENUE OFFICERS INVOLVED IN THE INVESTIGATION CANNOT BE USED AS BASIS TO IMPOSE THE CIVIL LIABILITIES PRAYED FOR BY PETITIONER.

The prosecution explains that there can be no court proceeding for collection of taxes without an assessment mandated under Section 203 of the Tax Code. But this general rule admits of exception provided in Section 222 of the same Code which states that *"[I]n the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission."* Since the cases fall under the exception, the subject tax deficiency can be collected without an assessment especially considering that it was already established that accused failed to supply correct information in Jadewell's Annual ITR for the years 2003 and 2004.

Corollarily, Section 7(b)(1) of Republic act No. (RA) 9282 provides that the filing of the criminal action carries with it the filing of the civil action. To require an assessment to determine civil liability for the exceptional cases in Section 222 is contrary to the said provision and may also run counter to Section 7(b)(1) of RA 9282.

Finally, accused cannot complain denial of due process since he was afforded the opportunity to contest the tax deficiency/civil liabilities during the proceedings before the Department of Justice (DOJ) and before the Court in Division and to present his own controverting documents on the matter.

The prosecution further contends that the amounts, as computed, termed by accused as "estimates" bear the final determination and approval of the Commissioner of Internal Revenue who authorized the same under the Letter of Authority No. 00086177 dated February 28, 2006.

On December 13, 2012, CTA EB Crim. No. 023 and CTA EB Crim. No. 022 were consolidated and thereafter submitted for decision after the parties traded pleadings.

RULING OF THE COURT *EN BANC*

Both petitions are without merit.

CTA EB Crim. No. 022 (Accused'Appeal)

Accused claims that the verdict of conviction against him is infirm for failure of the prosecution to establish that he directly participated in or was responsible for the preparation or filing of the alleged fallacious returns.

On this regard, Section 255 of the NIRC of 1997, as amended, under which accused is charged, is instructive. It reads as follows:

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

In connection with the foregoing, Section 52(A) of the same Tax Code provides that if the taxpayer is not a natural person but one created by legal fiction, the obligations cited in the above provision rest upon the shoulder of its president, vice-president, or other principal officers of the corporation, thus:

> SEC. 52. Corporation Returns. —
>
> (A) Requirements. — Every corporation subject to the tax herein imposed, except foreign corporations not engaged in trade or business in the Philippines shall render, in duplicate, a true and accurate quarterly income tax return and final or adjustment return in accordance with the provisions of Chapter XII of this Title. The return shall be filed by the **president, vice-president or other principal officer,** and shall be sworn to by such officer and by the treasurer or assistant treasurer.

In case of infraction or non-compliance with any of the obligations imposed under Section 255 by the association, partnership or corporation, the penalty shall be imposed upon its responsible officers, namely, its president, general manager, branch manager, treasurer, officer-in-charge or responsible employees who shall be indicted pursuant to Sections 253(d) and 256 of the NIRC of 1997, thus:

> SEC. 253. General Provisions. —
>
> xxx xxx xxx
>
> (d) In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation.
>
> SEC. 256. Penal Liability of Corporations. — Any corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees, shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000).

The provisions of law on the matter are very clear and unequivocal. Section 255 of the Tax Code lays down the elements of the infraction allegedly committed by accused, to wit:

1. The accused is a person required to supply correct and accurate information;

2. The accused failed to supply correct and accurate information, at the time or times required by law or rules and regulations;

3. That the failure to supply correct and accurate information was willful; and

4. In case of corporate taxpayers, that the accused is the responsible officer.

All the aforementioned elements must concur to seal a conviction for violation of Section 255 of the NIRC, as amended. The lack or absence of any of the enumerated elements warrants the exoneration of the person charged. Thus, it is incumbent upon the prosecution, on which the burden of proof lies, to establish by proof beyond reasonable doubt each and every element of the crime. Failure to discharge this burden will result in the acquittal of the accused.

In the present case, all the elements were sufficiently established by the prosecution to the satisfaction of the Court.

Under the law, Jadewell, a duly organized domestic corporation subject to tax, is **required to supply true, correct and accurate information in its income tax returns.** And since Jadewell is a corporation, an entity created by legal fiction, such obligation rest upon the shoulder of its responsible officers.

Significantly, accused admits that this obligation exists. In fact, he insists that Jadewell complied with this obligation when it filed its ITRs for the years 2003 and 2004. Evidence however reveal that Jadewell failed to comply with the obligation to supply correct and accurate information in the said ITRs resulting in the under-declaration of its revenues as illustrated by the Court in Division in wise:

In its Annual Income Tax Returns for taxable years 2003 and 2004, Jadewell declared as follows:

Year	2003	2004
Sales/Revenues/Receipts/Fees	P 38,140,921.20	P 15,083,952.86
Less: Cost of Sales/Services	33,870,841.20	13,424,718.05
Gross Income from Operation	P 4,270,080.00	P 1,659,234.81
Add: Non-Operating & Other Income	-	-
Total Gross Income	P 4,270,080.00	P 1,659,234.81
Less: Deductions	4,003,200.63	1,854,203.45
Taxable Income	P 266,879.37	P (194,968.64)

A scrutiny of the Statement of Income and Expenses for Baguio, stamped received by the Office of the City Treasurer of Baguio, supported by the Order of Payments and Official Receipts, shows that for taxable years 2003 and 2004, Jadewell generated revenues in the amounts of P17,064,684.11 and P14,827,134.66, respectively, compared with the respective amounts of P90,463,263.80 and P76,874,792.49, as found by the BIR. Details are as follows:

2003	Income	Direct Costs	Gross Profit	Oper. Exp.	Net Profit
January	P1,490,829.55	P550,807.13	P940,022.42	P699,628,76	P240,393.66
February	1,423,250.91	503,354.68	919,896.23	654295.84	265,600.39
March	1,465,930.91	552,097.48	913,833.43	560,134.73	353,698.70
April	1,886,349.99	618,413.61	1,267,936.38	748,621.95	519,314.43
May	1,608,451.81	603,707.82	1,004,743.99	645,385.91	359,358.08
June	1,167,263.64	511,772.20	655,491.44	482,619.36	172,872.08
July	1,014,656.37	531,690.97	482,965.40	477,311.73	5,653.67
August	1,082,271.83	541,592.41	540,679.42	444,931.55	95,747.87
September	1,096,187.28	564,329.77	531,857.51	493,938.54	37,918.97
October	1,460,763.64	532,867.58	927,896.06	544,032.31	383,863.75
November	1,582,054.54	650,786.93	931,267.61	572,543.72	358,723.89
December	1,786,673.64	775,444.86	1,011,228.78	711,965.82	299,262.96
Total – 2003 Baguio	P17,064,684.11	P6,936,865.44	P10,127,818.67	P7,035,410.22	P3,092,408.45

2004	Income	Direct Costs	Gross Profit	Oper. Exp.	Net Profit
January	P1,572,309.09	P553,037.85	P1,019,271.24	P659,660.01	P359,611.23
February	1,596,513.72	711,435.78	885,077.94	834,983.97	50,093.97
March	1,522,822.73	581,778.46	941,044.27	598,222.85	342,821.42
April	1,960,300.00	597,380.07	1,362,919.93	834,868.07	528,051.86
May	1,517,659.09	642,195.01	875,464.08	565,529.90	309,934.18
June	1,048,049.32	497,766.11	550,283.21	411,102.68	139,180.53
July	800,422.73	464,132.45	336,290.28	345,406.26	(9,115.98)
August	770,358.18	437,440.77	332,917.41	312,820.09	20,097.32

September	853,291.59	456,234.57	397,057.02	331,615.76	65,441.26
October	1,123,004.55	536,845.56	586,158.99	477,903.16	108,255.83
November	994,708.19	481,592.18	513,116.01	388,669.76	124,446.25
December	1,067,695.47	708,348.24	359,347.23	532,842.04	(173,494.81)
Total – 2004 Baguio	P14,827,134.66	P6,668,187.05	P8,158,947.61	P6,293,624.55	P1,865,323.06

With regard to the Caloocan operation, the accused failed to provide the related monthly Statement of Income and Expenses or other documents by which the Court can ascertain that the revenues as computed by the BIR were correct.

Using the limited evidence presented by the accused, particularly the Statement of Income and Expenses for Baguio, the Court finds that the Annual Income Tax Returns of Jadewell for the years 2003 and 2004 do not reflect its true income for the said years.

To illustrate, if we are to deduct the revenues generated by Jadewell from its Baguio operations from its declared total revenues for the years 2003 and 2004, the balances would pertain to Jadewell's declared revenues from its Caloocan operations. These balances when compared to the total collections per Certification of Total Remittances from the Office of the City Treasurer-Caloocan would show the following estimated minimum amount of undeclared revenues:

	2003	2004
Declared Sales/Revenues per Income Tax Return	P38,140,921.20	P15,083,952.86
Less: Baguio – per Statement of Income and Expenses	(17,064,684.11)	(14,827,134.66)
Declared Sales/Revenue after Baguio's Income	P21,076,237.09	P256,818.20
Less: Caloocan – Total Collection per City Treasurer	(21,076,350.31)	(11,789,860.66)
Estimated Minimum Amount of Undeclared Revenue	P(113.22)	P(11,533,042.46)

It is worth emphasizing that Jadewell's actual underdeclaration of revenues for its Caloocan operations would even be higher than the above computed amounts because the total collections

> reflected in the Certification of Total Remittances from the Office of the City Treasurer-Caloocan represent Jadewell's gross profit from sales/revenues, i.e., after deduction of the related direct costs/expenses.
>
> Clearly, there are under-declarations in Jadewell's Income Tax Returns.

Sufficient evidence also proved that the failure to supply correct and adequate information in Jadewell's ITRs for the taxable years 2003 and 2004 was willful and accused was responsible therefor.

Black's Law Dictionary defined the term "willful" as voluntary and intentional.[4] In tax crimes statutes, "willful" is defined as voluntary or intentional violation of a known legal duty. [5]

In the case of *Commissioner of Internal Revenue v. The Estate of Benigno P. Toda, Jr., et al.,*[6] the Supreme Court described it as **being "evil," in "bad faith," "willful," or "deliberate and not accidental";**[7] *(Boldfacing supplied)*

In another tax case, the Final Arbiter explained that the deception for purposes of evading payment of correct taxes must be intentional "**consisting of deception wilfully and deliberately done or resorted to in order to induce another to give up some legal right.**"[8] And as stated by the Court in Division, an act or omission is willfully done if executed voluntarily and intentionally with specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done.

Accused admits that he was not only the president but also the general manager of Jadewell in the years 2003 and 2004

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[4] 8th Ed., p. 1630.
[5] Mertens Law of Federal Income Taxation, Vol. 15, 1988 Ed., Chapter 55A, p. 76.
[6] G.R. No. 147188, September 14, 2004, 438 SCRA 290.
[7] De Leon, Fundamentals of Taxation, 1988 Ed., citing Batter, Fraud under Federal Tax Law, 1953 Ed.
[8] *Commissioner of Internal Revenue vs. Japan Airlines, Inc. et al.,* G.R. No. 60714, October 4, 1991.

when it was still in operation. As such, he was charged with the management of the company, set policies for the achievement of its goal and provided directions for the business to ensure its viability and financial growth.[9] This admission highlighted the fact that as the chief executive, he was the one on top of the operation overseeing if not directly controlling its daily business concerns. It is therefore incredible that he was not aware of the filing of the subject fallacious ITRs of Jadewell. Note that the filing of ITR is a significant incident of any business operation and one that does not merely involve filing of documents with the BIR but also shelling out some amounts which if indecent could possibly deplete corporate resources or even cause a closeshop. Precisely it places top management of any business enterprise in animation during the tax period. As earlier stated, accused was not only the president but also the general manager of Jadewell, hence, the possibility of not knowing the filing of the fallacious ITRs is nil.

Accused cannot also take refuge on the contention that subject ITRs did not bear his signature or were unsigned or with just the typewritten name of Via Aguas, who according to him, was not an employee of Jadewell. For one, his signature need not appear on the subject ITRs for it could be filed for and in behalf of Jadewell as obtaining in the case at bar.

Also incredulous is accused' claim that Via Aguas was not at all connected with Jadewell even if her typewritten name appears on Jadewell's ITR for taxable year 2004. Aside from his self-serving allegation, accused failed to present any evidence to bolster this defense which is strongly negated by the fact that Via Aguas as the company's bookkeeper signed several payment forms pertinent to the Jadewell's tax liability. Amazingly, accused, who was in control of the management of Jadewell, could not even explain how such incident occurred under his stewardship.

Likewise *sans* support in law and jurisprudence is accused' defense that the "willful blindness" rule applies only to violation of Section 255 involving non-filing of tax returns or non-payment of the corresponding taxes and not for failure to supply correct and accurate information in the returns. Per accused, "want of knowledge of obligation" or "good faith" cannot be presumed.

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[9] Judicial Affidavit of Rogelio A. Tan; Rollo, pp. 1104-1117.

However, none of the cases cited by accused categorically states that the "willful blindness" doctrine applies only to cases involving non-filing of return or non-payment of corresponding taxes. Willful blindness, as defined by Black's Law Dictionary, is the *"deliberate avoidance of knowledge of a crime, esp. by failing to make a reasonable inquiry about suspected wrongdoing despite being aware that it is highly probable."* [10] As correctly observed by the Court in Division, there was "willful blindness" on the part of accused. As president and general manager of Jadewell, he should, at the very least, knew who was authorized to sign the ITR and other tax filings for his company, but *nay*.

Accused also insists that Via Aguas was not an employee of Jadewell or one authorized to sign and file its ITR and other tax filings. Nothing shows the fallacy of this contention more sharply than accused' presentation and submission as his own evidence in chief the very same unsigned ITR or one with merely typewritten name of Via Aguas filed by Jadewell for taxable years 2003 and 2004. To be sure one instrument cannot hit two opposite targets at the same time. This sure contradiction was noted by Court in Division in the assailed Resolution of November 7, 2012, in the following fashion:

> In the instant case, accused assails that Via Aguas was not an employee authorized to sign Jadewell's authority (sic), yet at the same time proffered the same ITRs as proof of Jadewell's compliance with its tax obligations. This is a clear example of "conscious avoidance", "deliberate ignorance", or "willful blindness", considering that the accused has knowledge of the "irregularity" in its ITR, and yet he failed to take any action nor even inquire as to the validity of its filed ITR and the accuracy and correctness of the information contained therein.

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[10] Eight Edition, p. 1630.

In his last-ditch attempt to exonerate himself from criminal liability, accused claims that the act of Via Aguas of signing several payment forms in settlement of Jadewell's tax liabilities should not prejudice him in the absence of any evidence that conspiracy exists between them. Moreover, his being the President and General Manager of Jadewell during the relevant period *per se* is not sufficient to justify his conviction for the crimes charged.

But the law is clear. Section 253(d) of the NIRC of 1997 specifically imputes the criminal liability for the violation of the law by the association, partnership or corporation upon ***the partner, president, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation"***. Accused admits that he was the president and general manager or the responsible officer of Jadewell while it was still in operation in 2003 and 2004. Interestingly, his name was typewritten on Jadewell's ITR for taxable year 2003, this for sure contradicts his claimed ignorance regarding the preparation and filing of such ITR.

Accused also maintains that his conviction is flawed since the Court in Division did not find or declare that the BIR made a correct computation of the alleged under-declaration of Jadewell's income. Allegedly, the Court in Division simply made a deduction relying mainly on the limited evidence he presented. In the absence of any assessment by the BIR, there could be no basis for the alleged under-declaration of Jadewell's income for taxable years 2003 and 2004.

Firstly, precise computation and assessment of the tax liability is not an absolute requirement before a criminal complaint for violation of Section 255 of the Tax Code may be filed.[11]

Secondly, to reach the verdict, the Court in Division did not only consider the alleged "limited evidence" presented by accused but also the pieces of evidence adduced by the prosecution during the trial on the merits. More importantly,

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[11] Ungab vs. Cusi, Jr., 97 SCRA 877 (1980).

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the "limited evidence" offered by accused failed to melt down those of the prosecution which sufficiently show the under-declarations in Jadewell's ITRs. Accused failed to present any document to overturn the alleged under declaration revenues such as the related monthly Statement of Income and Expenses or other documents for Jadewell's Caloocan operation for the Court to ascertain the correctness of the computation made by the BIR.

In fine, no reason or ground exists to deviate from the findings of the Court in Division.

CTA EB Crim. No. 023
(People of the Philippines' Appeal)

In its Petition for Review, the prosecution finds fault in not awarding in its favor civil damages saying that the computation made by the Revenue Officers had the final determination and approval of the Commissioner of Internal Revenue when the cases were endorsed for preliminary investigation drawing strength from the referral of then Commissioner Jose Mario C. Buñag to the Secretary of Justice.

Section 222 (a) of the NIRC of 1997, as amended, relevantly provides:

> SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. —
>
> (a) In the case of a false or fraudulent return with intent to evade tax or failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud, or omission: Provided, that in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of

> in the civil or criminal action for collection thereof.

Corollary thereto, the relevant Section 205 (b) of the NIRC of 1997, as amended, provides:

> SEC. 205. Remedies for the Collection of Delinquent Taxes. — The civil remedies for the collection of internal revenue taxes, fees or charges, and any increment thereto resulting from delinquency shall be:
>
> (b) By civil or criminal action.
>
> xxx.
>
> **The judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case <u>as finally decided by the Commissioner</u>**.
>
> xxx. (*Emphases supplied*)

Pursuant to the above provisions, an assessment is not necessary to impose civil liabilities; **however, the computation of the civil liabilities must be signed and approved by the Commissioner himself**. In the instant case, an examination of the "estimates and computation" made by the Revenue Officers shows that it was not signed by the Commissioner of Internal Revenue, in violation of the above-quoted provisions.

Further, the endorsement of the findings of the Revenue Officers to the Secretary of Justice cannot be treated as the final determination and approval of the said "estimates and computation" by the Commissioner of Internal Revenue. The said endorsement is merely for the "investigation and consequent filing of the Information in court" against accused Rogelio A. Tan, as evident in the letter-referral to the Secretary of Justice dated October 27, 2006 by then Commissioner Jose Mario C. Buñag, viz.,:

> This letter referral is being written to signify the undersigned's approval, in accordance with Section 220 of the NIRC of 1997, as to the institution of the corresponding complaints for the crimes of Attempt to Evade Taxes (Section254) and Willful Failure to Supply Correct and Accurate Information (Section 255).

On the same issue, the Court in Division explained, thus:

> While it is true that the approximations of the alleged income earned by Jadewell for the taxable years 2003 and 2004 were relied upon by the court in finding the accused guilty beyond reasonable doubt, the said computation made by the Revenue Officers involved in the investigation cannot be used as basis to impose the civil liabilities prayed for by the prosecution. To reiterate, while an assessment is not required in the prosecution of the criminal case, the final determination of the Commissioner of Internal Revenue as to the tax liability is necessary in order for the Court to rule on the civil liability. However, in this case, the prosecution did not present any assessment by the Commissioner. What were presented were only the estimates and computation made by the Revenue Officer, thus there can be no basis for the civil liability of the accused.

Finding no reversible error, the Court *En Banc* affirms the assailed Decision dated June 27, 2012.

WHEREFORE, both Petitions for Review, docketed as C.T.A. EB Crim. Nos. 022 and 023, are hereby **DENIED** for lack of merit. Accordingly, the assailed Decision dated June 27, 2012 and the Resolution dated November 7, 2012 are hereby **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(with Dissenting and Concurring Opinion)
CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

(I join PJ's Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

ROGELIO A. TAN,
Petitioner,

-versus-

PEOPLE OF THE PHILIPPINES,
Respondent.

CTA EB CRIM NO. 022
(CTA CRIM CASE NOS. O-064 & O-065)

x--x

PEOPLE OF THE PHILIPPINES,
Petitioner,

-versus-

ROGELIO A. TAN,
Respondent.

CTA EB CRIM NO. 023
(CTA CRIM CASE NOS. O-064 & O-065)

Present:

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

Promulgated:
NOV 18 2014
8:50 p.m.

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DISSENTING OPINION

DEL ROSARIO, PJ:

With utmost respect to the *ponencia* of Hon. Esperanza R. Fabon-Victorino, I dissent on the conviction of accused Rogelio A. Tan for two (2) counts of violation of Section 255 of the 1997 National Internal Revenue Code (NIRC) for willful failure to supply correct information in the Income Tax Return (ITR) of Jadewell Parking Systems Corporation (Jadewell) for the years 2003 and 2004.

The *ponencia* finds as incredible for accused, being the President and General Manager of Jadewell, not to be aware of the filing of the alleged fallacious ITRs. I humbly submit that such conclusion cannot serve as a basis for conviction[1] *sans* evidence that accused is responsible for, or has participated in, the filing of the alleged fallacious ITRs, or that he induced someone to supply incorrect information in the ITRs more so, considering that the penalty for violation of Section 255 is imposed on the officers and employees **responsible** for the violation.[2] It would be the height of injustice for an officer of a corporation to be held criminally liable for violation of the provision of the NIRC on the sole basis of his position in the corporation.

It is settled that a corporation can only exercise its powers and transact its business through its board of directors and through its officers and agents when authorized by a board resolution or its bylaws.[3] While indeed accused is an officer of Jadewell, it cannot be concluded with certainty that the preparation and filing of the ITR is part of accused's function/responsibility in the absence of evidence thereon. It has been noted that both the 2003 and 2004 ITRs were not signed by accused even as no evidence exists showing at the very least that accused ordered the alleged under-declaration in the ITR.

From the foregoing, there appears to be **reasonable doubt** as to his involvement in the preparation and filing of the alleged fallacious ITRs. In other words, the prosecution failed to prove that accused is an officer **responsible** for violation of Section 255 of the NIRC; thus, he deserves an acquittal.

The prosecution bears the burden to establish the guilt of the accused beyond reasonable doubt. In discharging this burden, the prosecution's duty is to prove each and every element of the crime charged in the information to warrant a finding of guilt for the crime or for any other crime necessarily included therein. The prosecution must prove the participation of the

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[1] People v. Generoso Sujetado y Esmellarin, G.R. No. 103967, April 7, 1993.
[2] Sec. 253. *General Provisions.* -
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(d) In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and employees **responsible** for the violation.
[3] Salenga v. Court of Appeals, G.R. Nos. 174941, February 1, 2012.

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accused in the commission of the offense and must rely on the strength of its own evidence, and not upon the weakness of the evidence of the accused. The burden of proof placed on the prosecution arises from the presumption of innocence in favor of the accused that no less than the Constitution guarantees. Stated differently, the weakness of the defense evidence is inconsequential in the proceedings for as long as the prosecution has not discharged its burden of proof in establishing the commission of the crime charged and in identifying the accused as the malefactor responsible for it.[4]

Regarding the civil aspect of the case, I also register my dissent to the *ponencia* insofar as it declared that the estimates and computation made by the revenue officers cannot be considered as the final determination of the Commissioner of Internal Revenue (CIR) on the tax liability of the taxpayer.

Section 205 of the 1997 NIRC, as amended states that:

> "SECTION 205. ***Remedies for the Collection of Delinquent Taxes.*** — **The civil remedies for the collection of internal revenue taxes, fees, or charges, and any increment thereto resulting from delinquency shall be**:
>
> (a) By distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts, and interest in and rights to personal property, and by levy upon real property and interest in or rights to real property; and
>
> (b) **By civil or criminal action**.
>
> Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes: Provided, however, that the remedies of distraint and levy shall not be availed of where the amount of tax involved is not more than One hundred pesos (P100).
>
> **The judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case as finally decided by the Commissioner.**
>
> The Bureau of Internal Revenue shall advance the amounts needed to defray costs of collection by means of civil or criminal action, including the preservation or transportation of personal property distrained and the advertisement and sale thereof, as well as of real property and improvements thereon." (Emphasis supplied)

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[4] Patula v. People, G.R. No. 164457, April 11, 2012.

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Under Section 205 of the 1997 NIRC, as amended, criminal action is a recognized mode for the collection of taxes. Upon the filing of a criminal action, the corresponding civil action for the recovery of civil liability for taxes and penalty is deemed jointly instituted in the same proceeding. More importantly, no right to reserve the filing of such civil action separately from the criminal action is allowed. On this point, Section 7 of Republic Act (RA) No. 1125, as amended by RA No. 9282, *vis-vis* Section 11, Rule 9 of the Revised Rules of the Court of Tax Appeals provide:

Republic Act (RA) No. 1125, as amended by RA No. 9282

"Sec. 7. *Jurisdiction.* — The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) xxx xxx xxx;

xxx xxx xxx.

(b) Jurisdiction over cases involving criminal offenses as herein provided:

(1) Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs: *Provided, however,* That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate. **Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized.**" (Emphasis supplied)

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Revised Rules of the Court of Tax Appeals

"Rule 9
PROCEDURE IN CRIMINAL CASES

SEC. 11. *Inclusion of civil action in criminal action.* - In cases within the jurisdiction of the Court, **the criminal action and the corresponding civil action for the recovery of civil liability for taxes**

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> **and penalties shall be deemed jointly instituted in the same proceeding. The filing of the criminal action shall necessarily carry with it the filing of the civil action**. No right to reserve the filing of such civil action separately from the criminal action shall be allowed or recognized." (Emphasis supplied)

An assessment is not even necessary in a civil action for collection of delinquent taxes that is deemed filed in the prosecution of a criminal case.[5]

Here, when the then CIR opted to file a criminal action under Section 205 of the 1997 NIRC, she necessarily initiated the corresponding civil action and adopted or, at the very least, approved the computations made by her duly authorized revenue officer. Needless to say, the civil action for the collection of taxes does not require an approval from the CIR that is separate and distinct from the approval he issued in relation to the prosecution of the criminal case.

It is then my humble opinion that when the CIR ordered the filing of a criminal case, he was fully aware that the civil action for collection of taxes and penalties is thereby deemed instituted and that the amount thereof is that which is reflected in the Joint-Affidavit executed by the complainants (with all pertinent annexes) as submitted to the Department of Justice. Stated otherwise, in instituting the criminal case, the then CIR has thereby approved the amount of civil liability as computed by the duly authorized revenue officer which the government seeks to recover.

With his acquittal, accused may not be held civilly liable for the unpaid taxes of the *corporation*. For it is trite that the liability of a corporate taxpayer - - *being personal to it* - - may not be enforced against the corporate officers, viz.:

> "In the case at bar, in Criminal Cases No. 26168 to 71 only the responsible officers of the petitioner are charged in the Information, while in Civil Case No. 02-102650, it is only the corporation that is impleaded, holding it liable for the unpaid customs duties and taxes as a corporate taxpayer. **Taxes being personal to the taxpayer, it can only be enforced against herein petitioner because the payment of unpaid customs duties and taxes are the personal obligation of the petitioner**

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[5] "SECTION 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. —
(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed **without assessment**, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof." (1997 NIRC, as amended) (Emphasis supplied)

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> **as a corporate taxpayer, thus, it cannot be imposed on its corporate officers, much so on its individual stockholders, for this will violate the principle that a corporation has personality separate and distinct from the persons constituting it**…"[6] *(Emphasis supplied)*

Accordingly, Jadewell should be held liable to the extent of the amount of deficiency taxes proven or established by the prosecution during trial.

In view of the foregoing, I vote to **ACQUIT** the accused for failure of the prosecution to prove his guilt beyond reasonable doubt and to **REMAND** the case to the Court in Division for determination of the amount of civil liability of Jadewell.

ROMAN G. DEL ROSARIO
Presiding Justice

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[6] Proton Pilipinas Corporation vs. Republic of the Philippines, G.R. No. 165027, October 12, 2006.

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

ROGELIO A. TAN, Petitioner,	**CTA EB Crim. No. 022** (CTA Crim. Case Nos. O-064 & O-065)
- versus -	**CTA EB Crim. No. 023** (CTA Crim. Case Nos. O-064 & O-065)
PEOPLE OF THE PHILIPPINES, Respondent.	Present:
x- -x	**DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR.,** **BAUTISTA,**
PEOPLE OF THE PHILIPPINES, Petitioner,	**UY,** **CASANOVA,** **FABON-VICTORINO,** **MINDARO-GRULLA,**
- versus -	**COTANGCO-MANALASTAS,** *and* **RINGPIS-LIBAN,** *JJ.*
ROGELIO A. TAN, Respondent.	**Promulgated:** NOV 18 2014 3:50 p.m.

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CONCURRING AND DISSENTING OPINION

CASANOVA, *J.*:

In the instant cases, the Court *En Banc* denied both Petitions for Review for lack of merit. However, with all due respect to my esteemed colleagues, I only partially agree with the denial of the said Petitions.

With regard to CTA EB Crim Case No. 022, I vote to grant the said Petition. The Court En Banc, affirmed the findings of the Court a quo, based on the principle of "willful blindness". Petitioner-Accused's conviction was based on Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, for willful Failure to Supply Correct and Accurate Information in the Income Tax Returns (ITRs) for taxable years 2003 and 2004 of Jadewell Parking Systems Corporation ("Jadewell").

Petitioner-Accused was imputed criminal liability for being Jadewell's President and General Manager based on Sections 52 (A), 253 (d), and 256 of the NIRC of 1997, as amended. Thus, being the president and general manager of Jadewell, the Court En Banc finds that "he was charged with the management of the company, set policies for the achievement of its goal and provided directions for the business to ensure its viability and growth. This admission highlighted the fact that, as the chief executive, he was the one on top of the operation overseeing if not directly controlling its daily business concerns. It is, therefore, incredible that he was not aware of the filing of the subject fallacious ITRs of Jadewell. Note that the filing of ITR is a significant incident of any business operation and one that does not merely involve filing of documents with the BIR but also shelling out some amounts which if indecent could possibly deplete corporate resources or even cause a closeshop. Precisely, it places top management of any business enterprise in animation during the tax period. As earlier stated, accused was not only the president but also the general manager of Jadewell, hence, the possibility of not knowing the filing of the fallacious ITRs is nil."

While I agree that there is, indeed, violation of Section 255 of the NIRC, as amended, by Jadewell's failure to supply correct and accurate information. I, however, am not convinced that criminal liability should be imputed to petitioner-accused.

Section 52 (A) of the NIRC of 1997, as amended, provides that:

> "**SEC. 52. Corporation Returns. –**
>
> (A) Requirements. - Every corporation subject to the tax herein imposed, except foreign corporations not engaged in trade or business in the Philippines, shall render, in duplicate, a true and accurate quarterly income tax return and final or adjustment return in accordance with the provisions of Chapter XII of this Title.

> The return shall be filed by the president, vice-president **or** other principal officer, **and** shall be sworn to by such officer **and** by the treasurer or assistant treasurer.
>
> xxx xxx xxx." *(Emphases Supplied)*

Section 253 (d) of the same Code provides that:

> "**SEC. 253. General Provisions. –**
>
> xxx xxx xxx
>
> (d) In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and the employees **responsible for the violation**." *(Emphasis Supplied)*

And, Section 256 of the same Code provides that:

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

As can be gleaned from the foregoing, the criminal liability is imposed upon the officer responsible for the act or omission penalized under the Tax Code. Section 52 (A) above merely prescribes the responsibility of who should file a corporate tax return. Perusal of the said section reveals that the obligation to file a tax return is not limited to the President, as qualified by the conjunction "or"; the tax return may also be filed and sworn to by other principal officers. In fact, such officer and treasurer or assistant treasurer are burdened under the said provision to swear to the filing of the tax return. Furthermore, Section 253 (d) qualifies that the penalty shall be imposed upon the person, responsible for the violation. This interpretation is supported by Section 256, which placed the term "responsible" ahead of the enumerated persons, to bear emphasis that only the accountable person who did the act or omission shall be held liable. As Mr. Justice Felix Frankfurter reminds us, "One more caution is relevant when one is admonished to listen attentively to what a statute says. One must also listen attentively to what it does not say."[1]

A corporation has a distinct and separate personality from its officers, the title of Corporate President or General Manager are given to company and organization officials to show what duties and responsibilities they have in the organization, depending on the management structure. Needless to say, due to the function of their work, they have subordinates in charge of overseeing other tasks necessary for the corporation's existence. In the instant case, without any evidence that petitioner-accused had direct hand or connection with the willful failure to supply correct and accurate information in the ITRs for taxable years 2003 and 2004 of Jadewell, petitioner-accused cannot be held criminally liable for the act being penalized.

It is incorrect to hold petitioner-accused criminally liable based simply on the presumption that, being the President and General Manager of Jadewell, "he should, at the very least, knew who was authorized to sign the ITR and other tax filings for his company, x x x.", hence, "the possibility of not knowing the filing of the fallacious ITRs is nil." In fact, there is even no presumption of such nature under the Rules of Court.

Well-settled is the rule in criminal cases that the prosecution has the burden of proof to establish the guilt of the accused beyond reasonable doubt. Considering that the liability in criminal cases amounts to deprivation of liberty, such cannot be based on mere presumption. The rule is clear. The guilt of the accused must be proved beyond reasonable doubt. The prosecution, on its part, must rely on the strength of its own evidence and must not simply depend on the weakness of the defense. The slightest possibility of an innocent man being convicted for an offense he has never committed, let alone when no less than the capital punishment is imposed, would be far more dreadful than letting a guilty person go unpunished for a crime he may have perpetrated.[2]

Anent CTA EB Crim Case No. 023, I concur with the findings of the *ponencia* which affirmed the Court *a quo*, to wit:

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[1] Some Reflections on the Reading of Statute, 47 Column. L. Rev. 527, 536 (1947)
[2] People of the Philippines vs. Gilbert Baulite, et al., G.R. No. 137599, October 8, 2001

> "While it is true that approximations of the alleged income earned by Jadewell for the taxable years 2003 and 2004 were relied upon by the court in finding the accused guilty beyond reasonable doubt, the said computation made by the Revenue Officers involved in the investigation cannot be used as basis to impose civil liabilities prayed for by the prosecution. To reiterate, while an assessment is not required in the prosecution of the criminal case, the final determination of the Commissioner of Internal Revenue as to the tax liability is necessary in order for the Court to rule on the civil liability. However, in this case, the prosecution did not present any assessment by the Commissioner. What were presented were only the estimates and computation made by the Revenue Officer, thus there can be no basis for the civil liability of the accused."

Petitioner People of the Philippines mainly asserts that in criminal cases, tax collection may proceed without assessment since the civil aspect of the case was already deemed instituted the moment the criminal case was filed in court. However, I find the said assertion without merit. The case of *Republic of the Philippines vs. Pedro B. Patanao*[3], is instructive on the matter of instituting civil liability in the criminal prosecution for collection of taxes. Thus:

> "In applying the principle underlying the civil liability of an offender under the Penal Code to a case involving the collection of taxes, the court *a quo* fell into error. The two cases are circumscribed by factual premises which are diametrically opposed to each either, and are founded on entirely different philosophies. Under the Penal Code the civil liability is incurred by reason of the offender's criminal act. Stated differently, the criminal liability gives birth to the civil obligation such that generally, if one is not criminally liable under the Penal Code, he cannot become civilly liable thereunder. The situation under the income tax law is the exact opposite. Civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him. The criminal liability arises upon failure of the debtor to satisfy his civil obligation. The incongruity of the factual premises and foundation principles of the two cases is one of the reasons for not imposing civil indemnity on the criminal infractor of the income tax law. Another reason, of course, is found in the fact that while section 73 of the National Internal Revenue Code has provided the imposition of the penalty of imprisonment or fine, or both, for refusal or neglect to pay income tax or to make a

[3] G.R. No. L-22356, July 21, 1967

> return thereof, it failed to provide the collection of said tax in criminal proceedings. The only civil remedies provided, for the collection of income tax, in Chapters I and II, Title IX of the Code and section 316 thereof, are distraint of goods, chattels, etc. or by judicial action, which remedies are generally exclusive in the absence of a contrary intent from the legislator. (People vs. Arnault, G.R. No. L-4288, November 20, 1952; People vs. Tierra, G.R. Nos. L-17177-17180, December 28, 1964) <u>Considering that the Government cannot seek satisfaction of the taxpayer's civil liability in a criminal proceeding under the tax law or, otherwise stated, since the said civil liability is not deemed included in the criminal action</u>, acquittal of the taxpayer in the criminal proceeding does not necessarily entail exoneration from his liability to pay the taxes. It is error to hold, as the lower court has held, that the judgment in the criminal cases Nos. 2089 and 2090 bars the action in the present case. The acquittal in the said criminal cases cannot operate to discharge defendant appellee from the duty of paying the taxes which the law requires to be paid, since that duty is imposed by statute prior to and independently of any attempts by the taxpayer to evade payment. Said obligation is not a consequence of the felonious acts charged in the criminal proceeding, nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of non-existence of the criminal acts charged. (Castro vs. The Collector of Internal Revenue, G.R. No. L-12174, April 20, 1962)." *(Underscoring Ours)*

In view of the foregoing, I vote to **GRANT** the Petition for Review in CTA EB Crim Case No. 022, which in effect ACQUITS the accused for failure of the prosecution to prove his guilt beyond reasonable doubt; and further vote to **DENY** the Petition for Review in CTA EB Crim Case No. 023, finding no reversible error in the CTA Third Division's Decision dated June 27, 2012 and Resolution dated November 7, 2012, with regard to the determination of accused's civil liability.

CAESAR A. CASANOVA
Associate Justice