REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA Crim. Case No. O-263

- versus-

Members:
Castañeda,Jr.,*Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

OFELIA B. MIRANDILLA,
Accused.

Promulgated:
NOV 12 2015 9:00 a.m.

x- x

RESOLUTION

Accused Ofelia B. Mirandilla filed, with leave of Court, her *Demurrer to Evidence*[1], on September 11, 2015. Plaintiff, despite notice, failed to file comment.

Accused is charged for violation of Section 56(b), Section 106(a) and Section 255 in relation to Section 27 and Section 108, all of the 1997 National Internal Revenue Code, as amended. The Amended Information reads as follows:

> "That on or about the 13th day of May 2009 and for sometime prior thereto and persisting up to the present, in Quezon City, Philippines, the above-named accused, did then and there willfully and unlawfully fail, neglect and still fails and refuses and neglects to pay the Deficiency Income Tax in the amount of P522,694.80, Deficiency Value Added Tax of P627,800.00 of JAPTIN TRADING AND CONSTRUCTION, exclusive of interest and surcharges of P814,935.78 or a total of P1,995,430.68 computed as of May 13, 2009 covering taxable year 2005, under Assessment Notice No. FO8-040-11 dated December 10, 2008 which she failed and refused to pay the aforesaid deficiency Income Tax and Value Added Tax for taxable year 2005 resulting in the deprivation of revenues for the Government and/or the

[1] Docket, pp. 466-481.

BUREAU OF INTERNAL REVENUE herein represented by ATTY. PHILIP A. MAYO in the amount aforementioned."[2]

After presentation and formal offer of prosecution's evidence, the Court resolved as follows:

> "xxx, this Court hereby ADMITS Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-11-A", "P-11-B", "P-12", "P-13", "P-14", "P-14-A", "P-15", "P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-22", "P-22-A", "P-23", "P-24", "P-25", "P-27", "P-27-A", "P-28", and "P-28-A", subject to this Court's final evaluation and/or appreciation of their purposes, materiality, relevance, and probative value to the issues involves in this case."[3]

On the other hand, the Court denied the following[4]:

a. Exhibit "P-23" *Preliminary Assessment Notice dated October 29, 2010* – for failure of the actual exhibit to correspond to the description in the Formal Offer of Evidence;

b. Exhibits "P-26" and "P-26-A" *Judicial Affidavit of Glenda Ann A. Salvador and her signature* – for not being found in the records.

Accused argues that the prosecution failed to prove her guilt beyond reasonable doubt because the due process requirements in the issuance of deficiency tax assessments have not been strictly complied with.[5] Accused reiterates that she never received any assessments for her income and value-added tax deficiencies from the Bureau of Internal Revenue, nor did she receive any subpoena from the Office of the City Prosecutor of Quezon City during the preliminary investigation of this case.[6]

Accused argues that the Preliminary Assessment Notice, admitted into evidence as Exhibit "P-20", fails to inform the accused of the details of any income tax and value-added tax deficiencies and of the facts and the law, rules and regulations

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[2] Docket, p. 109.
[3] Docket, p. 460.
[4] Docket, p. 461.
[5] Docket, p. 466.
[6] *Id.*

on which the proposed assessment is based.[7] Further, accused argues that the evidence and testimony of prosecution's witnesses failed to prove that accused received the Preliminary Assessment Notice, Final Assessment Notice, and the Final Letter of Demand.[8]

The prosecution failed to file its Comment/Objection to accused's Demurrer to Evidence. The Court shall now resolve accused's Demurrer to Evidence.

A demurrer to evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.[9]

Herein accused is being charged for willful failure to pay tax under Section 255 of the National Internal Revenue Code of 1997 (1997 NIRC), as amended, in relation to other provisions of the same Code. Section 255 provides:

> "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 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." (*Emphasis ours*)

The instant case involves willful failure to pay deficiency income tax and value added tax for taxable year 2005 arising

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[7] Docket, p. 471.
[8] Docket, p. 476.
[9] *Gutib vs. Court of Appeals*, G.R. No. 131209, August 13, 1999.

from an assessment notice as stated in the Amended Information, *to wit*:

> "....., did then and there willfully and unlawfully fail, neglect and still fails and refuses and neglects to pay the Deficiency Income Tax in the amount of P522,694.80, Deficiency Value Added Tax of P627,800.00 of JAPTIN TRADING & CONSTRUCTION, ... computed as of May 13, 2009 covering taxable year 2005, **under Assessment Notice No. FO8-040-11 dated December 10, 2008** xxx" (*Emphasis ours*)

Considering the alleged deficiency income and value-added tax arose from an assessment, as stated in the Information, it becomes necessary for the prosecution to prove that there was a valid assessment against accused. Resolving this issue will likewise enable the prosecution to prove the required element of "willfulness" in the instant criminal prosecution.[10]

Section 228 of the 1997 NIRC, as amended, in relation to Section 3 of Revenue Regulations No. 12-99, provides the due process requirements for an assessment. Section 228 states:

> "Sec. 228. Protesting of Assessment. – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx
>
> xxx
>
> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> xxx"

In the case of *Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue*[11], the Supreme Court held that it is a requirement of due process that the taxpayer must actually receive the assessment, *to wit*:

> "Respondent argues that an assessment is deemed made for the purpose of giving effect to such assessment when the notice is released, mailed or sent to the taxpayer to effectuate the assessment, and there is no legal requirement

[10] *People of the Philippines vs. Typingco*, CTA Crim. Case No. O-114, May 16, 2012.
[11] G.R. No. 155541, January 27, 2004.

that the taxpayer actually receive said notice xxx Although there is no specific requirement that the taxpayer should receive the notice within the said period, due process requires at the very least that such notice actually be received." In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*, we had occasion to say:

> An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that **it must be served on and received by the taxpayer**.
>
> xxx
>
> It appearing that the person liable for the payment of the tax did not receive the assessment, the assessment could not become final and executory. (*citations omitted; underscoring ours*)

In the instant case, the prosecution submitted into evidence the Pre-Assessment Notice dated May 5, 2008 (Exhibit "P-20"), Final Assessment Notice for Deficiency Income and Value-added Taxes (Exhibits "P-1" and "P-2"), and Formal Letter of Demand (Exhibit "P-3").[12] The Preliminary Assessment Notice (Exhibit "P-23") was denied admission.[13]

Prosecution submitted into evidence Registry Receipt No. 3800 (Exhibit "P-21") to prove that the Pre- Assessment Notice was duly served against accused.[14] Prosecution also submitted into evidence the Transmittal Receipts of the mailing of the Preliminary Assessment Notice, and the Final Assessments and Formal Letter of Demand.[15]

However, while prosecution submitted into evidence the registry receipt for the Pre-Assessment Notice, which was admitted into evidence as Exhibit "P-21", with respect to the Preliminary Assessment Notice, Final Assessments and the Formal Letter of Demand, the Court finds that the transmittal receipts (Exhibits "P-4" and "P-24") presented by prosecution are not sufficient to prove the fact of mailing the same.

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[12] Docket, p. 414.
[13] Docket, p. 461.
[14] Docket, p. 420.
[15] Docket, p. 415.

Further, the evidence and the testimony of prosecution's witnesses were insufficient to prove that accused actually received the pre-assessment notice, preliminary assessment notice, final assessments, and formal letter of demand. Prosecution failed to present and submit into evidence the Registry Return Receipts, and prosecution's witness could not positively testify that the said assessment notices were actually received by the accused.

From the foregoing, considering that prosecution failed to prove the fact of mailing of the preliminary assessment notice, final assessments and formal letter of demand, and no evidence was presented to prove that accused actually received the assessments, the Assessment Notice No. F08-040-11, which is the basis of the criminal complaint and information for willful failure to pay tax under Section 255, cannot be considered as final, demandable and executory which would give rise to an obligation to pay the assessed deficiency taxes on the part of the accused. The subsequent issuance of the Preliminary Collection Letter, First Notice Before Issuance of Warrant of Distraint and Levy, and the issuance of the Warrant of Distraint and/or Levy do not correct infirmities in the due process of the assessment.

There being no final, demandable and executory assessment which the accused is required to pay, said accused cannot be found to have willfully failed to pay the deficiency income tax and value-added taxes alleged in the amended Information.

A person is presumed innocent, unless proven otherwise. Finding that the prosecution's evidence against accused is insufficient to secure a conviction, the demurrer to evidence is granted.

In *People vs. Sandiganbayan*[16], the Supreme Court discussed the effect of granting a demurrer to evidence:

> "The demurrer to evidence in criminal cases, such as the one at bar, is *filed after the prosecution had rested its case*, and when the same is granted, it calls for an appreciation of the evidence adduced by the prosecution and its sufficiency to warrant conviction beyond reasonable doubt, resulting in a *dismissal of the*

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[16] G.R. No. 137707-11, December 17, 2004.

> *case on the merits, tantamount to an acquittal of the accused."*

Verily, the accused is acquitted of the crime charged.

WHEREFORE, premises considered, accused's Demurrer to Evidence is **GRANTED**. Accordingly, Criminal Case No. O-263 is **DISMISSED** for failure of the prosecution to present sufficient evidence to establish the guilt of the accused. Consequently, the accused is **ACQUITTED** of the crime charged.

SO ORDERED.

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

(On Leave)
CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice