REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES, *Petitioner,*	**CTA *EB* CRIM. NO. 044** (CTA Crim. Case No. O-304)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
BIENVENIDO S. DIMSON and GILBERT P. DIMSON (DIMSON MANILA, INC.), *Respondents.*	Promulgated: JUL 09 2019 3:30pm

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D E C I S I O N

MANAHAN, J.:

Before the Court of Tax Appeals *En Banc* is the instant Petition for Review[1] filed on November 6, 2017, seeking the reversal of the Decision dated May 17, 2017 and the Resolution dated October 3, 2017, promulgated by the First Division of this Court (Court in Division) in CTA Crim Case Case No.O-304 entitled, *"People of the Philippines vs. Bienvenido S. Dimson and*

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[1] EB Docket, pp. 5-20.

Gilbert P. Dimson, Dimson (Manila), Inc., the dispositive portions of which read as follows:

Decision dated May 17, 2017

> "**WHEREFORE,** in light of the foregoing considerations, accused **BIENVENIDO S. DIMSON** is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt.
>
> Insofar as the case against the accused **GILBERT P. DIMSON,** who, to date, remains at large, let the same be sent to the **ARCHIVES**, to be revived upon his arrest."
>
> Further, the Assessment Notice No. 32-2002 dated October 19, 2005, the Demand Letter No. 32-2002 dated October 19, 2005, and the Final Notice Before Seizure dated May 3, 2006 are declared **VOID.**
>
> **SO ORDERED."**

Resolution dated October 3, 2017

> "**WHEREFORE**, in light of the foregoing considerations, plaintiff's *Motion for Reconsideration on the Civil Aspect of the Decision* is **DENIED** for lack of merit."
>
> **SO ORDERED."**

THE FACTS

Accused Bienvenido S. Dimson and Gilbert P. Dimson were charged with violation of Section 255 in relation to Section 253 (d) and 256 of the 1997 National Internal Revenue Code (NIRC), as amended, under the Information filed on November 5, 2012, the accusatory portions of which read:

> "That on or about October 19, 2005, in the City of Manila, Philippines, the said accused, Bienvenido S. Dimson, as President and General Manager and co-accused Gilbert P. Dimson as Vice-President/Treasurer of DIMSON (Manila) Inc., located at 1599 A. Maceda St., Sampaloc, this City, did then and

> there willfully and unlawfully fails (sic), refuses (sic) and neglects (sic), as they still fails (sic), refuses (sic) and neglects (sic) to pay their deficiency internal revenue tax liabilities for the year 2002 in the amount of P56,235,758.61 under Assessment Notices No. 32-2002, despite notice and service of said assessment, without formally protesting against or appealing the same and repeated demands made upon them to do so, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount of P56,235,758.61, Philippine Currency.
>
> Contrary to law."

In a Resolution dated November 19, 2012, the Court in Division found the existence of probable cause for the issuance of the warrant of arrest in CTA Crim. Case No. O-304.[2] Thereafter, accused Bienvenido Dimson voluntarily appeared before the Court in Division on January 29, 2013 and posted the required bail bond of Php 24,000 for his provisional liberty. Consequently, the Warrant of Arrest issued against accused Bienvenido S. Dimson was lifted and recalled.[3]

With regard to the Warrant of Arrest issued against Gilbert P. Dimson, it was not served within the prescribed period because he could not be located in the given address, therefore the Court ordered the issuance of an alias Warrant of Arrest in a Resolution dated February 5, 2013.

Meanwhile, on February 1, 2013, accused Bienvenido S. Dimson filed a *Motion for Reinvestigation* requesting that the case be remanded to the Office of the City Prosecutor of Manila for reinvestigation and filed his counter-affidavit.[4]

Plaintiff filed its *Comment/Opposition* to the accused's *Motion for Reinvestigation* on March 8, 2013.

In a Resolution dated March 22, 2013, the Court denied accused's *Motion for Reinvestigation* and re-scheduled the arraignment of accused Bienvenido Dimson on April 17, 2013.

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[2] Page 27, Court Docket, Volume I.
[3] Court Resolution dated January 31, 2013, Court Docket, page 44.
[4] Pages. 45-47, Court Docket, Volume I.

The accused Bienvenido S. Dimson, however, did not appear during the scheduled arraignment on April 17, 2013 so the Court reset it to June 5, 2013.

During the arraignment on June 5, 2013, accused Binevenido S. Dimson, with the assistance of his counsel *de parte*, entered a plea of "Not Guilty" to the crime charged. The preliminary conference was then set on June 26, 2013.

Pre-trial was held on October 23, 2013.

On November 7, 2013, the parties submitted their Joint Stipulation of Facts and Issues including therein the available trial dates.

Thereafter, on January 7, 2014, the Court issued a Pre-Trial Order[5] and the pre-trial was deemed terminated.

In the Pre-Trial Order, the parties stipulated on the following facts:

1. The identity of the accused Bienvenido S. Dimson as the same person charged in the Information;

2. The jurisdiction of the Honorable Court over the case;

3. Accused Bienvenido S. Dimson is the President of Dimson Manila, Inc. (DMI);

4. Dimson Manila, Inc. filed its Annual Income Tax Return (ITR) for taxable year 2002 on April 15, 2003 at Revenue District Office No. 32, Bureau of Internal Revenue-Manila; and

5. Dimson Manila, Inc. caused the amendment of its ITR for taxable year 2002 and filed an Amended Annual Income Tax Return on May 20, 2003 at Revenue District Office No. 32, Bureau of Internal Revenue-Manila.

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[5] Court Docket, Volume I, pp. 463-473.

Trial proceeded and to prove its case, the prosecution presented the following witnesses:

1. Ms. Remedios P. del Rosario of the Bureau of Internal Revenue (BIR) assigned at the Revenue District Office (RDO) No. 39, South-Quezon City.

2. Mr. Robert Inocando, Group Supervisor of RDO 52, Parañaque City, Revenue Region No. 8, BIR.

3. Ms. Myla Gulle, Revenue Officer III- Reviewer at the Assessment Division, Revenue Region No. 6, BIR-Manila.

4. Ms. Ma. Celerina Jugo, Administrative Assistant III assigned at the Assessment Division, Revenue Region No. 6, BIR Manila.

5. Mr. Armando Macatangay, mailing custodian of the Administrative Division of Revenue Region No. 6, BIR-Manila.

6. Ms. Felicidad dela Rosa, Revenue Officer-Seizure Agent assigned at the Collection Division of Revenue Region No. 6, BIR Manila.

7. Atty. Gerlo Cacatian, Attorney IV assigned at the Legal Division, Revenue Region No. 5, BIR- Caloocan.

The prosecution filed its Formal Offer of Documentary Exhibits on February 20, 2015 offering in evidence Exhibits "P" to "P-37 inclusive of sub-markings[6] which were admitted by the court in a Resolution dated May 26, 2015.[7]

On the other hand, accused presented the following witnesses:

1. Ms. Amelia B. Lazaro, accounting manager of R-II Builders;

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[6] Court Docket Volume II, pp.63-64.
[7] Court Docket, Volume II, pp. 673-675.

2. Mr. Bienvenido S. Dimson, the accused and engineer and President of Dimson Manila, Inc. (DMI).

Accused Bienvenido S. Dimson filed his Formal Offer of Evidence on January 11, 2016 through registered mail offering in evidence Exhibits "A" to "A-45" inclusive of sub-markings[8] which were admitted by the Court in a Resolution dated March 17, 2016.[9]

The case was submitted for decision on May 20, 2016.

On May 17, 2017, the Court in Division issued the assailed Decision.

On June 1, 2017, petitioner filed a *Motion for Reconsideration on the Civil Aspect of the Decision* praying for the reconsideration of the civil aspect of the assailed Decision dated May 17, 2017.

On October 3, 2017, the Court issued the assailed Resolution denying the aforesaid motion on the ground that since the deficiency tax assessment was rendered void, it follows that there could be no obligation or requirement to pay the alleged deficiency tax.

On November 6, 2017, petitioner filed the instant Petition for Review with the Court *En Banc.*

In a Resolution dated November 29, 2017, respondents were ordered to file their Comment within ten (10) days from notice.

On February 7, 2018, accused Bienvenido S. Dimson filed his *Comment/Opposition* and sought for relief with the Court *En Banc* to dismiss the Petition for Review and affirm the decision promulgated by the First Division.

Thereafter, both parties were ordered to file their respective Memoranda.

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[8] Court Docket, Volume II, pp. 802-823.
[9] Court Docket, Volume II, pp. 880-881.

Petitioner filed its Memorandum on June 6, 2018.

In the Records Verification Report of the Judicial Records Division of the Court dated June 19, 2018, it was stated that accused failed to file his Memorandum within the time prescribed by the Court. [10]

In a Resolution dated July 19, 2018, this case was deemed submitted for decision.[11]

ISSUE

Whether or not the Court in Division erred in holding that accused's supposed civil liability had been extinguished by his acquittal and that there is no final or valid assessment from which the accused is required to pay.

Petitioner's Arguments

Petitioner avers that the Final Assessment Notice (FAN) issued against the accused is valid and has become final, executory and demandable for failure of the latter to file a protest within the prescribed period provided by law. Petitioner insists that, even granting that the FAN is void, such may still become final and executory if no administrative protest is filed within thirty (30) days from receipt of the assessments. It further contends that the tax liabilities of DMI have long become overdue and delinquent and therefore incontrovertible. Petitioner simplified its theory by stating that this is not a case of a disputed assessment but a collection case of delinquent deficiency taxes for taxable year 2002 for failure of the respondent to file a protest.

Petitioner also assails the Decision dated May 17, 2017 for resolving issues that were not raised by both parties. It calls the attention of the Court on the issue jointly stipulated by both parties and which was duly approved by the Court, i.e., whether or not the accused Bienvenido S. Dimson is guilty of a violation of Section 255 in relation to Sections 253 (d) and 256 of the Tax Reform Act of 1997, as amended. According to petitioner, the Court should have focused on the final and executory FAN and

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[10] EB Docket, page 115.
[11] EB Docket, page 117.

the BIR's right to collect deficiency taxes instead of antecedent facts prior to the attainment of finality of the FAN like the issuance and service of the PAN. It therefore requests the Court *En Banc* to reverse the ruling of the Court in Division and order the accused to pay the internal revenue taxes in the total amount of Php56,235,758.61 plus penalties, surcharges and interest.

Accused's Arguments

Accused Bienvenido S. Dimson counter-argues that the Court in Division correctly ruled that a void assessment bears no valid fruit, hence can never attain finality. He avers that he never received the FAN and Preliminary Assessment Notice (PAN) as well as other notices for his alleged deficiency taxes for taxable year 2002 thus violating his right to due process. He further alleges that the non-receipt of these official notices was because they were sent to a wrong address thereby depriving him of the opportunity to dispute the alleged findings of tax deficiencies which is a violation of his right to due process.

Accused maintains that the Court in Division properly delved into the issue of the delivery and receipt of the PAN because the issuance of the latter is mandatory in the determination of the existence of the elements of the crime charged under Section 255 of the 1997 National Internal Revenue Code (NIRC). Accused contends that one basic element of the aforesaid crime is that the taxpayer is required under the 1997 NIRC to pay a tax hence knowledge of the said tax deficiencies by way of valid notices is essential. Accused firmly asserts that the PAN and the FAN were sent to the previous address of DMI hence they were never received by accused Bienvenido S. Dimson making such notices void and without any effect.

Rooted in the argument that it never received the PAN and the FAN, accused additionally submits that the BIR's right to assess DMI for taxable year 2002 has already prescribed.

RULING OF THE COURT EN BANC

This Court is of the view that the arguments raised by petitioner in its Petition for Review have been carefully discussed and substantially resolved by the Court in Division in its May 17, 2017 Decision and October 3, 2017 Resolution.

In ruling that there was no final, demandable and executory assessment which could be a valid basis for an obligation to pay deficiency taxes, the Court in Division held:

"Based on the above-quoted provisions, the following elements must be established by the prosecution to secure the conviction of the accused in the instant criminal case, to wit:

1. That a corporate taxpayer is required under the NIRC of 1997 to pay any tax, make a return, keep any record, or supply correct and accurate information; and

2. That the corporate taxpayer failed to pay the required tax, make a return or keep the required record of supply the 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; and

3. That accused, as the employee responsible for the violation, willfully failed 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 times or times required by law or rules and regulations.

A careful reading of the foregoing would reveal that the second and third elements are dependent on the first element. Specifically, the showing of the failure to pay the pertinent tax and the willfulness of such failure rest on whether the corporate taxpayer is required to pay the said tax in the first place. Thus, it is only when the first element is established that the remaining elements must be determined to exist. In other words, there can be no willful failure to pay a tax if there is no requirement to pay the same.

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In this case, there is no showing that the subject PAN was received by DMI or his duly authorized representative. In fact the prosecution witnesses are oblivious as to whether the said PAN was received by DMI after it was prepared, xxx xxx

xxx xxx xxx

Thus there is no proof that the subject PAN was received by DMI. And even granting that We have the tendency to believe the testimony of Myla O. Gulle that after she prepared the said PAN, it was subsequently transmitted to the Administrative Division for mailing, the same is of no moment.

xxx xxx xxx

Thus, since the prosecution failed to present the registry receipt issued by the Bureau of Posts or the Registry return card in connection with the mailing of the subject PAN, or a Bureau of Posts Certification to the effect that the same PAN was mailed, there can be no other conclusion than that the said PAN was not mailed and hence, has not been received by DMI.

Considering that the prosecution failed to prove that the PAN was indeed served to the taxpayer either personally or through registered mail, the subject deficiency tax assessment must be declared void in accordance with the doctrine laid out in the aforequoted case of Commissioner of Internal Revenue vs. Metro Superama, Inc.

Correspondingly, it becomes futile to discuss whether DMI had actually received the FAN and the FLD which were allegedly covered by Registry Receipt No. 218191, because a void assessment bears no valid fruit.

Since the corporate taxpayer, i.e., DMI, cannot be treated as one required to pay tax as there is no valid assessment to speak of, the first element of the crime charged is not present, and there is no valid assessment to speak of, the first element of the crime charged is not present, and there is no basis to sustain the charges against the accused Bienvenido S. Dimson. As such, it becomes unnecessary to discuss the existence of the second and third elements of the crime charged." (emphasis supplied)

In resolving petitioner's *Motion for Reconsideration on the Civil Aspect of the Decision*[12], the Court in Division ruled, thus:

"Considering that the prosecution failed to prove that the PAN was indeed served to the taxpayer, either personally or through registered mail, the subject deficiency tax assessment is therefore void, in accordance with the doctrine laid down in the aforequoted case.

Correspondingly, considering that a void assessment bears no valid fruit, the subject assessment cannot attain finality, and thus, the corporate taxpayer cannot be held civilly liable therefor." (emphasis supplied)

A careful review of the records of this case reveals that the prosecution failed to prove the actual receipt of the PAN and the FAN by the accused. The transmittal of the PAN to the correct

[12] Court's Resolution dated October 3, 2017.

address was not established during trial and the revenue officer who prepared the PAN, Ms. Myla Gulle, was not even sure if the PAN was actually sent to the office of the accused, we quote portions of the assailed Decision:

> The third witness, Myla Gulle, is presently designated as Revenue Officer III-Reviewer at the Assessment Division, Revenue Region No. 6, BIR-Manila.
>
> She testified that she reviewed the Memorandum Report of Investigation and Post Reporting Notice with attached computation of deficiency tax prepared by RO Robert Inocando and the tax records of DMI for TY 2002. She found that DMI had income tax deficiency in the amount of P56,235,758.61; thus, she prepared/accomplished a Revenue Officer's Audit Report on income tax (BIR Form No. 0500). She likewise prepared a Preliminary Assessment Notice (PAN) with attached Details of Discrepancies which was transmitted by her office to the Administrative Division, BIR Manila for mailing to DMI.
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> **On cross-examination, she admitted that she prepared the PAN on the basis of the Post Reporting Notice and the Memorandum prepared by RO Inocando; that she had no personal knowledge as to the aforesaid Post Reporting Notice and Memorandum as well as if the PAN was sent to DMI that as regards the PAN, there is no proof of receipt of such document.**
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> Both on re-direct and re-cross examination, she confirmed that the Billing Section transmitted the PAN from Assessment Division to the Administrative Division after she prepared the same. **In other words, she had no personal knowledge if the PAN was really sent to DMI."**

As regards the receipt of the FAN by the accused, records also show that this fact was also not properly proven or established by the prosecution and we quote portions of the assailed Decision:

> The fourth witness, Ma. Celerina Jugo, is presently an Administrative Assistant III assigned at the Assessment Division, Revenue Region No. 6, BIR-Manila.
>
> According to her, she prepared the FAN and the Formal Letter of Demand (FLD) dated October 19, 2005 against DMI. Thereafter, she submitted the said documents for approval to Ma. Paz Arcilla-Chief of the Billing Section, Enriqueta Rodelles – Chief of the Assessment Division, and Regional Director Alfredo V. Misajon, all of whom approved the said FAN and FLD. Afterwards, she

> prepared a transmittal slip to forward the FAN to the Administrative Division for the purpose of mailing to DMI.
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> xxx xxx xxx
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> On re-cross examination, she confirmed that the FAN being dated on the day it was supposed to be mailed was based on the instruction of her Supervisor; and the signature on the transmittal slip was not hers but of her Supervisor. **She also did not know if the taxpayer actually received the FAN.** (emphasis supplied).

We also quote below the testimony of the mailing custodian of the Administrative Division of Revenue Region No. 6, BIR-Manila, thus:

> "The fifth witness, Armando Macatangay, is the mailing custodian of the Administrative Division of Revenue Region No. 6, BIR-Manila.
>
> According to him, he was informed by the Legal Division that he would be testifying about the mailing of the FAN on income tax and demand letter for TY 2002 issued by the BIR against DMI. As such, he checked the Assessment Division's transmittal slip of the FAN and FLD issued to DMI, which is being kept at the Records Section of the Administrative Division, Revenue Region No. 6, BIR-Manila. He found out that the FAN and the FLD were mailed through registered mail on October 18, 2005 covered by Registry Receipt No. 218191 of the Manila Central Post Office.
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> xxx xxx xxx
>
> On cross-examination, he admitted that he served the Final Notice and the FAN through registered mail and that the address was given to him by the Assessment Division. **Allegedly, he had no personal knowledge if the stated address was indeed the address of DMI**. He likewise did not see the persons he was serving with notices, because it was only served through registered mail. He did not have any specific instructions when the mail matters should be sent; however, he would usually receive the notices from the Assessment Division in the morning and would send them in the afternoon. He accidentally included the subject FAN with those mail matters for mailing on October 18, 2005. **According to him, there is usually a return card attached to the documents, but in this instance, he did not receive any return card. As such, he did not know if the notices were really received by the addressee and he had no personal knowledge whether it was returned to sender.**" (emphasis supplied)

The Court in Division then correctly concluded that there is no proof that the subject PAN was received by DMI.

The Supreme Court, in the case of *Barcelon Roxas Securities, Inc. (now known as UBP Securities, Inc.)* [13] *vs. Commissioner of Internal Revenue,* emphasized the burden of proof and the documents to prove the fact of receipt of official notices, and we quote:

> "Jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The *onus probandi* was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail.
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> xxx xxx xxx
>
> What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized representative. And if said documents cannot be located, respondent at the very least, should have submitted to the Court a certification issued by the Bureau of Posts and other pertinent document which is executed with the intervention of the Bureau of Posts." xxx xxx xxx

By failing to establish receipt of the PAN and the FAN, petitioner was not able to establish that accused was informed in writing of the law and the facts on which the assessments were made which is an essential element of the latter's right to due process and also an essential element in the crime charged against him.

With regard to the assailed Resolution of the Court dated October 3, 2017, we subscribe to the ruling of the Court in Division that accused Bienvenido S. Dimson's civil liability was extinguished by his acquittal hence the government can no longer collect the alleged deficiency taxes due from him, and we quote:

> "In this case, the situation calls for the issuance of a PAN against DMI. However, plaintiff miserably failed to adduce proof that the said corporate taxpayer was notified of the PAN. The testimonial evidence presented by the prosecution, only showed that it was

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[13] G.R. No. 157064, August 7, 2006.

> prepared by Myla O. Gulle and that she transmitted it for mailing to the Administrative Division. Ms. Gulle admitted that she had no personal knowledge if the PAN was indeed sent to DMI and received by the latter.
>
> Considering that the prosecution failed to prove that the PAN was indeed served to the taxpayer, either personally or through registered mail, the subject deficiency tax assessment is therefore void, in accordance with the doctrine laid down in the aforequoted case.
>
> **Correspondingly, considering that a void assessment bears no valid fruit, the subject assessment cannot attain finality and thus, the corporate taxpayer cannot be held civilly liable therefor."** (emphasis supplied)

Rule 133, Section 2 of the Revised Rules of Court provides for the degree of proof in criminal cases, thus:

> **"Rule 133**
>
> Section 2. *Proof beyond reasonable doubt.* – In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such proof as, excluding the possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind."

The Supreme Court in the case of *Capistrano Daayata, et.al., vs. People of the Philippines*[14] elaborated on the concept of proof beyond reasonable doubt and the quantum of evidence necessary to prove guilt, and we quote:

> "Proof beyond reasonable doubt charges the prosecution with the immense responsibility of establishing moral certainty. The prosecution's case must rise on its own merits, not merely on relative strength as against that of the defense. **Should the prosecution fail to discharge its burden, acquittal must follow as a matter of course."** (emphasis supplied)

It is clear from the records of this case that petitioner failed to sufficiently establish its case against respondent thus petitioner's appeal on the civil aspect of the case must likewise fail. It is well settled that the filing of a criminal action

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[14] G.R. No.205745, March 8, 2017.

necessarily carries with it the filing of the civil action.[15] In criminal cases involving the non-payment of taxes, e.g., tax evasion, what is deemed instituted with the criminal action is the action to recover civil liability from the crime, i.e., collection of alleged unpaid taxes. It therefore follows that exemption from criminal liability implies exemption from civil liability.[16] We therefore find that the Court in Division correctly denied petitioner's *Motion for Reconsideration on the Civil Aspect of the Decision.*

As regards the contention of petitioner that the Court in Division should have focused on the issues jointly stipulated by the parties, i.e., the final and executory FAN and the BIR's right to collect deficiency taxes, we find this bereft of merit because it is plain from the relevant provisions of the Rules of Court that issues related to or dependent on an assigned error may be passed upon by the appellate court.[17]

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision dated November 6, 2017 and Resolution dated October 3, 2017 are hereby **AFFIRMED.**

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

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15 **Rule 111 (Revised Rules of Court)**
Section 1. *Institution of criminal and civil actions.* – (a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action."

Rule 9 (Revised Rules of the Court of Tax Appeals)

Section 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 and penalties shall be deemed instituted in the same proceeding. xxx xxx xxx

16 Lucio Francisco vs. Crispulo Onrubia, G.R. No. 22063, September 30, 1924.

17 **Rule 51**
Section 8. *Questions that may be decided.* – No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered **unless stated in the assignment of errors, or closely related to or dependent on an assigned error** and properly argued in the brief, save as the court may pass upon plain errors and clerical errors. (emphasis supplied).

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

(with Separate Concurring Opinion)
MA. BELEN M. RINGPIS -LIBAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

PEOPLE OF THE PHILIPPINES,
Petitioner,

- versus -

BIENVENIDO S. DIMSON and GILBERT P. DIMSON (DIMSON MANILA, INC.),
Respondents.

CTA EB Crim No. 044
(CTA Crim Case No. O-304)

Present:

DEL ROSARIO, *PJ*,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:

JUL 09 2019 3:30 pm

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SEPARATE CONCURRING OPINION

RINGPIS-LIBAN, *J.*:

With due respect to my esteemed colleague, Associate Justice Manahan, I concur with the dispositive portion of the *ponencia* which affirmed the assailed Decision dated May 17, 2017 and the Resolution dated October 3, 2017 in CTA Crim. Case No. O-304. The assailed Decision acquitted accused Bienvenido S. Dimson for failure of the prosecution to prove his guilt beyond reasonable doubt; archived Gilbert P. Dimson's case, to be revived upon arrest; and declared the Final Assessment Notice (FAN), Final Letter of Demand (FLD), and the Final Notice Before Seizure all void for lack of due process. I likewise concur with the finding of the *ponencia* upholding the Court in Division's denial of the Motion for Reconsideration of the civil aspect of the Decision.

This Concurring Opinion serves merely to stress the difference between civil liability arising from crime as opposed to civil liability arising from obligation which the undersigned discussed in *People vs. Ligot*, CTA Crim. Case Nos. O-241 to O-244.[1]

Rule 9, Section 11 of A.M. No. 05-11-07-CTA,[2] otherwise known as the Revised Rules of the Court of Tax Appeals (RRCTA), states that:

> 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 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.

In *Macario Lim Gaw, Jr. v. CIR*[3], the Supreme Court had occasion to discuss what encompasses the civil action that is jointly instituted with a criminal action, thus:

> "Rule 111, Section 1(a)[4] of the Rules of Court provides that what is deemed instituted with the criminal action is only the action to recover civil liability arising from the crime.[5] **Civil liability arising from a different source of obligation, such as when the obligation is created by law, such civil liability is not deemed instituted with the criminal action.**
>
> It is well-settled that the taxpayer's obligation to pay the tax is an obligation that is created by law and does not arise from the offense of tax evasion, as such, the same is not deemed instituted in the criminal case.[6]
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> In the case of *Republic of the Philippines v. Patanao,*[7] We held that:

[1] Promulgated January 8, 2019.
[2] REVISED RULES OF THE COURT OF TAX APPEALS.
[3] G.R. No. 222837, July 23, 2018.
[4] Sec. 1. *Institution of criminal and civil actions.* - (a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action. (Emphasis ours)
[5] Casupanan v. Laroya, 436 Phil. 582, 595 (2002).
[6] Proton Pilipinas Corp. v. Republic of the Phils., 535 Phil. 521, 533 (2006).
[7] 127 Phil. 105 (1967).

> **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. x x x 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, **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.** x x x.[8](Citations omitted and emphasis ours)

Further, in a more recent case of *Proton Pilipinas Corp. v. Republic of the Phils.*,[9] We ruled that:

> While it is true that according to the aforesaid Section 4, of Republic Act No. 8249, the institution of the criminal action automatically carries with it the institution of the civil action for the recovery of civil liability, however, in the case at bar, **the civil case for the collection of unpaid customs duties and taxes cannot be simultaneously instituted and determined in the same proceedings as the criminal cases before the Sandiganbayan**, as it cannot be made the civil aspect of the criminal cases

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[8] *Id.* at 108-109.
[9] 535 Phil. 521 (2006).

> filed before it. It should be borne in mind that the tax and the obligation to pay the same are all created by statute; so are its collection and payment governed by statute. The payment of taxes is a duty which the law requires to be paid. **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.** Hence, the payment and collection of customs duties and taxes in itself creates civil liability on the part of the taxpayer. Such 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.[10]" *(Emphasis supplied aside from those in the original)*

As the Supreme Court reminds us in *Lim Gaw*, what is deemed instituted with the criminal action is only the government's recovery of the taxes and penalties relative to the criminal case. **The remedy of the taxpayer to appeal the disputed assessment is not deemed instituted with the criminal case.** To rule otherwise would be to render nugatory the procedure in assailing the tax deficiency assessment. The tax evasion case filed by the government against the erring taxpayer has, for its purpose, the imposition of criminal liability on the latter.[11]

Also, in the *Lim Gaw* case, the Supreme Court clarified that while the tax evasion case is pending, the BIR is not precluded from issuing an FDDA. It is to prevent the assessment from becoming final, executory and demandable, that Section 9 of R.A. No. 9282 gives the taxpayer the remedy of filing a case with the CTA, a Petition for Review, within 30 days from receipt of the decision or the inaction of the respondent. This, in fact, has been the argument of petitioner all along -- that the FAN has become final, executory, and demandable for failure of the accused to file a protest within the prescribed period provided by law.

At the very least, accused would have had actual knowledge of the existence of the PAN/FAN if not during his arraignment, then by virtue of the Pre-Trial Order issued by the Court in Division. The records show, however, that the FAN/FLD was not protested by the accused despite having actual knowledge thereof, as discussed above, rendering the assessments final and executory.

However, in light of the judicial finding in the *ponencia* that the petitioner was unable to establish receipt of the PAN and the FAN by the accused thereby declaring the assessments void due to violation of the latter's right to due process,

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[10] *Id.* at 532-533.
[11] *Macario Lim Gaw, Jr. v. CIR*, G.R. No. 222837, July 23, 2018.

any claim that the very same assessments have been rendered final and executory falls apart since a void assessment can bear no valid fruit.

It is for the reasons above that I concur with the *ponencia.*

MA. BELEN M. RINGPIS-LIBAN
Associate Justice