22-000204-0013

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. O-904

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

LILIBETH RAMOS ARAGON,
On-Line Janitorial Services No. 134 Kamias Road, East Kamias, Quezon City,
Accused.

NOTICE OF RESOLUTION

To:

PROSECUTOR GENERAL RICHARD ANTHONY D. FADULLON
ASST. STATE PROSECUTOR MOISES YAO ACAYAN
Department of Justice
Padre Faura Street, Ermita
1000 Manila

COMMISSIONER OF INTERNAL REVENUE
Thru: Prosecution Division
Room 704, BIR National Office Building
Sen. Miriam. P. Defensor-Santiago Avenue
Diliman, Quezon City

DIRECTOR
Thru: General Services Division
National Bureau of Investigation
Building C and D, Filinvest Cyberzone
Bay City, Pasay City

PNP CHIEF
Thru: CIDG
Philippine National Police
National Headquarters
Camp BGen Rafael Tagle Crame
EDSA, Quezon City

CHIEF, WARRANT AND SUBPOENA SECTION
Quezon City Police District
Camp BGen Tomas Karingal
Sikatuna Village, Diliman
Quezon City

GREETINGS:

You are hereby notified by these presents that on **January 8, 2025,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **January 8, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

LILIBETH RAMOS ARAGON,
On-Line Janitorial Services
No. 134 Kamias Road, East Kamias, Quezon City (AT-LARGE),
Accused.

CTA Crim. Case No. O-904

For: Violation of Section 255 of the NIRC of 1997, as amended (Willful Failure to Pay Deficiency Value-Added Tax)

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:

JAN 08 2025; 9:30 AM

x- -x

RESOLUTION

In the *Information*[1] filed on May 5, 2022, and the *Amended Information*[2] filed on June 15, 2022, accused Lilibeth Ramos Aragon was charged with a violation of Section 255 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, allegedly committed as follows:

> That on or about 27 April 2017, in Quezon City, and within the jurisdiction of this Honorable Court, accused LILIBETH RAMOS ARAGON, the owner of On-Line Janitorial Services, an entity engaged in the business of providing janitorial services, with Tax Identification Number 175-076-476, and required by law, rules and regulations to file correct and accurate value-added tax returns and to pay the corresponding value-added tax due pursuant to Sections 105 and 106 of the National Internal Revenue Code (NIRC) of 1997, as amended, did then and there, knowingly, willfully and unlawfully fail to pay deficiency value-added tax in the amount of One Million Seven Hundred Four Thousand One

[1] Docket, p. 5–7.
[2] *Id.* at 54–56.

> Hundred Seventy-Seven and 30/100 Pesos (Php1,704,177.30), exclusive of surcharge and interest, for taxable year 2014, despite receipt of the Preliminary Assessment Notice and Formal Letter of Demand, with Details of Discrepancies, issued on 02 March 2017 and 28 March 2017, respectively, including prior and post-notices and demands to pay, the latest of which being in the nature of the Final Notice Before Seizure dated 24 October 2017, and her failure to file protest on said assessment within the prescribed period, thereby resulting to damage and prejudice to the Government of the Republic of the Philippines in the above amount.
>
> **CONTRARY TO LAW.**

In a *Resolution* dated May 20, 2022,[3] the Court found probable cause for the issuance of a Warrant of Arrest against accused, setting the amount of bail at ₱60,000.00. However, as of this date, accused remains at large.

Meanwhile, during a periodic review of active criminal cases and their factual antecedents, the Court noted that plaintiff failed to submit proof of mailing and/or receipt of the Final Assessment Notice and Formal Letter of Demand and (**FAN/FLD**) by accused.

In *Lim, Sr. v. Court of Appeals*[4] (*Lim*), the Supreme Court ruled that the crime of failure to pay taxes is committed only after the taxpayer's ***receipt*** of a final notice and demand for payment, coupled with a willful refusal to pay the taxes due within the allotted period:

> Inasmuch as the final notice and demand for payment of the deficiency taxes was served on petitioners on July 3, 1968, it was only then that the cause of action on the part of the BIR accrued. This is so because **prior to the *receipt* of the letter-assessment, no violation has yet been committed by the taxpayers. The offense was committed only *after receipt* was coupled with the wilful refusal to pay the taxes due within the alloted period.** The two criminal informations, having been filed on June 23, 1970, are well-within the five-year prescriptive period and are not time-barred. (*Emphasis added*)

Thus, the actual receipt of the FAN/FLD is indispensable in cases involving willful failure to pay tax.

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3 *Id.* at 47–50.
4 G.R. Nos. L-48134-37, October 18, 1990 [Per C.J. Fernan, Third Division].

This interpretation was reaffirmed in *Tupaz v. Ulep,*[5] where the Supreme Court held that a violation for willful failure to pay taxes "could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayer."

In the present case, as alleged in the *Complaint-Affidavit,*[6] the FAN/FLD issued on March 28, 2017, was purportedly served on accused via registered mail, and an Affidavit of Service was executed as proof of service of the FAN/FLD.[7] Photocopies of the registry receipts were likewise attached to the records.[8] However, the record is bereft of any evidence/proof that the FAN/FLD was actually received by the accused. The prosecution failed to attach or even submit the Registry Return Receipt to prove that the mailed FLD/FAN was actually received by the accused-addressee. To be sure, the Registry Return Receipt confirms whether or not a mailed matter was received by the addressee. As stated earlier, actual receipt of the FAN/FLD is indispensable in cases involving willful failure to pay taxes.

Even if the FAN/FLD was received, the FAN/FLD is nevertheless void for failure to indicate a due date.

It is axiomatic that an assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed.[9]

In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation, et al.,*[10] the Supreme Court held:

> **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. ... [*Emphasis and underscoring supplied.*]

Further, in *Commissioner of Internal Revenue v. Fitness By Design, Inc. (Fitness by Design),*[11] the Supreme Court is unambiguous when it declared, *viz*:

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5 G.R. No. 127777, October 1, 1999 [Per J. Pardo, First Division].
6 Docket, pp. 18–23.
7 *Id.* at 40.
8 *Id.* at 41.
9 *Tupaz vs. Ulep*, G.R. No. 127777, October 1, 1999 [Per J. Pardo, First Division].
10 G.R. No. 128315, June 29, 1999 [Per J. Panaganiban, Third Division].
11 G.R. No. 215957, November 9, 2016, 799 SCRA 391-420 [Per J. Leonen, Second Division].

A final assessment notice provides for the <u>amount</u> of tax due with a <u>demand</u> for payment. ...

...

The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. Neither the National Internal Revenue Code nor the revenue regulations provide for a "specific definition or form of an assessment." However, the National Internal Revenue Code defines its explicit functions and effects. **An assessment does not only include a <u>computation of tax liabilities</u>; it also includes a <u>demand for payment within a period prescribed</u>. Its main purpose is to determine the amount that a taxpayer is liable to pay**.

...

A final assessment is a notice "to the effect that the <u>amount</u> therein stated is due as tax <u>and</u> a <u>demand</u> for payment thereof." This demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]" Thus, it must be "sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period."

The disputed Final Assessment Notice is not a valid assessment.

...

First, **it lacks the definite amount of tax liability** for which respondent is accountable. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal Revenue Code, is a "written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed." **Although the disputed notice provides for the computations of respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment.** Thus:

> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. Please note, *however, that* ***the interest and the total amount due will have to be adjusted if <u>prior</u> or <u>beyond</u>*** *April 15, 2004.*

> Contrary to petitioner's view, April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not **the due date for payment of tax liabilities**. The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay. [*Emphasis and underscoring supplied; citations omitted*]

Following the *Fitness by Design* case, the Supreme Court has then consistently nullified assessments that do not contain a definite due date, as seen in *Republic v. First Gas Power Corp.* [12] and *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*[13]

In fact, reference to the due date in an assessment is found in Section 249(C) of the NIRC of 1997, as amended. We quote:

> *Section 249 – Interest.*
>
> (C) Delinquency Interest. - In case of failure to pay:
>
> (3) A deficiency tax, or any surcharge or interest thereon **<u>on the due date appearing in the notice and demand of the Commissioner</u>**, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax. [*Emphasis and underscoring supplied.*]

Accordingly, indicating the due date in an assessment is directly related to the requirement of indicating the definite amount that is assessed. The delinquency interest may not be properly computed if a due date does not appear in the FAN/FLD as in this case. It bears stressing that an assessment, in the context of the NIRC, is a "written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed."[14]

In the instant case, the *Assessment Notices* attached to the FLD do not have due dates. One of the Assessment Notices is reproduced below:

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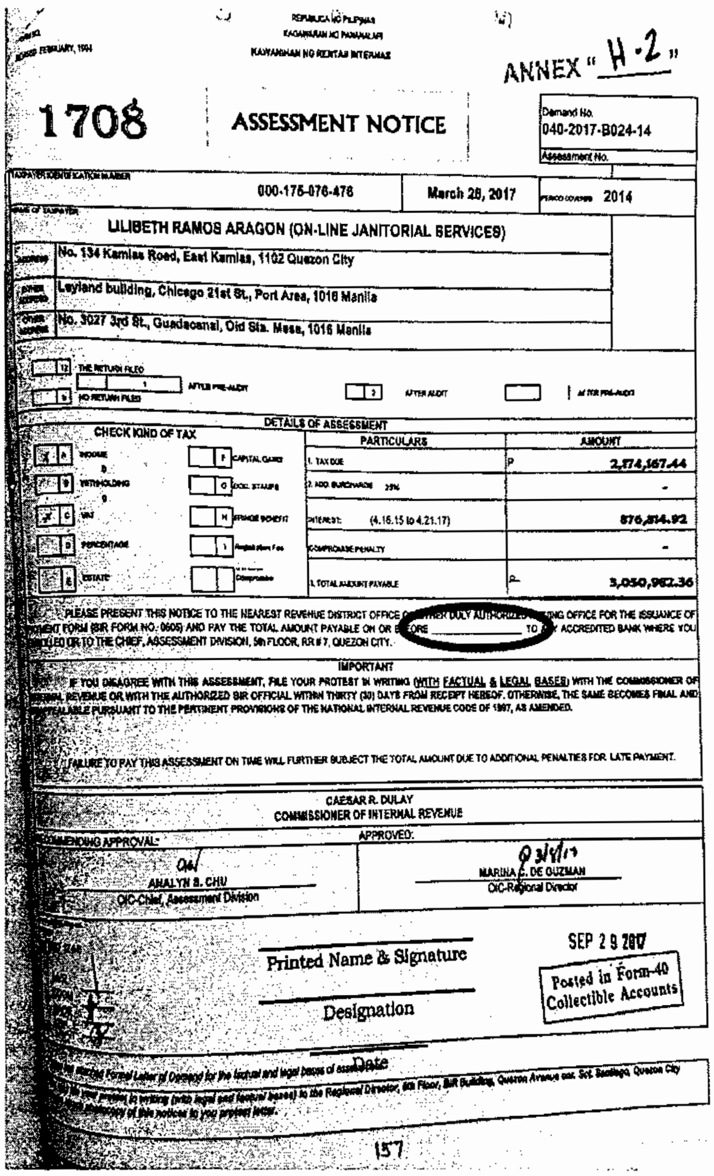
[12] G.R. No. 214933, February 15, 2022 [Per J. Lopez, J., First Division].
[13] G.R. No. 240729 (Resolution), August 24, 2020 [Per J. Inting, Second Division].
[14] *Adamson v. Court of Appeals*, G.R. Nos. 120935 & 124557, May 21, 2009 [Per C.J. Puno, First Division].



REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

ANNEX "H-2"

1708 ASSESSMENT NOTICE

Demand No. 040-2017-B024-14
Assessment No.

TAXPAYER IDENTIFICATION NUMBER 000-176-076-476	March 28, 2017	PERIOD COVERED 2014

NAME OF TAXPAYER: LILIBETH RAMOS ARAGON (ON-LINE JANITORIAL SERVICES)
No. 134 Kamias Road, East Kamias, 1102 Quezon City
Leyland building, Chicago 21st St., Port Area, 1018 Manila
No. 3027 3rd St., Guadacanal, Old Sta. Mesa, 1016 Manila

THE RETURN FILED / NO RETURN FILED — AFTER PRE-AUDIT — AFTER AUDIT

DETAILS OF ASSESSMENT

CHECK KIND OF TAX	PARTICULARS	AMOUNT
INCOME / CAPITAL GAINS	1. TAX DUE	P 2,174,167.44
WITHHOLDING / DOC. STAMPS	2. ADD: SURCHARGE 25%	-
VAT / FRINGE BENEFIT	INTEREST: (4.15.15 to 4.21.17)	876,814.92
PERCENTAGE	COMPROMISE PENALTY	-
ESTATE	3. TOTAL AMOUNT PAYABLE	P 3,050,982.36

PLEASE PRESENT THIS NOTICE TO THE NEAREST REVENUE DISTRICT OFFICE OR OTHER DULY AUTHORIZED ... OFFICE FOR THE ISSUANCE OF ... FORM (BIR FORM NO. 0605) AND PAY THE TOTAL AMOUNT PAYABLE ON OR BEFORE ____________ TO ANY ACCREDITED BANK WHERE YOU ... OR TO THE CHIEF, ASSESSMENT DIVISION, 5th FLOOR, RR # 7, QUEZON CITY.

IMPORTANT
IF YOU DISAGREE WITH THIS ASSESSMENT, FILE YOUR PROTEST IN WRITING (WITH FACTUAL & LEGAL BASES) WITH THE COMMISSIONER OF INTERNAL REVENUE OR WITH THE AUTHORIZED BIR OFFICIAL WITHIN THIRTY (30) DAYS FROM RECEIPT HEREOF. OTHERWISE, THE SAME BECOMES FINAL AND ... PURSUANT TO THE PERTINENT PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED.

FAILURE TO PAY THIS ASSESSMENT ON TIME WILL FURTHER SUBJECT THE TOTAL AMOUNT DUE TO ADDITIONAL PENALTIES FOR LATE PAYMENT.

CAESAR R. DULAY
COMMISSIONER OF INTERNAL REVENUE

RECOMMENDING APPROVAL: ANALYN B. CHU, OIC-Chief, Assessment Division
APPROVED: MARINA C. DE GUZMAN, OIC-Regional Director

Printed Name & Signature
Designation
Date

SEP 29 2017
Posted in Form-40 Collectible Accounts

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As such, failure to indicate the due date negates the BIR's demand for payment.[15] Well-settled is the rule that an assessment that fails to strictly comply with the due process requirements is *void and produces no effect.*[16] A void assessment bears no valid fruit.[17]

Considering that the FAN is void, there is no FAN to speak of and accused is not obliged to pay the taxes assessed therein. The Court thus arrives at the conclusion that there is no basis to charge accused for the crime of willful failure to pay tax.

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[15] *Id.*

[16] *Prime Steel Mill, Inc. v. Commissioner of Internal Revenue,* G.R. No. 249153, September 12, 2022 [Per J. Dimaampao, Third Division].

[17] *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, G.R. No. 223767, April 24, 2023 [Per C.J. Gesmundo, First Division]; *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014 [Per J. Villarama, Jr., Third Division]

WHEREFORE, premises considered, CTA Crim. Case No. O-904 is hereby **DISMISSED**.

Accordingly, the Alias Warrant of Arrest issued against accused is **RECALLED** and **SET ASIDE**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice