REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM. CASE Nos. O-202, O-203, O-204, and O-205**
	For: Violation of Section 255 of the NIRC of 1997, as amended.
- versus -	
SHIRLEY YANG (President), RAQUEL O. VILLARANTE (Corporate Secretary) and ZALDY G. TRINIDAD (Accounting Manager), (CARDONA APPAREL, INC., Warehouse 4, Corporate Park Development Site, Malitlit, Sta. Rosa, Laguna), *Accused.*	Members: DEL ROSARIO, *PJ, Chairperson,* MANAHAN, and REYES-FAJARDO JJ.
	Promulgated: JUN 01 2022 8:36 a.m.

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DECISION

REYES-FAJARDO, J.:

This Decision is limited to accused Raquel O. Villarante. No jurisdiction over the persons of accused Shirley Yang and accused Zaldy G. Trinidad was acquired. Hence, the Court cannot pass upon the guilt or innocence of accused Shirley Yang and accused Zaldy G. Trinidad.

Accused Shirley Yang, Raquel O. Villarante, and Zaldy G. Trinidad, are charged before this Court for violations of Section 255 of the National Internal Revenue Code of 1997, as amended (NIRC of 1997, as amended), in these consolidated criminal cases, CTA Crim. Case Nos. O-202, O-203, O-204, and O-205.

THE FACTS

Cardona Apparel, Inc. (CARDONA), is a domestic corporation organized and registered with the Philippine Securities and Exchange Commission. It was established to engage in, operate, conduct, and maintain the business of manufacturing, importing, exporting, buying, selling, or otherwise dealing in, at wholesale or retail, wearing apparel or outerwear and other goods of a similar nature, and any and all equipment, materials, and supplies used or employed in or related to the manufacture of such finished products,[1] with registered address at 9314 Warehouse, Corporate Park Development Site, Malitlit, Sta. Rosa, Laguna.[2] It was registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 57 - San Pedro, Laguna.[3]

Accused Shirley Yang is the President,[4] while accused Raquel O. Villarante is the Corporate Secretary[5] and accused Zaldy G. Trinidad is the Accounting Manager of CARDONA.[6]

Plaintiff People of the Philippines is represented by the BIR with office address at Room 704, 7th Floor, Prosecution Division, BIR National Office Building, Diliman, Quezon City.

On March 30, 2006, Letter of Authority (LOA) No. 00029465 was issued and was signed and received by "JR Villar Supleo" on May 29, 2006.[7] It authorized Revenue Officer (RO) Bernardo Mora and Group Supervisor (GS) Edwin Montealegre to examine the books of accounts and other accounting records of CARDONA for the period from January 1, 2004 to December 31, 2004 (CY 2004).

On April 4, 2006, a Notice for Presentation of Records / Documents was issued. The Notice was signed and received by "JR Villar.[8]" On June 27, 2006, a Final Notice for Presentation of Records

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1 Exhibit "A-1," CTA Crim. Case No. O-202 Docket Vol. 1, p. 351.
2 Exhibit "A-3," CTA Crim. Case No. O-202 Docket Vol. 1, pp. 370-374.
3 Pre-Trial Order, CTA Crim. Case No. O-202 Docket Vol. 3, p. 1351.
4 *Supra* note 2.
5 *Id.*
6 Memorandum (of Accused Raquel O. Villarante), CTA Crim. Case No. O-202 Docket Vol. 3, p. 1641.
7 Exhibit "P-5," CTA Crim. Case No. O-202 Docket Vol. 1, p. 266.
8 Exhibit "P-6," CTA Crim. Case No. O-202 Docket Vol. 1, p. 262.

/ Documents was issued. The Final Notice was signed and received by Paz G. Supleo on June 30, 2006.[9]

On December 15, 2006, BIR Revenue Region No. 9 - San Pablo City issued a Subpoena Duces Tecum (SDT) against CARDONA for CY 2004. The SDT was personally served by RO Bernardo A. Mora and received by accused Raquel O. Villarante[10] at the office address of Alas Group & Howarth (AGH) in Makati City.[11]

On February 20, 2007, AGH responded to the SDT on behalf of CARDONA, in a letter addressed to the Office of the Regional Director of BIR Revenue Region No. 9 - San Pablo City.[12]

On January 21, 2008, BIR issued and sent a Preliminary Assessment Notice (PAN) with Details of Discrepancy to the registered office address of CARDONA.[13]

On March 7, 2008, AGH received a Formal Letter of Demand and Final Audit Result / Formal Assessment Notice (FLD/FAN) with attached Details of Discrepancy issued by the BIR against CARDONA, covering the alleged deficiency taxes for CY 2004 in the total amount of ₱156,811,329.25,[14] comprised of deficiency income tax amounting to ₱99,180,355.01; deficiency value-added tax amounting to ₱51,538,973.55; deficiency withholding tax on compensation amounting to ₱1,567,505.40; and deficiency expanded withholding tax amounting to ₱4,524,494.66, inclusive of interests and penalties.[15]

On May 14, 2009, AGH received from BIR RDO No. 57 a Preliminary Collection Letter issued against CARDONA, covering the collection of the Company's alleged deficiency taxes for CY 2004 in the total amount of ₱156,811,329.[16]

On February 22, 2011, plaintiff filed four (4) Informations, docketed as CTA Crim. Case Nos. O-202, O-203, O-204, and O-205, the accusatory portions of which read:

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9 Exhibit "P-7," CTA Crim. Case No. O-202 Docket Vol. 1, p. 263; Judicial Affidavit of Bernardo Mora, CTA Crim. Case No. O-202 Docket Vol. 3, p. 1259.
10 *Supra* note 3, at p. 1352.
11 *Id.*
12 *Id.*
13 Memorandum (for the Plaintiff), CTA Crim. Case No. O-202 Docket Vol. 3, p. 1529.
14 *Supra* note 10.
15 Exhibit "P-18-a," "A-22," CTA Crim. Case No. O-202 Docket Vol. 1, pp. 283-284.
16 *Supra* note 10.

CTA Crim. Case No. O-202

That on the taxable year 2004, in the Province of Laguna, and within the jurisdiction of this Honorable Court, accused **SHIRLEY YANG, RAQUEL O. VILLARANTE and ZALDY G. TRINIDAD,** being the president, corporate secretary and accounting manager, respectively, and being the responsible officers of CARDONA APPAREL, INC., a domestic corporation organized under the laws of the Philippines, and mandated by law to pay Expanded Withholding Tax for taxable year 2004 willfully, unlawfully and feloniously fail to pay Expanded Withholding Tax in the total amount of **PhP4,524,494.66** [to] the damage and prejudice of the Government in the estimated amount of **PhP4,524,494.66**, inclusive of increments.

CONTRARY TO LAW.

CTA Crim. Case No. O-203

That on the taxable year 2004, in the Province of Laguna, and within the jurisdiction of this Honorable Court, accused **SHIRLEY YANG, RAQUEL O. VILLARANTE and ZALDY G. TRINIDAD,** being the president, corporate secretary and accounting manager, respectively, and being the responsible officers of CARDONA APPAREL, INC., a domestic corporation organized under the laws of the Philippines, and mandated by law to pay Withholding tax on compensation for taxable year 2004 willfully, unlawfully and feloniously fail to pay deficiency Withholding tax on compensation in the total amount of **PhP1,567,505.40** to the damage and prejudice of the Government in the estimated amount of **PhP1,567,505.40,** inclusive of increments.

CONTRARY TO LAW.

CTA Crim. Case No. O-204

That on the taxable year 2004, in the Province of Laguna, and within the jurisdiction of this Honorable Court, accused **SHIRLEY YANG, RAQUEL O. VILLARANTE and ZALDGY G. TRINIDAD,** being the president, corporate secretary and accounting manager, respectively, and being the responsible officers of CARDONA APPAREL, INC., a domestic corporation organized under the laws of the Philippines, and mandated by law to pay Value Added Tax for taxable year 2004 willfully, unlawfully and feloniously fail to pay deficiency Value Added Tax in the total amount of **PhP51,538,973.55** to the damage and prejudice of the Government in the estimated amount of **PhP51,538,973.55**, inclusive of increments.

CONTRARY TO LAW.

CTA Crim. Case No. O-205

That on the taxable year 2004, in the Province of Laguna, and within the jurisdiction of this Honorable Court, accused **SHIRLEY YANG, RAQUEL O. VILLARANTE and ZALDY G. TRINIDAD,** being the president, corporate secretary and accounting manager, respectively, and being the responsible officers of CARDONA APPAREL, INC., a domestic corporation organized under the laws of the Philippines, and mandated by law to pay tax willfully, unlawfully and feloniously fail to pay deficiency tax liability in the total amount of PhP156,811,328.62, representing deficiency income tax, deficiency VAT liability, deficiency withholding tax on compensation and expanded withholding tax, on the said taxable year to the damage and prejudice of the Government in the estimated amount of PhP156,811,328.62, inclusive of increments.

CONTRARY TO LAW.

Upon the filing of the respective Informations in the criminal cases, motions for consolidation were filed, and separate determinations on the existence of probable cause were made by the Court for purposes of issuing warrants of arrest against accused, to wit:

CTA Crim. Case No. O-202

In CTA Crim. Case No. O-202, on May 6, 2011, the Court found probable cause that the crime has been committed and that the accused are probably guilty thereof.[17] On May 10, 2011, the Court issued the warrants of arrest against the accused.[18] On June 17, 2011, June 23, 2011, and June 29, 2011, Returns of Warrants of Arrest/Alias Warrants of Arrest were filed with the Court, indicating that all the accused could no longer be found at their stated addresses and that their whereabouts are unknown.[19] On June 27, 2011, July 8, 2011, and September 12, 2011, the Court, having noted that the accused could not be found at their given addresses and that their whereabouts are unknown, ordered the issuance of *alias* warrants of arrest against the

17 CTA Crim. Case No. O-202 Docket Vol. 1, p. 62.
18 *Id.* at p. 63.
19 *Id.* at pp. 65, 73, and 81.

accused.[20] On July 18, 2011 and September 19, 2011, the Court issued the *alias* warrants of arrest against the accused.[21]

On November 9, 2011, a Return of Alias Warrant of Arrest was again filed with the Court, stating that the accused could not be located at their given address as the company has ceased business operations for almost four (4) years.[22] On November 18, 2011, noting the return of the *alias* warrants of arrest and considering that all the accused remained at large, the Court resolved to archive the case and to be revived upon the apprehension of the accused.[23]

On May 6, 2015, January 26, 2016, May 15, 2019 the Court directed the enforcement of the outstanding *alias* warrants of arrest against the accused.[24] However, the accused could not be located at the given address.[25]

Following the prosecution's filing of its *Compliance with Manifestation (For the Plaintiff)* on September 9, 2010, which informed the Court of the new business address of the accused, the Court, on October 3, 2010, ordered the issuance of warrants of arrest against the accused indicating their new business address.[26] On October 11, 2019, warrants of arrest were issued against the accused.[27]

On November 20, 2019, accused Raquel O. Villarante submitted herself to the jurisdiction of the Court and posted the required bail bond in the amount of Twenty Thousand Pesos (₱20,000.00), for her provisional liberty.[28]

CTA Crim. Case No. O-203

In CTA Crim. Case No. O-203, on May 20, 2011, the Court found probable cause that the crime has been committed and that the accused are probably guilty thereof.[29] On May 23, 2011, the Court issued the warrants of arrest against the accused.[30] On June 23, 2011,

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[20] *Id.* at pp. 71, 77, and 84.
[21] *Id.* at pp. 78 and 85.
[22] *Id.* at p. 88.
[23] *Id.* at pp. 96-97.
[24] *Id.* at pp. 100, 104, and 117.
[25] *Id.* at p. 104.
[26] *Id.* at pp. 161-163.
[27] *Id.* at p. 164.
[28] *Id.* at p. 197.
[29] CTA Crim. Case No. O-203 Docket, p. 66.
[30] *Id.* at 67-69.

a Return of Warrants of Arrest was filed with the Court, indicating that all the accused could no longer be found at their stated addresses despite diligent efforts exerted.[31] On July 6, 2011, the Court, having noted that the accused could not be found at their given addresses and that their whereabouts are unknown, ordered the issuance of *alias* warrants of arrest against the accused.[32] On July 6, 2011, the Court issued the *alias* warrants of arrest against the accused.[33] On September 1, 2011, a Return of Warrants of Arrest was filed with the Court, indicating that all the accused could no longer be found at their stated addresses despite diligent efforts exerted.[34]

On February 14, 2012, considering that the Warrants of Arrest have been returned unserved for the reason that accused cannot be found at their given addresses despite diligent efforts exerted, the Court resolved to archive the case, without prejudice to its revival upon the apprehension of the accused.[35]

On November 20, 2019, accused Raquel O. Villarante submitted herself to the jurisdiction of the Court and posted the required bail bond in the amount of Twenty Thousand Pesos (₱20,000.00), for her provisional liberty.[36] On the same date, in view of the voluntary surrender of accused Raquel O. Villarante to the jurisdiction of the Court, the case was reinstated.[37]

Acting on accused Raquel O. Villarante's Motion to Consolidate filed on November 22, 2019, the Court resolved to consolidate CTA Crim. Case No. O-203 with CTA Crim. Case No. O-202.[38]

CTA Crim. Case No. O-204

In CTA Crim. Case No. O-204, on June 29, 2011, the Court found that probable cause exists for the issuance of warrants of arrest against the accused.[39] On the same date, the Court issued the warrants of arrest against the accused.[40] On August 3, 2011, a Return of Warrant of Arrest was filed with the Court, indicating that all the

31 *Id.* at pp. 71.
32 *Id.* at p. 77.
33 *Id.* at pp. 83-85.
34 *Id.* at pp. 94.
35 *Id.* at pp. 95-96.
36 *Id.* at pp. 101-102.
37 *Id.* at p. 109.
38 *Id.* at pp. 139-140.
39 CTA Crim. Case No. O-204 Docket, pp. 64-65.
40 *Supra* note 39, at pp. 60-62.

accused could not be located despite diligent efforts.[41] On February 14, 2012, the Court resolved to issue warrants of arrest against the accused as the warrants of arrest issued on June 29, 2011 were returned to the Court.[42] On February 15, 2012, the Court issued warrants of arrest against the accused.[43] On May 8, 2012, a Return of Warrant of Arrest was filed with the Court, indicating that the accused cannot be located at their given address.[44] On May 16, 2012, the Court, having noted that the accused could not be located at their given address, ordered the issuance of *alias* warrants of arrest against the accused.[45] On May 17, 2012, the Court issued *alias* warrants of arrest against the accused.[46]

On September 28, 2012, considering that the *alias* warrants of arrest have already been issued and that all accused still remain at-large, the Court resolved to archive the case, subject to its revival upon the apprehension of the accused.[47]

On July 2, 2015 and January 28, 2016, the Court directed the enforcement of the outstanding *alias* warrants of arrest against the accused.[48]

On November 20, 2019, accused Raquel O. Villarante submitted herself to the jurisdiction of the Court and posted the required bail bond in the amount of Twenty Thousand Pesos (₱20,000.00), for her provisional liberty.[49] On the same date, in view of the voluntary surrender of accused Raquel O. Villarante to the jurisdiction of the Court, the case was reinstated.[50]

On November 25, 2019, plaintiff filed its Pre-Trial Brief.[51]

Acting on accused Raquel O. Villarante's Motion to Consolidate filed on November 22, 2019, the Court resolved to consolidate CTA Crim. Case No. O-204 with CTA Crim. Case No. O-202.[52]

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41 *Supra* note 39, at p. 67.
42 *Supra* note 39, at p. 76.
43 *Supra* note 39, at pp. 78-80.
44 *Supra* note 39, at p. 81.
45 *Supra* note 39, at p. 96.
46 *Supra* note 39, at pp. 97-99.
47 *Supra* note 39, at p. 102.
48 *Supra* note 39, at p. 104 and 110.
49 *Supra* note 39, at pp. 124-125.
50 *Id.*
51 *Supra* note 39, at pp. 153-158.
52 *Supra* note 39, at pp. 169-170.

CTA Crim. Case No. O-205

In CTA Crim. Case No. O-205, on May 26, 2011, the Court found that probable cause exists for the issuance of warrants of arrest against the accused.[53] On the same date, the Court issued the warrants of arrest against the accused.[54] On June 23, 2011, August 5, 2011, and on August 8, 2011, Returns of Warrants of Arrest were filed with the Court, indicating that all accused could no longer be found at their given address and their whereabouts are unknown.[55] On October 13, 2011, the Court, having noted that all the accused are no longer staying at their given address and that CARDONA is no longer existing at said place, ordered the issuance of *alias* warrants of arrest against the accused.[56] On the same date, the Court issued *alias* warrants of arrest against the accused.[57]

On February 8, 2012, considering that the *alias* warrants of arrest have already been issued and that all accused still remain at-large, the Court resolved to archive the case, subject to its revival upon actual arrest of the accused.[58]

On November 20, 2019, accused Raquel O. Villarante submitted herself to the jurisdiction of the Court and posted the required bail bond in the amount of Twenty-Eight Thousand Pesos (₱28,000.00), for her provisional liberty.[59] On the same date, in view of the voluntary surrender of accused Raquel O. Villarante to the jurisdiction of the Court, the case was reinstated.[60]

On January 24, 2020, plaintiff and accused Raquel O. Villarante filed their respective Pre-Trial Briefs.[61] On the same date, plaintiff filed its Manifestation with Offer of the Judicial Affidavits of its witnesses – Bernardo A. Mora, Edwin M. Montealegre, and Venus T. Gaticales.[62] The Judicial Affidavit for accused Raquel O. Villarante was filed on the same date.[63]

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53 CTA Crim. Case No. O-205 Docket, pp. 61-62.
54 *Supra* note 54, at pp. 63-65.
55 *Supra* note 54, at pp. 67, 73, and 79.
56 *Supra* note 54, at pp. 84-85.
57 *Supra* note 54, at pp. 86-88.
58 *Supra* note 54, at p. 91.
59 *Supra* note 54, at pp. 105-106.
60 *Id.*
61 *Supra* note 54, at pp. 174-179; 441-474.
62 *Supra* note 54, at pp. 181-182.
63 *Supra* note 54, at pp. 212-252.

Acting on accused Raquel O. Villarante's Motion to Consolidate filed on November 22, 2019, the Court resolved to consolidate CTA Crim. Case No. O-205 with CTA Crim. Case No. O-202.[64]

Consolidated Cases

On February 26, 2020, the Court resolved to consolidate CTA Criminal Case Nos. O-203,[65] O-204[66], and O-205 with CTA Criminal Case No. O-202.[67]

On March 2, 2020, accused Raquel O. Villarante filed a *Motion to Quash Information (in CTA Crim. Case No. 0-205)* on the ground that the Information under CTA Crim. Case No. O-205 charges more than one offense.[68]

On July 20, 2020, the prosecution filed three (3) *Motions to Admit (Amended Information)* (amended as to principal amounts involved) for CTA Crim. Case Nos. O-202, O-204, and O-205.[69] The accusatory portion of each Amended Information are quoted, to wit:

CTA Crim. Case No. O-202

> That on the taxable year 2004, in the Province of Laguna, and within the jurisdiction of this Honorable Court, accused **SHIRLEY YANG, RAQUEL O. VILLARANTE, and ZALDY G. TRINIDAD,** being the president, corporate secretary, and accounting manager, respectively, and being the responsible officers of CARDONA APPAREL, INC., a domestic corporation organized under the laws of the Philippines, and mandated by law to pay Expanded Withholding Tax for taxable year 2004 willfully, unlawfully, and feloniously failed to pay Expanded Withholding Tax **in the amount of PhP2,790,206.51, exclusive of surcharge and interest,**[70] on the said taxable year to the damage and prejudice of the Government in the estimated amount of PhP4,524,494.66, inclusive of surcharge and interest.

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64 *Supra* note 54, at pp. 495-496.
65 *Supra* note 17, at pp. 392-393; CTA Crim. Case No. O-202 Docket Vol. 2, pp. 866-868.
66 CTA Crim. Case No. O-202 Docket Vol. 2, pp. 856, 866-868.
67 *Id.*
68 *Id.* at pp. 869-875.
69 *Id.*, at pp. 956-960.
70 Emphasis supplied.

CTA Crim. Case No. O-204

That on the taxable year 2004, in the Province of Laguna, and within the jurisdiction of this Honorable Court, accused **SHIRLEY YANG, RAQUEL O. VILLARANTE, and ZALDY G. TRINIDAD,** being the president, corporate secretary, and accounting manager, respectively, and being the responsible officers of CARDONA APPAREL, INC., a domestic corporation organized under the laws of the Philippines, and mandated by law to pay Value Added Tax for taxable year 2004 willfully, unlawfully, and feloniously failed to pay Value Added Tax **in the amount of PhP32,053,529.40, exclusive of surcharge and interest,**[71] on the said taxable year to the damage and prejudice of the Government in the estimated amount of PhP51,538,973.55, inclusive of surcharge and interest.

CTA Crim. Case No. O-205

That on the taxable year 2004, in the Province of Laguna, and within the jurisdiction of this Honorable Court, accused **SHIRLEY YANG, RAQUEL O. VILLARANTE, and ZALDY G. TRINIDAD,** being the president, corporate secretary, and accounting manager, respectively, and being the responsible officers of CARDONA APPAREL, INC., a domestic corporation organized under the laws of the Philippines, and mandated by law to pay Income Tax for taxable year 2004 willfully, unlawfully, and feloniously failed to pay Income Tax **in the amount of PhP63,427,452.82, exclusive of surcharge and interest,**[72] on the said taxable year to the damage and prejudice of the Government in the estimated amount of PhP99,180,355.64, inclusive of surcharge and interest.

On October 6, 2020, accused Raquel O. Villarante manifested in her *Comment / Opposition (To Motions to Admit Amended Information in CTA Crim. Case Nos. O-202, O-204, and O-205),* that she has no objection to the admission of the sets of Amended Information for CTA Crim. Case Nos. O-202 and O-204, being clarifications of the amounts of the alleged basic deficiency tax liabilities. However, as to CTA Crim. Case No. O-205, accused objected to the admission of the Amended Information, as the original Information was *void ab initio* as she was charged of four (4) counts of tax evasion or for more than one (1) offense.[73]

On November 16, 2020, the Court resolved to grant the *Motions to Admit (Amended Information)* filed by the prosecution and admitted

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71 Emphasis supplied.
72 Emphasis supplied.
73 CTA Crim. Case No. O-202 Docket Vol. 2, at pp. 943-947.

the sets of *Amended Information* for CTA Crim. Case Nos. O-202, O-204, and O-205, and denied accused Raquel O. Villarante's *Motion to Quash Information (In CTA Crim. Case No. O-205).*

The Preliminary Conference was held on December 11, 2019.[74] Both parties filed their Pre-Trial Briefs on January 24, 2020.[75]

On January 19, 2021, accused Raquel O. Villarante filed her *Manifestation and Motion to Adopt Pre-Trial, Judicial Affidavit, and Documentary Evidence in CTA Crim. Case No. O-202.*[76]

On January 27, 2021, during the Arraignment and Pre-Trial Conference, accused Raquel O. Villarante pleaded **NOT GUILTY** to the crimes charged against her.[77] Moreover, during the Pre-Trial Conference, the Court granted accused Raquel O. Villarante's *Manifestation and Motion to Adopt Pre-Trial, Judicial Affidavit, and Documentary Evidence in CTA Crim. Case No. O-202.*[78]

On March 17, 2021, the prosecution presented three (3) witnesses, namely: Mr. Bernardo A. Mora, Mr. Edwin M. Montealegre, and Ms. Venus T. Gaticales.[79]

Mr. Bernardo A. Mora represented that he was an RO of BIR RDO No. 57 - San Pedro, Laguna and was part of the group assigned to investigate the alleged tax liabilities of CARDONA for CY 2004.[80]

Mr. Edwin M. Montealegre represented that he was a GS of BIR RDO No. 57 - San Pedro, Laguna from 2006 to 2009, and he was part of the group authorized to undertake an examination of the books of accounts and accounting records of CARDONA for all internal revenue taxes for CY 2004.[81]

Ms. Venus T. Gaticales represented that she was an Assistant Revenue District Officer of RDO No. 57 from July 2007 to December 2009.[82]

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74 *Id.* at p. 237.
75 *Id.* at pp. 422 and 560.
76 CTA Crim. Case No. O-202 Docket Vol. 3, pp. 961-969.
77 *Id.* at pp. 1289-1291.
78 CTA Crim. Case No. O-202 Docket, TSN dated January 27, 2021, p. 8.
79 CTA Crim. Case No. O-202 Docket, TSN dated March 17, 2021, p. 5.
80 Judicial Affidavit of Bernardo Mora, CTA Crim. Case No. O-202 Docket Vol. 3, p. 1257.
81 Judicial Affidavit of Edwin M. Montealegre, CTA Crim. Case No. O-202 Docket Vol. 3, p. 1271.
82 Judicial Affidavit of Venus T. Gaticales, CTA Crim. Case No. O-202 Docket Vol. 3, p. 1279.

On March 29, 2021, the prosecution filed its Formal Offer of Evidence,[83] with the following exhibits, to wit:

EXHIBIT	DOCUMENT
P-1	General Information Sheet of Cardona Apparel, Inc. for the year 2004
P-2	Letter Referral dated November 4, 2010 signed by BIR Commissioner Kim Jacinto-Henares for the criminal and civil charges against Cardona Apparel, Inc. and its responsible officers namely Shirley Yang, Raquel O. Villarante, and Zaldy G. Trinidad, as President, Corporate Secretary, and Accounting Manager, respectively
P-3	Affidavit of Julio G. Alcasabas subscribed on November 4, 2010
P-4	Affidavit of Bernardo Mora subscribed on November 4, 2010
P-5	Letter of Authority (LOA) No. 00029465 dated March 30, 2006 issued to Cardona Apparel, Inc.
P-6	Notice for Presentation of Records / Documents dated April 4, 2006
P-7	Final Notice for Presentation of Records / Documents dated June 27, 2006
P-8	Certification dated September 14, 2006 by the Assistant City Treasurer of Sta. Rosa City, Laguna
P-9	Memorandum dated November 16, 2006 amending Subpoena Duces Tecum
P-11	Memorandum dated August 8, 2006 requesting for the issuance of a Subpoena Duces Tecum
P-12	Subpoena Duces Tecum dated December 4, 2006
P-13	Letter Acknowledging receipt of SDT dated December 20, 2006
P-14	Letter signed by Raquel O. Villarante dated February 19, 2007
P-15	Memorandum dated December 26, 2007 prepared and submitted by Bernardo Mora recommending the issuance of a Preliminary Assessment Notice
P-16; P-16-A; P-17	Preliminary Assessment Notice dated January 21, 2008, its Details of Discrepancy and Registry Return Card
P-18	Assessment Notice No. 57-2004 (FAN) - Income Tax, Value Added Tax, Withholding Tax on Compensation and Expanded Withholding Tax dated February 8, 2008
P-18-A; P-18-B	Formal Letter of Demand (FLD) dated February 8, 2008 and its Details of Discrepancy
P-19	Preliminary Collection Letter (PCL) dated April 15, 2009
P-20	Memorandum dated July 4, 2008
P-23	Barangay Certification dated September 2, 2009
P-24	Certification by the Business Permit and License Office of

[83] *Supra* note 77, at pp. 1305-1317.

	Sta. Rosa, Laguna dated September 16, 2009
P-26-A; P-26-A	Annual Income Tax Return of Cardona Apparel, Inc. (BIR Form 1702) for taxable year 2004 and Independent Certified Public Accountant's Report attached to Income Tax Return for taxable year 2004
P-27; P-27-A	Annual Information Return of Creditable Income Taxes Withheld (Expanded) / Income Payments Exempt from Withholding Tax (BIR Form 1604-E) for taxable year 2004 and Alphalist for 1604-E as of December 31, 2004
P-28; P-28-A	Annual Information Return of Income Taxes Withheld on Compensation, Final Withholding Taxes (BIR Form 1604-CF) for taxable year 2004 and Trial Balance for the year 2004
P-30; P-30-A	Judicial Affidavit of Bernardo Mora; signature of Bernardo Mora
P-31; P-31-A	Judicial Affidavit of Edwin M. Montealegre; signature of Edwin M. Montealegre
P-32; P-32-A	Judicial Affidavit of Venus T. Gaticales; signature of Venus T. Gaticales

On June 1, 2021, the Pre-Trial Order of the case was issued.[84]

On June 9, 2021, accused Raquel O. Villarante appeared before the Court to testify.[85]

On June 14, 2021, accused Raquel O. Villarante filed her Formal Offer of Evidence,[86] with the following exhibits, to wit:

EXHIBIT	DOCUMENT
A-1	Certificate of Filing of Amended Articles of Incorporation ("AOI") of Cardona Apparel, Inc. dated July 27, 2010 with attached Amended AOI
A-2	General Information Sheet (GIS) of Cardona Apparel, Inc. dated April 11, 2003, filed with the SEC
A-3	GIS of Cardona Apparel, Inc. dated April 30, 2004, filed with the SEC
A-4	GIS of Cardona Apparel, Inc. dated May 29, 2007, filed with the SEC
A-5	GIS of Cardona Apparel, Inc. dated April 16, 2008, filed with the SEC
A-6	Articles of Partnership of Alas, Oplas & Co., CPAs (AO&C) approved by the SEC on November 21, 2019
A-7	Articles of Incorporation of Alas Group & Horwath, Inc. (AGH) approved by the SEC on October 8, 2003
A-8	Engagement Proposal bearing the letterhead of Alas Group

84 *Supra* note 76, at pp. 1336-1364.
85 CTA Crim. Case No. O-202 Docket, TSN dated June 9, 2021.
86 *Supra* note 76, pp. 1429-1493.

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	& Horwath
A-9	Certificate of Employment and Good Moral Character signed by one *"MA. CRISELDA S. OPLAS"* on January 6, 2020
A-9-a	Signature of Ms. Ma. Criselda S. Oplas on the Certificate of Employment and Good Moral Character dated January 6, 2020
A-10	Social Security System (SSS) Employment History of Raquel Villarante
A-11	Certificate of Non-Registration of Company of Snowdown Development Corp. issued by the SEC Company Registration and Monitoring Department on December 18, 2019
A-12	Certificate of Filing of Amended Articles of Incorporation of Wintertex Corporation, with attached Amended AOI, duly approved by the SEC on July 23, 2010
A-13 to A-16-a	GIS of Wintertex Corporation for the years 2000, 2001, 2002, 2003, and 2004
A-17	Subpoena Duces Tecum issued by Araceli L. Francisco, BIR Revenue Region No. 9 - San Pablo City, on December 4, 2006, against Cardona Apparel, Inc., received by one Raquel O. Villarante on December 15, 2006
A-17-a	Signature of Raquel O. Villarante on Subpoena Duces Tecum
A-18	Printout of an email from one "Raquel O. Villarante" <racquelvillarante@alasgroup.com> addressed to <jessica@email.klf.com.tw> with the subject: "Fwd: bir examination - Cardona Apparel 2004 case" and bearing the date January 30, 2007
A-19	Engagement Proposal bearing the letterhead of "Alas, Ople & Co., CPAs," with the subject "PROPOSED TAX SERVICE FOR CARDONA APPAREL, INC.," addressed to the Board of Directors of Cardona Apparel, Inc. and dated January 29, 2007
A-19-a	Signature of Ms. Arlene B. Baroga on Page 3 of the Engagement Proposal
A-19-b	Signature of Ms. Marycris S. Oplas on Page 3 of the Engagement Proposal
A-20	Letter bearing the letterhead of "Alas Group & Horwath (Member of Horwath International)" and filed on behalf of Cardona Apparel Incorporated dated February 19, 2007 and stamped as received by the BIR on February 20, 2007
A-20-a	Signature of Raquel O. Villarante on the Letter dated February 19, 2007
A-21	FAN captioned as Audit Result / Assessment Notice and dated February 8, 2008, stamped as received by Alas Group & Horwath on March 7, 2008
A-21-a	Signature of Mr. Reynaldo A. Custodio on the first page of the FAN
A-22	FLD, captioned as FORMAL LETTER OF DEMAND,

	addressed to CARDONA APPAREL, INC. c/o Ms. Raquel O. Villarante, with attached Details of Discrepancies dated February 8, 2008 and stamped as received by Alas Group & Horwath on March 7, 2008
A-23	Printout of an email from one "Raquel O. Villarante" <racquelvillarante@alasgroup.com> addressed to <jessica@email.klf.com.tw> with the subject: "2004 tax case of cardona apparel,"and bearing the date July 9, 2008
A-24	Printout of the FAN and FLD (attachment to email)
A-25	Printout of an email from one "nezily basilides," with email address <nezbasilides@rsm-alasoplascpas.com>, addressed to <johnsonL168@gmail.com>, <johnsonliao@email.klf.com.tw>, and <jessica@email.klf.com.tw>, dated Monday, July 28, 2008
A-26	Printout of an email from one "nezily basilides," with email address <nezbasilides@rsm-alasoplascpas.com>, addressed to <johnsonL168@gmail.com>, <johnsonliao@email.klf.com.tw>, and <jessica@email.klf.com.tw> dated Monday, July 28, 2008
A-27	Printout of an email from one "nezily basilides," with email address <nezbasilides@rsm-alasoplascpas.com>, addressed to <johnsonL168@gmail.com>, <johnsonliao@email.klf.com.tw>, and <jessica@email.klf.com.tw> dated Friday, August 15, 2008
A-28	Printout of an email from one "Johnson@Gmail," with email address <johnsonll68@gmail.com> addressed to "nezily basilides" <nezbasilides@rsm-alasoplascpas.com>; <johnsonliao@email.klf.com.tw>; and <jessica@email.klf.com.tw> dated Friday, August 15, 2008 11:13:25 AM with the subject: "RE: CARDONA TAX CASE 2004 PROPOSAL"
A-29	Printout of an email from one "nezily basilides," with email address <nezbasilides@rsm-alasoplascpas.com> addressed to "johnsonll68@gmail.com" <johnsonll68@gmail.com>; "johnsonliao@email.klf.com.tw" <johnsonliao@email.klf.com.tw> and "jessica@email.klf.com.tw" <jessica@email.klf.com.tw> dated Friday, August 15, 2008, 11:33:08 AM GMT+8, with the subject: "Re: CARDONA TAX CASE 2004 PROPOSAL"
A-30	Preliminary Collection Letter issued by BIR against Cardona Apparel, Inc. dated April 15, 2009, signed as received by "Isha, for Mam Racs" on May 14, 2009
A-30-a	Signature of Ms. Larissa "Isha" Valera on the Preliminary Collection Letter
A-31	Printout of an email from one "Raquel Villarante" <racquelvillarante@bsucompliance.com> addressed to <jessica@email.klf.com.tw> copied "Johnson@Gmail," dated Thursday, May 14, 2009 14:29, with the subject: "cardona apparel preliminary collection letter"
A-32	Printout of an email from one "JohnsonLLiao"

	<johnsonll68@gmail.com> addressed to "Raquel Villarante" <racquelvillarante@bsucompliance.com> and <jessica@email.klf.com.tw>, dated Thursday, May 14, 2009, 1:05 AM, with the subject: "RE: cardona apparel preliminary collection letter"
A-33	Printout of an email from one "Racquel Villarante" <racquelvillarante@bsucompliance.com>, to "JohnsonLLiao" dated Thursday, May 14, 2009 15:07, with the subject: "RE: cardona apparel preliminary collection letter"
A-34	Printout of an email from one "JohnsonLLiao" <johnsonll68@gmail.com> addressed to <racquelvillarante@bsucompliance.com> dated Thursday, May 14, 2009, 4:30:40 PM GMT+8, with the subject: "RE: cardona apparel preliminary collection letter"
A-35	Certificate of Incorporation (with attached AOI) of "BSU & COMPLIANCE CONSULTING SERVICES INC." dated April 20, 2010
A-36	Certificate of Filing of Amended Articles of Incorporation (with attached Amended AOI) of "BSU & COMPLIANCE CONSULTING SERVICES INC." dated April 20, 2010
A-37	Tax Clearance (BIR Form No. 2320), captioned as "CERTIFICATE OF NO OUTSTANDING TAX LIABILITY" issued by BIR Revenue District Office No. 57 and signed by one "JULIO G. ALCASABAS, REVENUE DISTRICT OFFICER" on March 8, 2010
A-38	Letter from the BIR Office of the Regional Director, Revenue Region 9B – LaQueMar, San Pablo City, dated December 4, 2019 and addressed to "MR. GREGORIO P. MANALANG, JR." of Follosco Morales & Herce, signed by JOSEPH M. CATAPIA, OIC-Regional Director
A-39	Special Power of Attorney ("SPA") signed by Ms. Villarante and notarized on November 21, 2019
A-40	Affidavit of Publication signed by one Rodolfo Tamayo, containing a copy of the Notice of Company Dissolution of Cardona Apparel, Inc.
A-40-a	Notice of Company Dissolution of Cardona Apparel, Inc.
A-41	Printout of news articles from the website of the Official Gazette dated November 4, 2010, with the title "BIR-Apparel Company fitted Tax Evasion 'suit' for willful failure to pay long overdue taxes"
A-42	Printout of an email from one "Jessica Tsao," with email address <jessica.tsao@klf.com.tw>, addressed to <racquelvillarante@alasgroup.com> dated Wednesday, June 22, 2011 2:36 AM, with the subject: "Cardona Apparel"
A-43	Printout of an email from one "Raquel O. Villarante" with email address <racquelvillarante@alasgroup.com>, addressed to Jessica Tsao, with email address <jessica.tsao@klf.com.tw> dated Wednesday, June 22, 2011 9:09 PM with subject: "Re: Cardona Apparel"

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A-44	Printout of an email from one "Jessica Tsao," with email address <jessica.tsao@klf.com.tw> addressed to <racquelvillarante@alasgroup.com> dated Wednesday, June 22, 2011, 6:19 PM, with the subject: "RE: Cardona Apparel"
A-45	Printout of an email from one "Raquel O. Villarante," with email address <raquelvillarante@alasgroup.com>, addressed to Jessica Tsao and sent on Thursday, June 23, 2011 10:03 AM, with the subject: "RE: Cardona Apparel"
A-46	Printout of an email from one Jessica Tsao, with email address <jessica.tsao@klf.com.tw> addressed to one "Raquel O. Villarante" <racquelvillarante@alasgroup.com> dated Friday June 24, 2011, 3:43 AM, with the subject: "RE: Cardona Apparel"
A-47	Printout of an email from one "Raquel O. Villarante," with email address <racquelvillarante@alasgroup.com> and addressed to <jessica.tsao@klf.com.tw>, sent on Tuesday, June 28, 2011 11:24 AM with the subject: "RE: Cardona Apparel"
A-48	Judicial Affidavit of Accused Raquel O. Villarante dated January 23, 2020
A-48-a	Signature of Accused Raquel O. Villarante on her Judicial Affidavit dated January 23, 2020

On October 21, 2021, the Court admitted the exhibits offered by the prosecution. All other exhibits offered by accused Raquel O. Villarante were admitted, except for Exhibits "A-37," "A-40,"and "A-40-a" which were not admitted for failure to present the originals for comparison.[87]

On December 15, 2021, the prosecution filed its Memorandum[88] while accused Raquel O. Villarante filed her Memorandum[89] on February 7, 2022. On March 11, 2022, the case was submitted for decision.

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[87] Resolution dated October 21, 2021, CTA Crim. Case No. O-202 Docket Vol. 3, p. 1520.

[88] *Supra* note 76, p. 1529.

[89] *Supra* note 76, p. 1641.

ISSUES

During the Pre-Trial Conference, the parties adopted the following issues:

I. Whether or not accused is criminally liable for failure to pay expanded withholding tax, withholding tax on compensation, value-added tax, and income tax for CY 2004, in the amount stated in the Information / Amended Informations in CTA Crim. Case Nos. O-202, O-203, O-204, and O-205, respectively; and

II. Whether or not accused may be held civilly liable in the present proceedings for tax deficiencies indicated in the Information / Amended Informations in CTA Crim. Case Nos. O-202, O-203, O-204, and O-205.[90]

ARGUMENTS OF THE PARTIES

Prosecution's arguments:

The prosecution asserted in its Memorandum,[91] that despite repeated demands and notices, CARDONA and/or accused Raquel O. Villarante, as Corporate Secretary, failed and refused to pay CARDONA's deficiency taxes knowing fully well that the tax assessment has already become final, due, and demandable.

It added that for defrauding the government of the correct taxes due and neglecting to pay the final and demandable assessment against it, CARDONA is liable under Section 255 of the NIRC of 1997, as amended. It further contended that it had provided sufficient evidence that CARDONA's failure to pay the deficiency taxes was willful.

The prosecution argued that considering that CARDONA is a juridical person who acted through its responsible officers, accused Raquel O. Villarante, CARDONA's Corporate Secretary, is charged as the remaining corporate officer at the time the tax assessment became final, executory, and demandable, and the responsible corporate

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90 *Supra* note 76, p. 1287.
91 *Supra* note 76, pp. 1529-1548.

officer who failed to file a protest and failed to pay taxes due under Sections 253 (d) and 256 of the NIRC of 1997, as amended.

Accused's arguments:

The accused countered that the prosecution failed to establish the guilt of accused Raquel O. Villarante beyond reasonable doubt and that it was not able to prove CARDONA's alleged liability for the payment of the deficiency taxes.

Moreover, accused Raquel O. Villarante argued that most of the items of assessment indicated in the FLD/FAN, particularly, Value-Added Tax, Expanded Withholding Tax, and Withholding Tax on Compensation were issued beyond the three (3)-year prescriptive period to assess under Section 203 of the NIRC of 1997, as amended.

She also asserted that there was no proper service of the PAN on CARDONA, and therefore, the alleged deficiency tax assessment of CARDONA is null and void and does not give rise to any liability on the part of CARDONA.

Finally, she argued that since the elements of the offenses charged against accused Raquel O. Villarante were not proven by the prosecution, the act or omission from which any civil liability *ex delicto* may arise is wanting, therefore, no civil liability may be imposed on accused Raquel O. Villarante.[92]

RULING OF THE COURT

THIS COURT HAS NO JURISDICTION OVER CTA CRIM. CASE NO. O-203

Section 7 of Republic Act (RA) No. 1125, as amended by RA No. 9282, provides:

> Sec. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

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[92] *Supra* note 76, pp. 1641-1702.

> (1) ...
>
> (b) Jurisdiction over cases involving criminal offenses as herein provided:
>
> (1) Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs: Provided, however, That offenses or felonies mentioned in this paragraph **where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (₱1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate.** Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized.[93]

Section 3 (b) (1), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) states:

> SEC. 3. Cases within the jurisdiction of the Court in Division.— The Court in Division shall exercise:
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> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
>
> ...
>
> (b) Exclusive jurisdiction over cases involving criminal offenses, to wit:
>
> (1) Original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs, **where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is one million pesos or more.**[94]

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93 Emphasis supplied.

94 Emphasis supplied.

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The CTA has exclusive original jurisdiction on criminal offenses arising from violations of the NIRC or Tariff and Customs Code and other laws administered by the BIR and the Bureau of Customs, provided that the principal amount of taxes and fees, exclusive of charges and penalties, claimed is at least ₱1,000,000.00. On the other hand, where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than ₱1,000,000.00 or where there is no specified amount claimed, the case shall be tried by the regular courts and the jurisdiction of this Court shall be appellate.

The failure of an information to allege matters that specifically vest jurisdiction upon the court, effectively deprives the court of jurisdiction to take cognizance of the case.[95] Averments in the complaint or information characterize the crime to be prosecuted and the court before which it must be tried.[96] Evidence presented could not cure the defect in the information.[97]

The Information under CTA Crim. Case No. O-203 did not indicate the principal amount of the deficiency withholding tax on compensation, exclusive of charges and penalties, as follows:

> That on the taxable year 2004, in the Province of Laguna, and within the jurisdiction of this Honorable Court, accused **SHIRLEY YANG, RAQUEL O. VILLARANTE and ZALDY G. TRINIDAD,** being the president, corporate secretary and accounting manager, respectively, and being the responsible officers of CARDONA APPAREL, INC., a domestic corporation organized under the laws of the Philippines, and mandated by law to pay Withholding tax on compensation for taxable year 2004 willfully, unlawfully and feloniously fail to pay deficiency withholding tax on compensation in the total amount of **PhP1,567,505.40** to the damage and prejudice of the Government in the estimated amount of **PhP1,567,505.40,** inclusive of increments.[98]

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95 *Allen A. Macasaet, et al. v. The People of the Philippines and Joselito Trinidad,* G.R. No. 156747, February 23, 2005 as cited in *People of the Philippines v. Carlo J. Caparas,* CTA Crim. Case Nos. O-321, O-322, O-323, and O-324, March 4, 2020.

96 *Solemnidad M. Buaya v. The Honorable Wenceslao M. Polo, Presiding Judge, Branch XIX, Regional Trial, Court of Manila and the Country Bankers Insurance Corporation,* G.R. No. L-75079, January 26, 1989; *Balite v. People,* G.R. No. L-21475, September 30, 1966; *People v. Masilang,* G.R. No. L-64699, July 11, 1986 as cited in *People of the Philippines v. Carlo J. Caparas,* CTA Crim. Case Nos. O-321, O-322, O-323, and O-324, March 4, 2020.

97 *Francisco I. Chavez v. Court of Appeals,* G.R. No. 125813, February 6, 2007 as cited in *People of the Philippines v. Carlo J. Caparas,* CTA Crim. Case Nos. O-321, O-322, O-323, and O-324, March 4, 2020.

98 Emphasis supplied.

There being no allegation in the Information under CTA Crim. Case No. O-203 on the jurisdictional amount of tax liability of accused Raquel O. Villarante, specifically that the principal amount of its deficiency withholding tax on compensation liability for CY 2004, is at least ₱1,000,000.00, exclusive of charges and penalties, this Court finds the Information under CTA Crim. Case No. O-203, substantially defective as to vest jurisdiction upon this Court.

ELEMENTS OF THE CRIMINAL OFFENSE CHARGED IN CTA CRIM. CASE NOS. O-202, O-204, AND O-205

Accused Raquel O. Villarante, under CTA Crim. Case Nos. O-202, O-203, O-204, and O-205, was charged under Section 255 of the NIRC of 1997, as amended, for failure to pay Expanded Withholding Tax, Withholding Tax on Compensation, Value-Added Tax, and Income Tax for CY 2004, to wit:

> SECTION 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.

To sustain a conviction for the offense of 'Failure to Pay Tax' under Section 255 of the NIRC of 1997, as amended, the following elements must be established by the prosecution beyond reasonable doubt:

1. The taxpayer is required under the NIRC of 1997, as amended, to pay any tax, make a return, keep any record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on

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compensation, at the time or times required by law or rules and regulations;[99]

2. The taxpayer failed to pay the required tax at the time required by law or rules and regulations; and

3. The taxpayer willfully fails to pay the tax.[100]

The *second* and *third* elements are dependent on the establishment of the *first element*. The showing of the failure to pay the pertinent tax and the willfulness of such failure rests on whether the corporation (i.e., the taxpayer in this case) is required to pay the subject tax in the first place. Thus, it is only when the first element is established that the remaining elements must be determined to exist. There can be no willful failure to pay a tax if there is no requirement to pay the same at all.[101]

The legal obligation to pay the tax under the NIRC of 1997, as amended, arises from two (2) specific instances: first, at the time required by the law to pay a particular tax; or second, upon being informed of a tax assessment issued by the BIR, requiring the taxpayer to pay the assessed tax or deficiency tax within a specific period, as set forth in the assessment.[102]

The first instance involves a self-assessment of tax obligations.[103] A self-assessment approach starts and ends with the

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99 See *Bureau of Internal Revenue v. Court of Appeals, Spouses Antonio Villan Manly, and Ruby Ong Manly*, G.R. No. 197590, November 24, 2014 and *Commissioner of Internal Revenue v. Court of Appeals*, G.R. No. 119322, June 4, 1996.

100 *Bureau of Internal Revenue v. Court of Appeals, Spouses Antonio Villan Manly, and Ruby Ong Manly*, G.R. No. 197590, November 24, 2014; *Commissioner of Internal Revenue v. Court of Appeals*, G.R. No. 119322, June 4, 1996; *People of the Philippines v. Cross Country Oil and Petroleum Corporation, Arturo M. Zapata, and Jacob Valeriano Jr.*, CTA Crim. Case No. O-620, May 19, 2021.

101 *Id.*

102 See *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, G.R. No. 215957, November 9, 2016, as cited in *People of the Philippines v. Cross Country Oil and Petroleum Corporation, Arturo M. Zapata, and Jacob Valeriano Jr.*, CTA Crim. Case No. O-620, May 19, 2021, where the Supreme Court ruled:

> The assessment process starts with the filing of tax return and payment of tax by the taxpayer. **The initial assessment evidenced by the tax return is a <u>self-assessment</u> of the taxpayer.** The tax is primarily computed and voluntarily paid by the taxpayer without need of any demand from government. If tax obligations are properly paid, the Bureau of Internal Revenue may dispense with its own assessment. (underscoring and emphasis supplied).

103 *Id.*

initial assessment by the taxpayer of the tax due and the filing of the requisite return and payment of said tax. Assuming the tax obligations were properly computed and paid, the process is rendered complete without the participation or intervention of the BIR.[104]

The second instance involves the issuance by the BIR of a tax assessment, when the tax obligation was not properly computed or paid by the taxpayer. The deficiency tax assessment, shall then be paid by the taxpayer upon notice and demand, which is predicated upon a valid assessment issued in full compliance with the requirement on procedural due process.[105]

In addition, Section 256, in relation to Section 253, of the NIRC of 1997, as amended, specifies the penal liability of a corporate entity and its officers, where the offender-taxpayer is a corporation. The civil liability of a corporate taxpayer, being personal to it, may not be enforced against its corporate officers[106] to wit:

> SECTION 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).
>
> ...
>
> SECTION 253. General Provisions. -
>
> (a) Any person convicted of a crime penalized by this Code, shall in addition to be being liable for the payment of the tax, be subject to the penalties imposed herein: *Provided,* That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution for violation of any provision of this Code or in any action for the forfeiture of untaxed articles.
>
> ...

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104 *Id.*

105 *Id.*

106 *Proton Corporation v. Republic of the Philippines,* G.R. No. 165027, October 12, 2006 as cited in *People of the Philippines v. Corazon C. Generale,* CTA EB Crim. Case No. 063 (CTA Crim. Case No. O-336), July 30, 2020

(d) In the case of associations, partnerships or **corporations, the penalty shall be imposed** on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation.[107]

Thus, for accused Raquel O. Villarante to be held liable for the crime charged, it must be shown additionally, that she is the president, general manager, branch manager, treasurer, officer-in-charge, or employee responsible for the acts of omission or commission penalized under NIRC of 1997, as amended.

THE FIRST ELEMENT IS ABSENT IN THE PRESENT CASE

For purposes of the *first element* of the offense of 'Failure to Pay Tax' under Section 255 of the NIRC of 1997, as amended, the prosecution alleges that the criminal cases against accused Raquel O. Villarante was filed for failure of CARDONA to pay its deficiency taxes for CY 2004, and that said deficiency taxes were from a valid assessment which has become final, executory, and demandable for failure to file a protest within the prescribed period.[108]

Thus, it becomes necessary to examine the validity of the subject assessment.[109]

The period to assess CARDONA deficiency Value-Added Tax, Expanded Withholding Tax, and Withholding Tax on Compensation

Accused Raquel O. Villarante argued that since the FAN/FLD was issued by the BIR only on February 8, 2008, the alleged deficiency Value-Added Tax assessment issued by the BIR for the 1st to 4th quarters of CY 2004 are null and void, having been issued after

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107 Emphasis supplied.

108 Memorandum (for the Plaintiff), CTA Crim. Case No. O-202 Docket Vol. 3, pp. 1536-1537.

109 *Bureau of Internal Revenue v. Court of Appeals, Spouses Antonio Villan Manly, and Ruby Ong Manly,* G.R. No. 197590, November 24, 2014; *Commissioner of Internal Revenue v. Court of Appeals,* G.R. No. 119322, June 4, 1996; *People of the Philippines v. Cross Country Oil and Petroleum Corporation, Arturo M. Zapata, and Jacob Valeriano Jr.,* CTA Crim. Case No. O-620, May 19, 2021.

the lapse of the three (3)-year prescriptive period to assess.[110] Similarly, accused Raquel O. Villarante argued that for the alleged deficiency Withholding Tax on Compensation and Expanded Withholding Tax, the BIR lost its right to assess CARDONA on account of the lapse of the three (3)-year prescriptive period to assess considering that the FAN/FLD was only issued on February 8, 2008.

An assessment is deemed made when notice to this effect is released, mailed, or sent by the BIR to the taxpayer.[111] The BIR's three (3)-year period to assess internal revenue taxes is reckoned from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later.[112] Section 203 of the NIRC of 1997, as amended, provides:

> SEC. 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided,* That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such las day.

Accused Raquel O. Villarante in her Memorandum[113] cited the case of *HPCO Agridev Corporation v. Commissioner of Internal Revenue.*[114] In the *HPCO case,* the Court established the reckoning point of the three (3)-year period to assess by comparing the date of actual filing of the relevant returns (i.e., Quarterly VAT Returns and Monthly Remittance Returns of Income Taxes Withheld) submitted by petitioner and the statutory deadline to file the same, and

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110 Memorandum (of Accused Raquel O. Villarante), CTA Crim. Case No. O-202 Docket Vol. 3, p. 1664.

111 *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.,* G.R. No. 197515, July 2, 2014.

112 *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.* G.R. No. 201398-99 & 201418-19, October 3, 2018; *Commissioner of Internal Revenue v. Kudos Metal Corporation,* GR No. 178087, May 5, 2010 as cited in *Commissioner of Internal Revenue v. Standard Insurance Co., Inc.,* CTA EB Case No. 2090 (CTA Case No. 9550), June 21, 2021; *Commissioner of Internal Revenue v. FMF Development Corporation,* G.R. No. 167765, June 30, 2008 as cited in *Robert Christopher M. Carmona, doing business under the name Saga Casting and Productions v. Commissioner of Internal Revenue,* CTA Case No. 8484, January 20, 2015.

113 Memorandum (of Accused Raquel O. Villarante), CTA Crim. Case No. O-202 Docket Vol. 3, p. 1663.

114 *HPCO Agridev Corporation v. Commissioner of Internal Revenue,* CTA Case No. 6355, July 18, 2002.

determining the reckoning point to be either the actual date of filing or the statutory deadline, whichever comes later.

In the present case, the relevant returns were not offered in evidence. As such, the Court cannot establish the actual date of filing of the returns and consequently, the Court cannot ascertain the reckoning point of the three (3)-year period to assess, which is either the last day prescribed by law for the filing of the return or in case where a return is filed beyond the period prescribed by law, the day the return was filed.[115]

The taxpayer has the burden of proving that the prescriptive period has lapsed, including positively identifying when the prescriptive period began to run and exactly when it expired.[116] Accused Raquel O. Villarante cannot avail of the defense of prescription for having failed to present proof of actual filing of the that pertinent tax returns.[117]

Receipt of PAN by CARDONA

Section 228 of the NIRC of 1997, as amended, lays down the procedure in the issuance of tax deficiency assessment, to wit:

> 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....
>
> ...
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

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115 See *AFP General Insurance Corporation v. Commissioner of Internal Revenue*, G.R. No. 222133, November 4, 2020; *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*, G.R. No. 202695, February 29, 2016; *Megabucks Merchandising Corp. v. Commissioner of Internal Revenue*, CTA Case No. 9345, August 17, 2018; *Commissioner of Internal Revenue v. First Philippine Holdings Corporation*, CTA EB Case No. 1625, September 3, 2018; *Northern Tobacco Redrying Co., Inc. v. Commissioner of Internal Revenue*, CTA Case No. 8866, February 23, 2017; *Robert Christopher M. Carmona, doing business under the name Saga Casting and Productions v. Commissioner of Internal Revenue*, CTA Case No. 8484, January 20, 2015.

116 *AFP General Insurance Corporation v. Commissioner of Internal Revenue*, G.R. No. 222133, November 4, 2020 citing *Philippine National Oil Company v. Court of Appeals*, G.R. No. 109976, April 26, 2005.

117 *Id.*

> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eight (180)-day period; otherwise, the decision shall become final, executory and demandable.

To implement the foregoing provisions, Revenue Regulations (RR) No. 12-99,[118] was issued to outline the due process requirement to be observed in the issuance and service of deficiency tax assessment notices, to wit:

> SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. -
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> ...
>
> 3.1.2 Preliminary Assessment Notice (PAN). — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed

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118 Subject: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

> assessment is based (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> ...
>
> 3.1.4 Formal Letter of Demand and Assessment Notice. — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.
>
> ...
>
> 3.1.7 Constructive Service. — If the notice to the taxpayer herein required is served by registered mail, and no response is received from the taxpayer within the prescribed period from date of the posting thereof in the mail, the same shall be considered actually or constructively received by the taxpayer. If the same is personally served on the taxpayer or his duly authorized representative who, however, refused to acknowledge receipt thereof, the same shall be constructively served on the taxpayer. Constructive service thereof shall be considered effected by leaving the same in the premises of the taxpayer and this fact of constructive service is attested to, witnessed and signed by at least two (2) revenue officers other than the revenue officer who constructively served the same. The revenue officer who constructively served the same shall make a written report of this matter which shall form part of the docket of this case (see illustration in ANNEX D hereof).

The use of the word "shall" in Section 228 of the NIRC of 1997, as amended, and RR No. 12-99 indicates the mandatory nature of the requirements laid down. Thus, the prosecution must establish and prove that the requirements in the issuance of the assessment notices, were complied with. Failure to strictly comply with these requirements is considered equivalent to a denial of due process.[119]

The Supreme Court in *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, [120] explained the significance of the notice requirements under Section 228 of the NIRC of 1997, as amended, to wit:

> **Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made.** The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations - that taxpayers should be able to present their case and adduce supporting evidence.
>
> ...
>
> **From the provision quoted above, it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the 'due process requirement in the issuance of a deficiency tax assessment,' the absence of which renders nugatory any assessment made by the tax authorities.** The use of the word *'shall'* in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process. **Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void.**[121]

In *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*,[122] the Supreme Court discussed the shifting of the burden of proof to the BIR where the taxpayer denies the receipt of

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119 *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010 as cited in *People of the Philippines v. Cross Country Oil and Petroleum Corporation, Arturo M. Zapata, and Jacob Valeriano Jr.*, CTA Crim. Case No. O-620, May 19, 2021.

120 *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

121 Emphasis supplied.

122 *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.* G.R. No. 202695, February 29, 2016.

BIR's assessment notices and the evidence necessary to prove the fact of mailing of assessment notices, to wit:

> **If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. Here, the *onus probandi* has shifted to the BIR to show by contrary evidence that [the taxpayer] indeed received the assessment in the due course of mail. It has been settled that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee.**
>
> **To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the taxpayer or its authorized representative. And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and by other pertinent document executed with its intervention.** The Court does not put much credence to the self-serving documentations made by the BIR personnel, especially if they are unsupported by substantial evidence establishing the fact of mailing. While it is true that an assessment is made when the notice is sent within the prescribed period, the release, mailing, or sending of the same must still be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or control, and without adequate supporting evidence cannot suffice. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices.[123]

To prove the fact of mailing of the PAN, the prosecution presented a Registry Return Receipt.[124] However, only the back side of the Registry Return Receipt was presented and offered in evidence, which only contains the name of addressee, which reads: "CARDONA APPAREL, INC. (2004)." The front side, which was not presented, would have indicated relevant information that will prove due service, such as: (a) the date of mailing; (b) the name of the sender; (c) the street number; (d) the name of the post office; and (f) file case/account number.

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[123] Emphasis supplied.

[124] Exhibit "P-17," CTA Crim. Case No. O-202 Docket Vol. 1, p. 278.

The Judicial Affidavit[125] of RO Bernardo A. Mora provides that the PAN was sent by the Assessment Division to the registered office address of CARDONA:

> 52. Q: After issuance of the PAN, what happened next?
> A: The PAN was sent by the Assessment Division to the registered office address of Cardona Apparel Inc.
>
> 53. Q: If the copy of the registry return card is shown to you, would you be able to recognize it?
> A: Yes.
>
> 54. Q: I am showing you a copy of the registry return card. What relation does this document have to the one you mentioned earlier?
> A: This is the same document I just mentioned.
>
> Atty. Dulay: The Registry Return Card of the Preliminary Assessment Notice was previously marked during the preliminary conference as **Exhibit "P-17".**

The Memorandum of the prosecution likewise provides that the PAN *"was issued and was sent to the registered office address of CARDONA."*[126] In RO Bernardo A. Mora's Affidavit,[127] he averred that he *"served the said PAN, by way of registered mail, to CARDONA, INC. at its registered office address at Warehouse 4, Corporate Park Development Site, Malitlit, Sta. Rosa, Laguna, but the same was returned unserved as the company was alleged to have moved out."*

However, upon questioning by the Court, RO Bernardo A. Mora testified that the PAN was mailed to the office of accused Raquel O. Villarante,[128] to wit:

> JUSTICE MANAHAN:
>
> Question 54. Can you refer to your answer to Question 54? It pertains to the service of the Preliminary Assessment Notice through a registered return card.
>
> MR. BERNARDO A. MORA:
>
> A. Yes.

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125 Judicial Affidavit of Bernardo Mora, CTA Crim. Case No. O-202 Docket Vol. 3, p. 1265.

126 Memorandum (for the Plaintiff), CTA Crim. Case No. O-202 Docket Vol. 3, p. 1531.

127 Exhibit "P-4," CTA Crim. Case No. O-202 Docket Vol. 1, p. 258.

128 CTA Crim. Case No. O-202 Docket, TSN dated March 17, 2021, pp. 32-34.

JUSTICE MANAHAN:

Okay. So, I just want to find out who received, who was the one who signed the registry return card. Have you identified whether the one who received the PAN is connected with Cardona Apparel, Inc. and where was that PAN, where was it mailed? Is it mailed to the business address of Cardona or was it mailed to the corporate secretary['s] office address?

MR. BERNARDO A. MORA:

A. The registry receipt is not here.

JUSTICE MANAHAN:

The registry return card. Isn't that the pink one? The registry return card?

MR. BERNARDO A. MORA:

A. Yeah.

JUSTICE MANAHAN:

And normally, there's a portion there where the one receiving the mailed matter will sign or affix his or her signature?

MR. BERNARDO A. MORA:

A. It was only stamped but who received it is not. (Interrupted)

JUSTICE MANAHAN:

Stamped? It was stamped? Nobody received it?

JUSTICE SAN PEDRO:

No signature?

MR. BERNARDO A. MORA:

A. No signature on the attached assessment notice.

JUSTICE MANAHAN:

Somebody received the attached document?

MR. BERNARDO A. MORA:

A. (Inaudible).

JUSTICE MANAHAN:

But who is the person who (Interrupted)

MR. BERNARDO A. MORA:

A. Received the registry receipt (Interrupted).

JUSTICE MANAHAN:

Who signed the assessment notice attached to the Registry Return Card?

MR. BERNARDO A. MORA:

A. Reynaldo Custodio, Alas Group & Horwath.

JUSTICE MANAHAN:

So, it was mailed to the office of the corporate secretaries?

MR. BERNARDO A. MORA:

A. Yes.

JUSTICE MANAHAN:

And not to the business address of Cardona in Laguna?

MR. BERNARO A. MORA:

A. Yes, Your Honors.

Also, while RO Bernardo A. Mora testified by way of Judicial Affidavit that an assessment notice attached to the Registry Return Card was signed and received, the PAN offered in evidence,[129] did not bear any signature of Reynaldo Custodio or by AGH. Even assuming that there was a signature of Reynaldo Custodio or AGH, the prosecution failed to establish the corresponding authority of Reynaldo Custodio or AGH to receive the PAN on behalf of CARDONA. Likewise, the service of the PAN cannot be established as only the back side of the Registry Return Receipt was presented and offered in evidence, which only contains the name of the addressee, which reads: "CARDONA APPAREL, INC. (2004)."

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[129] Exhibit "P-16," CTA Crim. Case No. O-202 Docket Vol. 1, p. 274.

In *Ting v. Court of Appeals,*[130] the Supreme Court ruled that to serve as proof of receipt of letters sent through registered mail, Registry Return Receipts must be authenticated by proof of actual receipt by the addressee or duly authorized agent of the addressee, to wit:

> Given petitioners' denial of receipt of the demand letter, it behooved the prosecution to present proof that the demand letter was indeed sent through registered mail and that the same was received by petitioners. This, the prosecution miserably failed to do. Instead, it merely presented the demand letter and registry return receipt as if mere presentation of the same was equivalent to prove that some sort of mail matter was received by petitioners. **Receipts for registered letters and return receipts do not prove themselves; they must be properly authenticated in order to serve as proof of receipt of the letters.**
>
> Likewise, for notice by mail, it must appear that the same was served on the addressee or a duly authorized agent of the addressee. In fact, the registry return receipt itself provides that [a] registered article must not be delivered to anyone but the addressee, or upon the addressee's written order, in which case the authorized agent must write the addressee's name on the proper space and then affix legibly his own signature below it.
>
> **In the case at bar, no effort was made to show that the demand letter was received by petitioners or their agent. All that we have on record is an illegible signature on the registry receipt as evidence that someone received the letter. As to whether this signature is that of one of the petitioners or of their authorized agent remains a mystery.** From the registry receipt alone, it is possible that petitioners or their authorized agent did receive the demand letter.[131]

Only the taxpayer or its authorized representative may receive the assessment from the BIR and the mere presentation of the registry receipts are insufficient. To ascertain whether the signatures appearing therein were authorized representatives of the taxpayer, the signatures should be identified and authenticated.[132]

There is no valid service by the BIR of the PAN on CARDONA. It may be the duty of the taxpayer to notify the BIR of the change of its registered business address or closure of business. However, its

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130 *Ting v. Court of Appeals,* G.R. No. 140665, November 13, 2000; *Suarez v. People,* G.R. No. 172573, June 19, 2008.

131 Emphasis supplied.

132 *Commissioner of Internal Revenue v. T Shuttle Services, Inc.,* G.R. No. 240729, August 24, 2020.

failure to do the same does not necessarily negate the BIR's strict obligation to inform the taxpayer in writing of the facts and the law on which the assessment is made.[133] There are also other recognized modes of service of the PAN under Section 3.1.6[134] of RR No. 12-99, as amended, which the BIR could have resorted to.[135]

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133 *Commissioner of Internal Revenue v. Azucena T. Reyes,* G.R. Nos. 159694 & 163581, January 27, 2006 as cited in *Trorev Realty Co., as represented by its President, Roberto R. Ignacio v. Commissioner of Internal Revenue,* CTA Case No. 9251, July 18, 2019.

134 3.1.6 Modes of Service. — The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner of his duly authorized representative through the following modes:

i. The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A known address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.

In case personal service is not practicable, the notice shall be served by substituted service or by mail.

ii. Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:

The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.

If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.

If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.

If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

Should the party be found at his registered or known address or any other place but refuse to receive the notice, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

'Disinterested witnesses' refers to persons of legal age other than employees of the Bureau of Internal Revenue.

iii. Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.

The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath

Thus, for failure of the BIR to inform the taxpayer of the facts and the law on which the assessment was made through the valid service of the PAN as strictly required by Section 228 of the NIRC of 1997, as amended, this Court holds that the subject assessment is void and of no legal effect.[136] It bears emphasis that an invalid assessment bears no valid fruit.[137]

In the absence of a valid assessment for deficiency tax, the *first element* of the crime charged is not present.[138] As the assessment is void, it therefore follows that the legal obligation on the part of CARDONA and accused Raquel O. Villarante, as Corporate Secretary, to pay the deficiency tax assessments does not arise.

Conduct of the audit investigation by an authorized representative of the Commissioner of Internal Revenue (CIR)

Basic is the rule that ROs conducting an examination of a taxpayer for purposes of determining the correct amount of taxes due must be duly authorized. An assessment is void for being issued without valid authority.[139]

Section 13 of the NIRC of 1997, as amended, provides:

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under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information. The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailimg and shall be attached to the case docket.

Service to the tax agent/practitioner, who is appointed by the taxpayer under circumstances prescribed in the pertinent regulations on accreditation of tax agents, shall be deemed service to the taxpayer."

135 *Trorev Realty Co., as represented by its President, Roberto R. Ignacio v. Commissioner of Internal Revenue*, CTA Case No. 9251, July 18, 2019.

136 *Id.*

137 *Commissioner of Internal Revenue v. BASF Coating + Inks Phil.*, Inc., G.R. No. 198677, November 26, 2014.

138 *Bureau of Internal Revenue v. Court of Appeals, Spouses Antonio Villan Manly, and Ruby Ong Manly*, G.R. No. 197590, November 24, 2014; *Commissioner of Internal Revenue v. Court of Appeals*, G.R. No. 119322, June 4, 1996; *People of the Philippines v. Cross Country Oil and Petroleum Corporation, Arturo M. Zapata, and Jacob Valeriano Jr.*, CTA Crim. Case No. O-620, May 19, 2021.

139 *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

> SEC. 13. *Authority of a Revenue Officer.* – Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, 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.[140]

The Supreme Court in *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[141] elucidated:

> Based on Section 13 of the Tax Code, **a Letter of Authority or LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.** The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.
>
> . . .
>
> **Clearly, 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.**[142]

In the case at bar, LOA No. 00029465 dated March 30, 2006 authorized RO Bernardo Mora and GS Edwin Montealegre to examine the books of accounts and accounting records of CARDONA for CY 2004.[143] The Details of Discrepancies to the PAN[144] and the FLD/FAN,[145] wherein the facts, the law, rules and regulations, or jurisprudence, are stated as basis for the assessment, was signed by RO Yzarina D. Braña. Evidently, RO Yzarina D. Braña was not indicated in the LOA as an authorized representative of the CIR to conduct the audit investigation of CARDONA. While the

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140 Emphasis supplied.

141 *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.

142 Emphasis supplied.

143 Exhibit "P-5," CTA Crim. Case No. O-202 Docket Vol. 1, p. 261.

144 Exhibit "P-16-A," CTA Crim. Case No. O-202 Docket Vol. 1, p. 276-277.

145 Exhibit "P-18-b," CTA Crim. Case No. O-202 Docket Vol. 1, p. 285-286.

Memorandum[146] recommending the issuance of the PAN were signed by RO Bernardo A. Mora and GS Edwin M. Montealegre, the Details of Discrepancies, were prepared and issued by a different RO.

A taxpayer must be informed in writing of the legal and factual bases of the tax assessment made against him.[147] The requirement of informing the taxpayers of the factual and legal bases of the assessment is for the purpose of affording them the opportunity to contest them intelligently or to file an effective protest, if need be, against the assessment. Such is a vital part of the due process requirement enshrined in the 1987 Constitution.[148] RR No. 12-99 prescribes not only the issuance of an assessment notice but also the issuance of the "Details of Discrepancies," wherein the facts, the law, rules and regulations, or jurisprudence, are to be stated as bases for the assessment made. Both the assessment notice and the Details of Discrepancies must be issued by the BIR as part of due process in the issuance of tax assessments.[149] In fact, in the present case, the PAN and the FLD/FAN even referred to the accompanying "ANNEX A" to embody the *"complete details covering the aforementioned discrepancies established during the investigation of this case."*[150]

The preparation of the Details of Discrepancies and the issuance thereof are part of the assessment function of an RO in a tax audit investigation. It presupposes that there must be a grant of authority before said RO can conduct an examination or assessment, which includes the preparation and issuance of the Details of Discrepancies.

Based on the documentary evidence presented, the RO named under LOA No. 00029465 dated March 30, 2006 was different from that who actually examined CARDONA's books of accounts and other accounting records for CY 2004. No other document was also provided showing any other form of authorization by the CIR or the CIR's duly authorized representative to RO Yzarina D. Braña to conduct the tax audit / investigation. Following the doctrine laid

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146 Exhibit "P-15," CTA Crim. Case No. O-202 Docket Vol. 1, p. 272-273.

147 *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014.

148 See *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014; *Ateneo de Davao University v. Commissioner of Internal Revenue*, CTA Case No. 9779, September 23, 2021.

149 *Id.*

150 Exhibit "P-16-a," CTA Crim. Case No. O-202 Docket Vol. 1, p. 275; Exhibit "P-18-b," CTA Crim. Case No. O-202 Docket Vol. 1, p. 284.

down in the above-cited cases, the assessment that resulted from the examination of CARDONA's books of accounts and other accounting records should be rendered void due to lack of authority on the part of the RO to conduct the tax audit/ investigation for CY 2004.

In the absence of a valid assessment for deficiency tax, the *first element* of the crime charged is not present.[151] It follows that the legal obligation on the part of CARDONA and accused Raquel O. Villarante as Corporate Secretary, to pay the deficiency tax assessment does not arise.

SECOND AND THIRD ELEMENTS

Considering the subject assessment is void, accused Raquel O. Villarante cannot be said to have failed to pay the deficiency taxes *(second element)* much more to have done so willfully *(third element)* - as required under Section 255 of the NIRC of 1997, as amended.

It is unnecessary and futile to discuss the existence of the second and third elements of the offense charged as the same are dependent on the first element, the existence of which was not established by the prosecution by the required quantum of proof.

In all criminal prosecutions, the prosecution bears the burden to establish the guilt of the accused beyond reasonable doubt. In discharging this burden, the prosecution's duty is to prove each and every element of the crime charged in the information to warrant a finding of guilt for that crime or for any other crime necessarily included therein.[152]

CIVIL LIABILITY

Accused Raquel O. Villarante is only charged in this case, pursuant to Section 253 (d) of the NIRC of 1997, as amended, as

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151 *Bureau of Internal Revenue v. Court of Appeals, Spouses Antonio Villan Manly, and Ruby Ong Manly,* G.R. No. 197590, November 24, 2014; *Commissioner of Internal Revenue v. Court of Appeals,* G.R. No. 119322, June 4, 1996; *People of the Philippines v. Cross Country Oil and Petroleum Corporation, Arturo M. Zapata, and Jacob Valeriano Jr.,* CTA Crim. Case No. O-620, May 19, 2021.

152 *Anna Lerima Patula v. People of the Philippines,* G.R. No. 164457, April 11, 2012, citing *Andaya v. People,* G.R. No. 168486, June 27, 2006.

Corporate Secretary or the "officer in charge" of CARDONA, the corporate entity alleged to be responsible for violations of Section 255 of the NIRC of 1997, as amended.

Section 7 (b) (1) of Republic Act (RA) No. 1125, as amended,[153] states that "[a]ny provision of law or Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action shall be deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized."

Since the Court has not acquired jurisdiction over CARDONA, as it is not an accused in the present case, no civil action against it pursuant to Section 7 (b) (1) of Republic Act No. 1125, as amended, is deemed instituted in this case.

Basic is the rule in corporation law that a corporation is a juridical entity which is vested with a legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. Thus, obligations incurred by the corporation, acting through its directors, officers, and employees, are its sole liabilities. A director, officer, or employee of a corporation is generally not held personally liable for obligations incurred by the corporation. [154] To pierce the separate legal personality of a corporation, the facts justifying the piercing thereof must be pleaded and proved.[155] There must be clear and convincing proof that the separate and distinct personality of the corporation was purposely employed to commit fraud.[156]

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153 An Act Creating the Court of Tax Appeals.

154 *Heirs of Tan Uy v. International Exchange Bank,* G.R. No. 166282, February 13, 2013 and *Goldkey Development Corporation v. International Exchange Bank,* G.R. No. 166283, February 13, 2013 citing *Garcia v. Social Security Commission Legal and Collection,* G.R. No. 170735, December 17, 2007.

155 *Commissioner of Internal Revenue v. Spouses Remigio P. Magaan and Leticia L. Magaan,* G.R. No. 232663, May 3, 2021 citing *Kukan International Corporation v. Hon. Amor Reyes,* G.R. No. 182729, September 29, 2010.

156 *Bureau of Customs v. The Honorable Agnes Devanadera,* G.R. No. 193253, September 8, 2015

The civil liability of a corporate taxpayer, being personal to it, may not be enforced against its corporate officers.[157] In *People of the Philippines v. Enviroaire, Inc.*, a similar case decided by this Court, wherein the corporate taxpayer was not charged in the Information, this Court ruled that without the corporate taxpayer being held liable, its corporate officers cannot assume a liability that does not exist, to wit:[158]

> Interestingly, there is nothing on record to show that Enviroaire – the corporate taxpayer – was ever charged and found guilty of failure to supply correct and accurate information. Yet, the culpability of responsible officers of a corporate entity is dependent upon the liability of the corporation itself as a taxpayer. *Sans* the corporate taxpayer itself being held liable, its officers cannot assume a liability that does not exist.
>
> ...
>
> Truth to tell, it is the conviction of a corporate entity that triggers the imposition of penalty upon its responsible officers, While Enviroaire is named as accused in the title of this case per the Second Amended Information, the cause of action, however, as contained in the accusatory portion, is directed only against accused Ong and Chua as President and Treasurer, respectively, of Enviroaire. Hence, this Court has no jurisdiction to render a judgment against Enviroaire as it is not an accused in the case at bar.

There being no liability of the corporate taxpayer, CARDONA, its Corporate Secretary, accused Raquel O. Villarante, cannot assume a liability that does not exist.

Finally, since the assessment is null and void, the elements of the crime charged were not proven by the prosecution; hence the act or omission from which the civil liability *ex delicto* may arise is wanting. No civil liability *ex delicto* may be adjudged against CARDONA's Corporate Secretary, accused Raquel O. Villarante.

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157 *Proton Corporation v. Republic of the Philippines*, G.R. No. 165027, October 12, 2006 as cited in *People of the Philippines v. Corazon C. Generale*, CTA EB Crim. Case No. 063 (CTA Crim. Case No. O-336), July 30, 2020

158 *People of the Philippines v. Enviroaire, Inc. represented by TYRONE N. ONG (a.k.a. Tyrone Ng Arejola) and ARLENE CHUA (a.k.a. Arlene Miyron Matela Chua and Arlene Miyron Chua Arejola)*, CTA Crim. Case No. O-407, February 26, 2020.

WHEREFORE, premises considered, the Court rules as follows:

1. Accused Raquel O. Villarante is hereby **ACQUITTED** of the crime charged in CTA Crim. Case No. O-203, on jurisdictional grounds.

   The respective cash bail bond of the accused is hereby **CANCELLED** and ordered **RELEASED** upon accused Raquel O. Villarante upon presentation of proper documents, in accordance with usual accounting rules and regulations.

2. Accused Raquel O. Villarante is hereby **ACQUITTED** of the crimes charged in CTA Crim. Case Nos. O-202, O-204, and O-205, for failure of the prosecution to establish the guilt of accused beyond reasonable doubt, without any civil liability.

   The respective cash bail bonds of the accused are hereby **CANCELLED** and ordered **RELEASED** upon accused Raquel O. Villarante upon presentation of proper documents, in accordance with usual accounting rules and regulations.

3. With respect to accused Shirley Yang and accused Zaldy G. Trinidad in CTA Crim. Case Nos. O-202, O-203, O-204, and O-205, who remain at large, let the cases be **ARCHIVED,** without prejudice to their revival immediately upon apprehension of the said accused.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
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 consolidated cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice