

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA Crim. Case No. O-653

-versus-

Members:

CASTAÑEDA, Chairperson,
and
MINDARO-GRULLA, JJ.

ARTURO M. ZAPATA, JACOB
VALERIANO, JR. AND CROSS
COUNTRY OIL & PETROLEUM
CORP.,

Accused.

Promulgated: JUN 28 2019

✓ 9:10 a.m.

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RESOLUTION

MINDARO-GRULLA, J.:

For this Court's resolution are accused's **Demurrer to Evidence**, filed on March 7, 2019, with plaintiff's **Comment/Opposition to Demurrer to Evidence**, filed on April 5, 2019, with accused's **"Reply (Re: Comment/Opposition dated 04 April 2019)"**, filed on May 6, 2019, and accused's **"Supplemental Arguments (to the Demurrer to Evidence dated 07 March 2019)"**, filed on March 13, 2019, without prosecution's Comment.

The instant Demurrer to Evidence was filed by the accused on the ground that plaintiff's evidence is insufficient to establish the commission of the offense charged by proof beyond reasonable doubt.

Accused anchors their Demurrer to Evidence on two grounds: (1) the prosecution was bereft of any authority to perform and undertake the examination of their books and (2) they were denied of due process for failure to serve the Preliminary Assessment Notice (PAN), Final Assessment Notice (FAN) and Final Letter of Demand (FLD).

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Accused are being charged for violation of Section 255, in relation to Sections 253 (d) and 256 of the National Internal Revenue Code (NIRC) of 1997, as amended.

The Amended Information reads as follows:

"That on or about January 14, 2015, and for sometime prior thereto, in the City of Manila, Philippines, accused ARTURO M. ZAPATA and JACOB VALERIANO, being then the President and Treasurer, respectively, of Cross Country Oil and Petroleum Corp., with business address at Room 3105 31st Floor, World Trade Exchange Bldg., 215 Luna Street, Binondo* City, did then and there willfully and unlawfully fail, refuse and neglect, as they still fail, refuse and neglect to pay the principal deficiency income tax, value-added tax and expanded withholding tax of the corporation for taxable year 2011 in the amounts of P249,645,069.52, P155,277,239.45, and P34,224.60, respectively, or in the total amount of FOUR HUNDRED FOUR MILLION NINE HUNDRED FIFTY SIX THOUSAND FIVE HUNDRED THIRTY THREE and 57/100 PESOS (P404,956,533.57), exclusive of penalties, surcharges and interest, under Assessment Notice/Demand Letter Nos. 30-11-IT-7136, 30-11-VT-7137 & 30-11-WE-7138, despite notice and service of assessment and Warrant of Distrainment and/or Levy dated December 21, 201, 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 P404,956,533.57, Philippine Currency.

CONTARY TO LAW"

Sections 255, 253(d) and 256 of the NIRC of 1997, as amended, provide:

"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.”

“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 the employees responsible for the violation.

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“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)”

In sum, in order for prosecution to seal a conviction under Section 255 of the NIRC, as amended, the following elements must concur:

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1. A corporate taxpayer is required to pay any tax under the NIRC, as amended;
2. The corporate taxpayer failed to pay the required tax at the time required by law;
3. Failure to pay tax was willful; and
4. Accused are responsible officers of the corporate taxpayer.

Under the premises, the prosecution has the burden of proof to show moral certainty that each and every essential element of the crime charged exists to sustain a conviction. Otherwise, the scales of justice must necessarily tilt in favor of the accused who must be acquitted.¹

In the case at bar, the prosecution alleges that that the criminal case against accused was filed for their failure to pay delinquent taxes of the corporation for taxable year 2011, and that said delinquent taxes were from a valid assessment which has become final, executory and demandable for failure to file a protest within a prescribed period.

Likewise, it is contended that the subject assessments were issued pursuant to validly issued and served Letters of Authority (LOAs).

To prove the charge, prosecution presented the following evidence, which were admitted by this Court in the Resolution dated 29 January 2019²:

Exhibit	Description
P-1	Letter of Authority SN:eLA201100030776/LOA-030-2013- 00000118 dated April 15, 2013
P-2	First Request for Presentation of Records dated April 16, 2013
P-3	First Request for Presentation of Records
P-4	Final Request for Presentation of Records dated October 29, 2013
P-5	Recommendation for the issuance of

¹ Rolie Calimutan vs. People of the Philippines, et. al., G.R No. 152133, February 9, 2006.

² Division Docket, Vol. II, Resolution dated January 29, 2019.

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	Subpoena Duces Tecum
P-6	Subpoena Duces Tecum (SDT No. RR6-2013-0516) dated
P-7	Affidavit of Service of Subpoena Duces Tecum
P-8	Memorandum dated January 21, 2014
P-9	2 nd Indorsement dated April 22, 2014
P-10	Memorandum Report
P-11	Indorsement dated May 05, 2014
P-12	Preliminary Assessment Notice (PAN) dated December 29, 2014 with Details of Discrepancies
P-12-a	Details of Discrepancies
P-13	Transmittal of PAN for Mailing
P-14	Letter to the Postmaster
P-15	Assessment Notice No. 30-11-IT-7136 dated January 14, 2015 for deficiency income tax in the amount of P378,627,190.43
P-16	Assessment Notice No. 30-11-VT-7137 dated January 14, 2015 for deficiency VAT in the amount of P247,578,844.17
P-17	Assessment Notice No. 30-11-WE-7138 dated January 14, 2015 for deficiency expanded withholding tax in the amount of P54,759.36
P-18	Formal Letter of Demand (FLD) dated January 14, 2015 with Details of Discrepancies
P-18-a	Details of Discrepancies (Annex A)
P-19	Transmittal of FAN/DL for Mailing
P-20	Letter to the Postmaster dated January 14, 2015
P-21	1 st Indorsement dated July 20, 2015
P-22	Preliminary Collection Letter (PCL)
P-22-a	Registry Receipt No. AC122846489 ZZ
P-23	Final Notice Before Seizure dated September 15, 2015
P-23-a	Transmittal Form
P-24	Memorandum dated September 18, 2015
P-25	Warrant of Garnishment issued to China Banking Corporation
P-25-a	Warrant of Garnishment issued to Citibank

P-25-b	Warrant of Garnishment issued to PS Bank
P-25-c	Warrant of Garnishment issued to PNB
P-25-d	Warrant of Garnishment issued to Philtrust Bank
P-25-e	Warrant of Garnishment issued to Security Bank
P-26	Audited Financial Statement of Cross Country Oil and Petroleum Corp. for TY-2014 filed with the SEC
P-27	Letter to Cross Country Oil dated May 23, 2016 addressed to Arturo M. Zapata
P-28	Letter to Cross Country Oil dated May 23, 2016 addressed to Jacob Valeriano
P-29	Letter to Cross Country Oil dated May 23, 2016 addressed to Jaime C. Cariño
P-30	Certification issued by Property Manager to WTECC
P-31	Memorandum dated May 31, 2016
P-32	Judicial Affidavit of RO John Paulo A. Leonardo
P-32-a	Signature above the printed name "John Paulo A. Leonardo"
P-33	Judicial Affidavit of RO Ronnie Roel Y. Bolledo
P-33-a	Signature above the printed name "Ronnie Roel Y. Bolledo"
P-34	Judicial Affidavit of RO Ma. Paz Arcilla
P-34-a	Signature above the printed name "Ma. Paz Arcilla"
P-35	Judicial Affidavit of RO Benhur C. Nacorda
P-35-a	Signature above the printed name "Benhur C. Nacorda"
P-36	Judicial Affidavit of RO Ronnielyn V. Inocencio
P-36-a	Signature above the printed name "Ronnielyn V. Inocencio"
P-37	Judicial Affidavit of RO Henry B. Benitez
P-37-a	Signature above the printed name "Henry B. Benitez"

Bearing in mind the above provisions and the allegation in the information, the Court shall carefully scrutinize the pieces of evidence presented by the prosecution and

determine whether they are competent or sufficient to establish a *prima facie* case against the accused.

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.³

The power of courts to grant demurrer in criminal cases should be exercised with great caution, because not only the rights of the accused - but those of the offended party and the public interest as well - are involved. Once granted, the accused is acquitted and the offended party may be left with no recourse. Thus, in the resolution of demurrers, judges must act with utmost circumspection and must engage in intelligent deliberation and reflection, drawing on their experience, the law and jurisprudence, and delicately evaluating the evidence on hand.⁴

We resolve.

The Court finds the arguments of the accused meritorious. The prosecution was unable to sufficiently discharge its burden of proving all the elements of the crime charged.

In every criminal conviction, the prosecution is required to prove two things beyond reasonable doubt: first, the fact of the commission of the crime charged, or the presence of all the elements of the offense; and second, the fact that the accused was the perpetrator of the crime.⁵

In the instant case, the charge consists of the accused's alleged failure to pay the deficiency tax assessment for taxable year 2011 despite notices issued to the accused. Based on the afore-stated elements, the showing of the

³ Gutib vs. Court of Appeals, et. al., G.R. No. 131209, August 13, 1999.

⁴ People of the Philippines vs. Jose C. Go, Aida C. Dela Rosa, and Felecitas D. Necomedes, G.R. No. 191015, August 6, 2014.

⁵ Guilbemer Franco vs. People of the Philippines, G.R. No. 191185, February 1, 2016.

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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.⁶

Considering that the obligation or requirement to pay the alleged deficiency taxes arose from an assessment, the Court shall look into the validity of the subject tax assessment in order to determine if the first element has been established.

Accused argues that the assessments are null and void for two reasons: (1) the LOA was served beyond the 30-day period from its date of issuance, without proof that it was revalidated; and (2) Cross Country's right to due process was violated for failure to validly serve the the PAN, and FAN/FLD.

Under Section 6(A) of the Tax Code⁷, the Commissioner of Internal Revenue (CIR) is granted the authority to examine and to make an assessment to determine the correct amount of tax due from a taxpayer.

Corollary thereto, Section 13 of the NIRC provides as follows:

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a Revenue Officer assigned to perform assessment functions in any district may, **pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax** (Emphasis supplied) due in

⁶ People v. Bienvenido S. Dimson, et al., CTA Crim. Case No. 0-304, May 17, 2017

⁷Section 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. -

(A) Examination of Returns and Determination of Tax Due. - After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.

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the same manner that the said acts could have been performed by the Revenue Regional Director himself.

In so far as tax assessments are concerned, it bears emphasis that an audit and examination of books to be lawful, must be based on a valid Letter of Authority (LOA).

A Letter of Authority is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables the revenue officer to examine the books of accounts and other accounting records, in order to determine the correct tax liabilities of a particular taxpayer.

In sum, before any revenue officer can conduct an examination or assessment, there must be grant of authority. Further, the revenue officer so authorized must not go beyond the authority given. Otherwise, a deficiency assessment issued without a valid authority is a nullity.

One system to implement the correct and regular collection of taxes is the assessment/audit program of the BIR. This audit program being conducted by the various revenue district offices and regional offices of the BIR is said to not only increase enforcement of revenue regulations but also to improve voluntary tax compliance and collect the correct amount of taxes from taxpayers.

Any audit of the books of any taxpayer is composed of different stages which may be generally summarized as follows: starting with the issuance of the written authorization – i.e. Letter of Authority (LA), Letter Notice (LN), Tax Verification Notice (TVN) or , now known as the Electronic Letter of Authority (eLA)⁸- **empowering the BIR personnel to conduct the audit** (Emphasis supplied), to the actual audit of the books of account, the informal conference between the taxpayer and the BIR, and then the issuance of the Preliminary Assessment Notice (PAN), Final Assessment Notice (FAN) and the Final Decision on Disputed Assessment (FDDA).

⁸ Revenue Memorandum Circular No. 38-13 (RMC No. 38-13), May 2, 2013.

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The significance of the Letter of Authority (LOA) is expressly mandated by Section 13 of the 1997 National Internal Revenue Code ("NIRC"), to reiterate:

"xxx a Revenue Officer assigned to perform assessment functions in any district may, **pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax** due in the same manner that the said acts could have been performed by the Revenue Regional Director himself." (Emphasis Supplied)

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Relevant thereto, in the case of *CIR vs. Sony Philippines, Inc.*⁹, the Supreme Court also ruled in this wise:

"xxx there must be a **grant of authority before any revenue officer can conduct an examination or assessment**. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity. (Emphasis ours)

As earlier stated, LOA 19734 covered 'the period 1997 and unverified prior years.' For said reason, the CIR acting through its revenue officers went beyond the scope of their authority because the deficiency VAT assessment they arrived at was based on records from January to March 1998 or using the fiscal year which ended in March 31, 1998. As pointed out by the CTA-First Division in its April 28, 2005 Resolution, the CIR knew which period should be covered by the investigation. Thus, if the CIR wanted or intended the investigation to include the year 1998, it should have done so by including it in the LOA or issuing another LOA."

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⁹ Commissioner of Internal Revenue vs. Sony Philippines, Inc., G.R. No. 178697, November 17, 2010.

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Further, in the case of *University of Santo Tomas Hospital, Inc., vs. Commissioner of Internal Revenue*¹⁰, this Court has similarly ruled that the LOA became null and void when the Revenue Officer was already transferred to the jurisdiction of the Large Taxpayers Service. To wit;

"In the present case, LA 2001 00052716 did not have any force and effect having been issued when petitioner was already transferred to the jurisdiction of the LTS. Thus, when the Region proceeded with its assessment it did so without the necessary authority. Furthermore, Revenue Memorandum Order ("RMO") No. 43- 90 provides:

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'C. Other policies for issuance of L/As.

1. All audits/ investigations, whether field audit or office audit, should be conducted under a Letter of Authority.

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5. Any re-assignment/ transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall **require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/ A number and date of issue of said L/As.**" (underscoring ours)'

Applying RMO No. 43-90 to the instant case, **the assessment conducted by the Region was unauthorized, because there was no valid LA covering it xxx.**" (Emphases supplied)

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Under the premises, the Court sees no reason why the same pronouncements above should not be applied in the case at bar. Whether the crux of the issue pertains to the

¹⁰ *University of Santo Tomas Hospital, Inc., vs. Commissioner of Internal Revenue* CTA Case No. 8292, March 2, 2015.

taxable period covered, the jurisdiction of the examining revenue officers, or the period when the LOA was actually served to the subject taxpayer, what is common under these circumstances is that the **examination conducted did not arise from a valid, and/or existing LOA that will empower and authorize the revenue officers to proceed with the audit.** (Emphasis supplied)

Accordingly, Revenue Audit Memorandum Order (RAMO) 1-00 provides as follows:

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2.3 A Letter of Authority **must be served** or presented to the taxpayer **within 30 days from its date of issue; otherwise it becomes null and void**, unless revalidated. The taxpayer has the right to refuse its service if presented beyond the 30-day period depending on the policy set up by management. Revalidation is done by issuing a new Letter of Authority or by just simply stamping the words "Revalidated on _____" on the face of the copy of the Letter of Authority issued.

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In the same vein, the General Audit Procedures and Documentation¹¹ of the Bureau of Internal Revenue explicitly state:

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4.) When must a Letter of Authority be served?

A Letter of Authority **must be served to the concerned Taxpayer within thirty (30) days from its date of issuance, otherwise, it shall become null and void.** The Taxpayer shall then have the right to refuse the service of this LA, unless the LA is revalidated.

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Likewise, evidence on record also reveals that LOA 2007-00047426 contained a statement as follows:

¹¹ BIR General Audit Procedures and Documentation, <http://www.bir.gov.ph/index.php/taxpayer-bill-of-rights.html>

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"This Letter of Authority becomes void if it contains erasures, or if not served to the taxpayer within 30 days from date hereof, or if dry seal of BIR office is not present".

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The LOA should be properly served on the subject taxpayer. The RMOs clearly mandate that the LOA **must be served on the subject taxpayer within thirty (30) days** from date of issue lest the authority becomes null and void. The RMOs even state that a simple erasure on an LOA already renders it null and void¹², more so if it is improperly or belatedly served.

The Supreme Court, in several pronouncements, has already ruled that where the language of the law is clear and unequivocal, it must be given its literal application and applied without interpretation¹³. Words used in the law must be given its ordinary meaning, unless a contrary intent is manifest from the law itself. The general rule of requiring adherence to the letter in construing statutes applies with particular strictness to tax laws and provisions of a taxing act are not to be extended by implication¹⁴.

A perusal of the afore-cited revenue memorandum orders and regulations would show that the statements use the terms "must", "shall", and "should", thus, applying the principle in statutory construction, they are couched in terms that impose a duty which is imperative and mandatory in nature.

Considering that these guidelines for the examination of returns and issuance of letters of authority to audit are mandatory, a deviation from these obviously renders the result of the audit and examination defective.

In the case at bar, the LOA no longer has any force or effect having been served on the accused beyond the prescribed 30-day period. The assessment conducted by the

¹² BIR Revenue Memorandum Order 28-83.

¹³ Commissioner of Internal Revenue vs. Julieta Arete, G.R. No. 164152, January 21, 2010.

¹⁴ SMI-ED Philippines Technology, Inc., vs. Commissioner of Internal Revenue, G.R. No. 175410 , November 12, 2014.

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Revenue Officers was already unauthorized, because there was no valid LOA covering it. Clearly, the deficiency tax assessments of herein accused for the taxable year 2011, were done without the necessary authority.

While we agree that taxes are the lifeblood of the country, and the key to the survival of a developing economy, there is an accompanying responsibility by the Bureau of Internal Revenue (BIR) to develop and ensure a system for correct and regular tax collection.

Given the circumstances at bar, LOA SN: eLA201100030776/LOA-030-2013-0000118 issued on April 15, 2013 were void from the beginning and has no force and effect for having been served only upon the accused on May 30, 2013 or 15 days beyond the prescribed 30-day period. [It is noteworthy that a void assessment bears no valid fruit¹⁵.] Moreover, basic is the rule that a void act cannot be validated or ratified¹⁶.

It is basic truism that the prosecution has the burden of proving beyond reasonable doubt each element of the crime as its case will rise or fall on the strength of its own evidence, never on the weakness or even absence of that of the defense.¹⁷ Failing to prove the required quantum of evidence, the presumption of innocence must prevail and accused should be acquitted.

Lastly, the Court has repeatedly pronounced that parties must come to court with clean hands. Parties who do not come to court with clean hands cannot be allowed to benefit from their own wrongdoing¹⁸. Following the foregoing principle, the prosecution should not be allowed to benefit from the principle, the prosecution should not be allowed to benefit from the flaws of its own irregularities and successfully insist on the validity of the LOA in order to evade its responsibility to efficiently and effectively perform its duties.

¹⁵Commissioner of Internal Revenue v. Azucena T. Reyes, G.R. No. 159694; Azucena T. Reyes v. Commissioner of Internal Revenue, G.R. No. 163581, January 27, 2006.

¹⁶ Spouses Reyes, et al., v. Court of Appeals and the Republic of the Philippines, G.R. No. 94524, September 10, 1998

¹⁷ Alferez vs. People of the Philippines, G.R. No. 182301, January 31, 2011.

¹⁸ Commissioner of Internal Revenue vs. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.), G.R. No. 212825, December 7, 2015.

Considering that the prosecution failed to prove that accused Cross Country is required to pay the assessed deficiency income taxes, the Court will no longer discuss the remaining elements of the crime charged.

WHEREFORE, premises considered, accused's Demurrer to Evidence is **GRANTED**. Accordingly, CTA Crim. Case No. O-653 is hereby **DISMISSED**.

Accused Arturo M. Zapata, Jacob Valeriano Jr., and Cross Country Oil & Petroleum Corp. are hereby **ACQUITTED**.

SO ORDERED.

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

I CONCUR:

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