REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

PEOPLE OF THE PHILIPPINES, As represented by the Solicitor General through the Bureau of Internal Revenue, *Petitioner*,	**CTA *EB* CRIM. NO. 151** (CTA Crim. Case No. O-834)
	Present:
-versus-	**RINGPIS-LIBAN,** *Acting P.J.*, **MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
ANNE GIL RACHEL LABAO y KUAN, and COURT OF TAX APPEALS, THIRD DIVISION, *Respondents.*	Promulgated: OCT 29 2025 4:15 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a Petition for Certiorari,[1] filed on July 9, 2024, pursuant to *Rule 65 of the Rules of Court*, assailing the Decision, dated February 7, 2024[2] ("Assailed Decision"), and Resolution, dated April 29, 2024[3] ("Assailed Resolution"), both rendered by this Court's Third Division ("Court in Division"), insofar as it acquitted herein private respondent and did not impose civil liability against her on her alleged willful failure to supply correct and accurate information in her Income Tax Return and pay the income tax deficiency for taxable year 2011. Petitioner prays that this Court reverse and set aside the Assailed Decision acquitting private respondent,

[1] *Rollo*, pp. 1-34.
[2] Division Docket, Vol. III, pp. 1269-1306.
[3] *Id*, pp. 1384-1389.

finding her without any civil liability, and the Assailed Resolution denying the motion for reconsideration for lack of merit.

The Parties

Petitioner, People of the Philippines, is represented by the Bureau of Internal Revenue ("BIR"), the government agency mandated to collect national internal revenue taxes for nation building. It represents the State or the People in instituting the instant petition.[4]

Public respondent is the Court of Tax Appeals – Third Division, a tribunal established by law exercising judicial functions, with jurisdiction over tax and customs cases.[5]

Private respondent is a natural person known as Anne Gil Rachel Labao y Kuan and is registered with the BIR Revenue District Office ("RDO") No. 101, Iligan City under BIR Taxpayer Identification Number ("TIN") 196-393-586. Private Respondent is the registered owner of San Miguel Protective Security Agency.[6]

The Facts

On September 3, 2020, an Information dated October 4, 2019[7] was filed by the Department of Justice against Private Respondent for alleged violation of *Section 255 of the National Internal Revenue Code of 1997, as amended* ("*NIRC*").[8] It states:

> That on or about September 21, 2015, 2016 or on dates subsequent thereto, in Iligan City, and within the jurisdiction of this Honorable Court, the above-named accused, as the registered proprietor of San Miguel Protective Security Agency (SMPSA), Janitorial, Messengerial and Allied Services or San Miguel Security Agency (SMSA), a business establishment registered with the Bureau of Internal Revenue (BIR) under Tax Identification No. (TIN) 196-393-586, and with registered business address in Don Pedro Celdran Avenue (*sic*), Corpus Christi Village, Tubod, Iligan

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4 *Id.*

5 Republic Act No. 9282 (2004).

6 *Id.*

7 Division Docket, Vol. I, pp. 5-82, with annexes.

8 **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 to supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply 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 that Ten thousand pesos (PhP10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

> City, and as such required by law, rules and regulations to supply correct and accurate information in the income tax return of her business establishment and to pay the taxes due thereon, did then and there, willfully, unlawfully, and feloniously fail to supply the correct and accurate information in the income tax return of the said business establishment and to pay the Income Tax Deficiency for the taxable year 2011 in the amount of Php3,573,880.78, exclusive of interest, penalty and surcharge, arising from a final demandable and executory Assessment Notice/Formal Letter of Demand dated September 21, 2015, to the prejudice of the government in the aforementioned amount.
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> CONTRARY TO LAW.

Upon finding probable cause to hold private respondent for trial, the CTA – First Division ordered the issuance of a Warrant of Arrest against the former through a Resolution dated September 17, 2020. Additionally, a bail bond for her provisional liberty was fixed at Sixty Thousand Pesos (PhP60,000.00).[9] The Warrant of Arrest was issued on September 22, 2020.[10]

On December 17, 2020, private respondent voluntarily surrendered and posted a cash bond before the Office of the Clerk of Court, Regional Trial Court of Lanao Del Norte, Iligan City. Hence, the Warrant of Arrest issued on September 22, 2020 was lifted and set aside.[11]

Arraignment and Pre-Trial were conducted on October 27, 2021. During arraignment, private respondent manifested that she fully understood the crime charged against her after being explained by counsel and moved for the waiver of the reading of the Information. She thereafter pleaded not guilty to the crime charged.[12]

After the submission of the Parties' Joint Stipulation of Facts and Issues on November 10, 2021,[13] the Court issued the Pre-Trial Order dated March 14, 2022.[14]

On May 23 and 26, 2022, the prosecutor filed the then-plaintiff's Formal Offer of Evidence,[15] while private respondent filed her Formal Offer of Documentary Evidence on May 22, 2023.[16]

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9 Division Docket, Vol. I, pp. 84-85
10 *Id*, pp. 86-87.
11 *Id*. pp. 125-126.
12 *Id*, pp. 486-489.
13 Division Docket, Vol. II, pp. 582-596.
14 *Id*, pp. 680-701.
15 *Id*, pp. 797-847 and pp. 745-795.
16 *Id*, pp. 1130-1154.

On October 25, 2023, private respondent submitted her Memorandum[17] where she argued that the prosecution failed to discharge the quantum of proof required to indict her of the crime of violating of *Section 255 of NIRC* or the failure to file return and supply correct and accurate information.

On the other hand, in plaintiff's Memorandum,[18] filed via registered mail on October 25, 2023, it argued, among others, that: (1) it has proven private respondent's failure to pay the income tax deficiency for taxable year 2011, in violation of *Section 255 of the NIRC*; (2) the prosecution sufficiently proved that all the elements of the alleged crime are present; and (3) private respondent is a person required under the *NIRC* to pay deficiency taxes at times required by law and regulation.[19]

The case was submitted for decision on November 13, 2023.[20] On February 7, 2024 the Assailed Decision was rendered by the Court in Division, the dispositive portion of which reads:

> **WHEREFORE,** accused is hereby **ACQUITTED** in CTA Crim. Case No. O-834 for failure of the prosecution to establish the accused's guilt beyond reasonable doubt and is **DECLARED** without any civil liability.
>
> The cash bail bond posted by accused is hereby **CANCELLED** and **ORDERED RELEASED** to the accused upon presentation of the proper documents, in accordance with usual accounting rules and regulations.
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> **SO ORDERED.**

Plaintiff received a copy of the Assailed Decision on February 7, 2024. On February 22 2024, a Motion for Reconsideration (of the Decision dated February 7, 2024) was filed.[21] The Motion for Reconsideration argued that the prosecution was able to establish that the criminal offense was committed willfully, contrary to the findings of the Court in Division, and that Private Respondent should be held civilly liable for the offense charged.[22]

Through a Resolution, dated April 29, 2024, [23] the Court in Division denied the Motion for Reconsideration for lack of merit.

In its Assailed Resolution, the Court in Division reaffirmed the established doctrine that the acquittal of an accused is a final judgment and, as such, is not susceptible to a review via ordinary appeal in view of the proscription against double jeopardy. This principle was underscored in the

[17] Division Docket, Vol. III, pp. 1195-1247.
[18] *Id*. pp. 1250-1265.
[19] *Id.*
[20] *Id*, Minute Resolution dated November 13, 2023, p. 1266.
[21] *Id*, pp. 1321-1338.
[22] *Id.*
[23] *Id.* pp. 1384-1389.

case of *People of the Philippines v. Danilo F. Serrano, Sr., et al.*[24] Accordingly, a judgment of acquittal cannot be challenged by a motion for reconsideration but may be assailed through a petition for certiorari under *Rule 65 of the Rules of Court* upon a showing of grave abuse of discretion in the rendition of the verdict.

On July 9, 2024, petitioner filed a Petition for Certiorari (of the Resolution dated April 29, 2024) pursuant to *Rule 65 of the Rules of Court* for the criminal and the deemed instituted civil aspect of the Assailed Decision rendered by the Court in Division, including the Assailed Resolution denying the Motion for Reconsideration for lack of merit.[25]

On September 19, 2024, private respondent received a Notice of Resolution dated August 15, 2024 ordering her to file a comment on the Petition for Certiorari within ten (10) days from notice.[26] On September 27, 2024, Private Respondent filed her Comment/Opposition in compliance thereto.[27]

Thereafter, the present case was submitted for decision on November 12, 2024.[28]

Hence, this Decision.

The Assigned Errors

Petitioner assigns the following errors to the assailed issuances of the Court in Division:[29]

(a) The Court in Division committed grave abuse of discretion when it resolved to acquit the private respondent for failure of the prosecution to establish guilt beyond reasonable doubt;

(b) The Court in Division committed grave abuse of discretion when it resolved to declare the private respondent without civil liability.

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[24] G.R. No. 135451 (Resolution), September 30, 1999.
[25] Division Docket, Vol. III, pp. 1390-1423.
[26] *Id*, p. 1624.
[27] *Id*, pp.1625-1654.
[28] *Id*. p. 1656.
[29] *Supra* note 1.

The Arguments

Petitioner raises the following arguments:[30]

(a) The Court in Division committed grave abuse of discretion when it ruled that petitioner's failure to properly serve notices to the respondent casts doubt that the criminal offense was committed willfully;

(b) Petitioner has sufficiently proven that all the elements for the violation of *Section 255 of the NIRC* are present;

i. First, Private respondent is a person required under the *NIRC* to pay the tax deficiency at times required by law and regulations;

ii. Second, Private Respondent failed to pay her required income tax deficiency for taxable year 2011;

iii. Third, Private Respondent willfully failed to pay her required income tax deficiency for taxable year 2011.

(c) Private Respondent Labao committed tax evasion; and

(d) Private Respondent is civilly liable of violating *Section 255 of the NIRC*, as amended.

Private respondent opposes the above with the following contentions:[31]

(a) There is no grave abuse of discretion amounting to lack or excess of jurisdiction in the instant case;

(b) The Court in Division correctly ruled when it acquitted the Private respondent and held that the petitioner's failure to properly serve notices to the private respondent casts doubt as to the willful commission of the crime charged; and

(c) The Court in Division correctly ruled that the private respondent is not civilly liable.

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[30] *Rollo*, pp. 1-33.
[31] *Id*, pp. 118-147.

The Ruling of the Court En Banc

The Court has jurisdiction over the instant Petition.

Under *Rule 4, Section 2 (f) of the Revised Rules of the Court of Tax Appeals, as amended*, this Court *En Banc* has jurisdiction over appeals from the Court in Division's rulings in criminal cases:

> SEC. 2. *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
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> . . . .
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> (f) Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive original jurisdiction over cases involving criminal offenses arising from violations of the National Internal Revenue Code or the Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or Bureau of Customs;
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> . . . .

This jurisdiction covers not only regular appeals but also Rule 65 petitions for certiorari from such rulings.[32]

The petition here assails the Court in Division's acquittal of private respondent. Its subject matter thus falls squarely within this Court *En Banc*'s jurisdiction.

As for the timeliness of the petition, *Rule 65, Section 4 of the Rules of Court* mandates that a petition for certiorari be filed within 60 days from notice of the judgment, order, or resolution. Petitioner here received the Assailed Resolution on May 10, 2024, giving it until July 9, 2024 within which to file its Petition.

Considering that the instant petition was filed on exactly July 9, 2024, the same was timely filed, and this Court *En Banc* properly assumed jurisdiction over this case.

32 *People v. Court of Tax Appeals-Third Division*, G.R. Nos. 250736 & 250801-03, December 5, 2022.

Private respondent's right against double jeopardy is not infringed by Petitioner's filing of a Petition for Certiorari under Rule 65 of the Rules of Court.

In her Comment/Opposition (Re: Petition or Certiorari dated July 9, 2024),[33] private respondent asserts the inviolability of the finality of acquittal rule, citing the case of *Torres v. AAA*.[34] She posits that pursuant to the right against double jeopardy, as guaranteed by the *1987 Philippine Constitution*, the acquittal of an accused, whether by a trial or an appellate court, is final, unappealable, and immediately executory upon its promulgation.

While private respondent's argument may be valid in principle, it is misplaced in the instant case.

A petition for certiorari under Rule 65 of the Rules of Court is a special civil action that may be resorted to in the absence of an appeal, or any plain, speedy and adequate remedy in the ordinary course of law.[35]

In the recent case of *Austria v. AAA*,[36] citing the case of *Dela Rosa v. Court of Appeals*,[37] the Court reiterated that a special civil action for certiorari necessitates a clear showing that the court or tribunal rendering the assailed decision or resolution committed grave abuse of discretion amounting to lack or excess of jurisdiction or acted on other jurisdictional grounds. The rules further provide that said petition may be filed by an aggrieved person, which in legal standing extends to and includes the State.

Time and time again, the Court has defined grave abuse of discretion as the "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of hostility."[38] Thus, when a court or

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[33] Supra note 27.
[34] G.R. No. 248567, Nov. 10, 2020.
[35] **Section 1.** *Petition for certiorari.* – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its jurisdiction, or which grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary court of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
[36] G.R. No. 205275, June 28, 2022.
[37] G.R. No. 116945, February 9, 1996.
[38] *People v. Hon. Castaneda, Jr.*, G.R. No. 208290, December 11, 2013

tribunal renders a decision tainted with grave abuse of discretion, the proper remedy is to file a petition for certiorari under Rule 65 of the Rules of Court.[39]

However, being a criminal proceeding in nature, the instant case falls under an exception rather than the rule.

Pursuant to *Section 21, Article III of the 1987 Philippine Constitution*, "[n]o person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act."

Be that as it may, prevailing jurisprudence establishes that a petition for certiorari under *Rule 65 of the Rules of Court* does not contravene the accused's constitutional right against double jeopardy upon a clear showing that the court or tribunal, in rendering the judgment of acquittal, committed grave abuse of discretion. This principle was affirmed in the case of *de Grano*,[40] to wit:

> By way of exception, a judgment of acquittal in a criminal case may be assailed in a petition for certiorari under Rule 65 of the Rules of Court, but only upon a clear showing by the petitioner that the lower court, in acquitting the accused, committed not merely reversible errors of judgment but also grave abuse of discretion amounting to lack or excess of jurisdiction, or to a denial of due process, thus rendering the assailed judgment void. In which event, the accused cannot be considered at risk of double jeopardy — the revered constitutional safeguard against exposing the accused to the risk of answering twice for the same offense.

Hence, it follows that the Petitioner's act of initiating a Petition for Certiorari under *Rule 65 of the Rules of Court* does not breach private respondent's right against double jeopardy.

Petitioner's arguments are merely alleged errors of judgment of the Court a quo rather than pinpointing grave abuse of discretion committed by the Court.

Acting on the Petition for Certiorari under *Rule 65 of the Rules of Court* filed by petitioner seeking to set aside the Assailed Decision and Assailed Resolution, this Court resolves to deny the petition for lack of merit.

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39 *Cruz v. People*, G.R. No. 224974, July 3, 2017.
40 *People v. de Grano*, G.R. No. 167710, June 5, 2009.

A judicious review of the instant Petition reveals that while it purports to be a Petition for Certiorari under *Rule 65*, the arguments raised fail to demonstrate any grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Court in Division. Instead of pointing out acts of caprice, whim, or blatant disregard for law or jurisprudence, the Petition merely rehashes the arguments already considered and resolved by the court *a quo* and merely points to alleged errors of judgment committed by it in evaluating the facts and applying the law to the case.

The Supreme Court has consistently distinguished between grave abuse of discretion and errors of judgment, and it bears reiterating this fundamental principle. In the case of *Miro v. de Erederos*,[41] the Court emphasized that an error of judgment is a mistake in the application of the law or an appreciation of the facts, which is correctible by an appeal via *Rule 45 of the Rules of Court.* This is in contrast to grave abuse of discretion, as earlier discussed.

Here, the errors alleged in the Petition are within the ambit of errors of judgment. Petitioner is essentially asking this Court to re-examine the facts and re-evaluate the evidence, a function that is not within the purview of a Petition for Certiorari under *Rule 65 of the Rules of Court.* On this ground alone, the Petition is already bereft of merit.

Notwithstanding the foregoing, this Court deems it prudent to address the arguments raised by Petitioner in the instant Petition, thus providing a comprehensive discussion of the issues presented.

In the absence of a clear showing that the Court in Division acted with grave abuse of discretion, the Petition for Certiorari must necessarily be denied for lack of merit.

Petitioner contends that the Court in Division committed grave abuse of discretion when it acquitted the Private Respondent in view of the prosecution's failure to prove Private Respondent's guilt beyond reasonable doubt. Specifically, by failing to properly serve notices to the accused, which casts doubts that the criminal offense was committed willfully.

We are unconvinced.

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41 G.R. Nos. 172532 & 172544-45. November 20, 2013.

Among the fundamental principles of Criminal Law is the quantum of proof required to convict an accused of the crime charged, which is proof beyond reasonable doubt, as discussed in the case of *Imperial v. People*:[42]

> No less than the highest quantum of proof is required, as the life and liberty of a person are at stake. In these cases, the overriding consideration is not whether the court doubts the innocence of the accused, but whether it entertains a reasonable doubt as to their guilt. In so evaluating, courts must consider every circumstance in favor of the accused's innocence. The accused bears no burden to prove his or her innocence; thus, the weakness of the defense is inconsequential. When the prosecution fails to establish by proof beyond reasonable doubt the commission of the crime charged and in identifying the accused as the one responsible therefor, as in this case, acquittal must follow.

While it is uncontested that the prosecution was able to establish the existence of the first two elements of the offense charged,[43] the third element, which is the willful and deliberate failure to pay such tax and to supply correct and accurate information in her Income Tax Return ("ITR"), is wanting.

A study of the evidence on hand, along with the cross-examination conducted by private respondent's counsels on Revenue District Officer Dimalomping, reveals that the Notice of Informal Conference ("NIC") and the Preliminary Assessment Notice ("PAN") were served to persons who were not authorized by Private Respondent to receive them on her behalf. Thus, the subject notices were not properly served to Private Respondent.

The Court in Division's reference to the case of *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*[44] in the Assailed Decision is called for. In said case, the Supreme Court ruled that when an authority, such as the BIR, determines a tax deficiency, the taxpayer must be formally notified. This is a fundamental due process requirement.

According to *Section 3.1.4 of Revenue Regulations No. 12-99*, a Formal Letter of Demand ("FLD") and Final Assessment Notice ("FAN") must be delivered to the taxpayer either by registered mail or personal delivery.

If the notice is personally delivered, the taxpayer or their authorized representative must sign for it. The person signing must indicate their name, signature, and their position and authority to act on behalf of the taxpayer. This is to ensure that the recipient understands the seriousness of the document.

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[42] G.R. No. 230519, June 30, 2021.
[43] *People v. E&D Parts Supply, Inc.*, G.R. No. 259284, January 24, 2024.
[44] G.R. No. 244202, July 10, 2023.

Similarly, the NIC and PAN must also be properly served on the taxpayer or their authorized representative to uphold due process. Failure to properly serve these preliminary notices, as well as the FAN, renders the entire tax assessment void. This is because proper service is an essential part of the assessment process and provides the taxpayer with an opportunity to address the issue before a final assessment is issued.

This is further reiterated by the Supreme Court in the case of *Commissioner of Internal Revenue v. Fort 1 Global City Center, Inc.*,[45] *viz.*:

> Well-settled is the rule that an assessment that fails to strictly comply with the due process requirements outlined in Section 228 of the Tax Code and its implementing rules is void and produces no effect. This is because while it is true that taxation is the lifeblood of the government, the power of the State to collect tax must be balanced with the taxpayer's right to substantial and procedural due process. This Court has consistently recognized that, between the power of the State to tax and an individual's right to due process, the scale favors the right of the taxpayer to due process. We have repeatedly urged strict observance by the BIR of the prescribed procedure for issuance of the assessment notices to uphold the taxpayer's constitutional rights.

Therefore, without a valid assessment, tax authorities cannot legally collect taxes. The law requires more than just formal notice. In fact, it demands a substantial process. This process ensures that taxpayers are informed of the government's claim and are given a fair opportunity to present their side and provide evidence. Without this essential step, seizing a taxpayer's property would violate the principle of due process, as the taxpayer would not be able to make an effective protest.[46]

Thus, as correctly held by the Court in Division in the Assailed Decision:

> In the instant case, the NIC and the PAN were received by a certain Jonahlyn T. Germata and Maria Chalebra A. Cabangahan, respectively.
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> In the NIC, Ms. Germata's indicated designation or position is one of a "Secretary"; while Ms. Cabangahan's indicated designation is an "Office Staff of SMSA". However, in both documents, the signee-recipients failed to indicate their authority to act for and in behalf of the accused taxpayer, Ms. Labao.
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> Applying the preceding case, the NIC and the PAN were not properly served to accused Labao and, therefore, the succeeding FLD and its corresponding Assessment Notices were also void as an invalid or void assessment bears no valid fruit as held in *Commissioner of Internal Revenue v. Azucena T. Reyes*, . . .

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[45] G.R. No. 263811. November 26, 2024.

[46] *Commissioner of Internal Revenue v. Azucena T. Reyes, G.R. No. 159694, January 27, 2006.*

. . . .

> Thus, the prosecution failed to prove the third requisite that the alleged failure of accused Labao to supply correct and accurate information in the ITR and to pay its corresponding tax was done willfully."

In sum, petitioner failed to satisfy the quantum of proof required in criminal cases to secure a conviction against the Private Respondent for a violation of *Section 255 of the NIRC.*

Neither is there grave abuse of discretion on the part of the Court in Division in declaring that Private Respondent is without civil liability.

Petitioner contends that Private Respondent should be held civilly liable for the deemed instituted civil aspect of the instant case despite her acquittal, given that the standard proof required to establish civil liability is only a mere preponderance of evidence. Hence, the acquittal of Private Respondent should not serve as a hindrance to the collection of the civil liability imposed for her failure to pay the required taxes.

We are not convinced.

In its ruling in the case of *Commissioner of Internal Revenue v. Sps. Magaan*,[47] the Supreme Court reaffirmed the doctrine previously established in the case of *Hantex Trading Co., Inc.*[48] This reiteration reinforces the principle that a tax assessment, while generally presumed to be correct, must not be based on mere presumptions, but rather on competent and substantial evidence, to wit:

> We agree with the contention of the petitioner that, as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a prima facie case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the *prima facie* presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record – keeping requirements of the NIRC.

47 G.R. No. 232663, May 3, 2021.
48 G.R. No. 136975, March 31, 2005.

> However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a "naked assessment," *i.e.*, without any foundation character, the determination of the tax due is without rational basis. In such a situation, the U.S. Court of Appeals ruled that the determination of the Commissioner contained in a deficiency notice disappears. Hence, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.
> (Citations omitted)

Based on the foregoing, tax assessments from the BIR are assumed to be correct considering the presumption of administrative regularity. This places the burden of proof on the taxpayer to show the assessment is flawed. However, this presumption is not absolute. If the taxpayer can prove the assessment is arbitrary and has no factual basis, such as in a "naked assessment", the presumption is lost. In such case, the court must then decide the matter based on all the credible evidence presented by both the BIR and the taxpayer.

The same was held by the CTA *En Banc* in the case of *Keansburg Marketing Corporation v. Commissioner of Internal Revenue,*[49] ruling that: "although tax assessments have the presumption of correctness and regularity in its favor, it is also equally true that assessments should not be based on mere presumptions no matter how reasonable or logical the presumption might be."

Based on the evidence presented, the tax assessment issued by the BIR against the private respondent is void for a lack of factual basis. The assessment contained in the LN was founded on unverified data from third parties, which petitioner merely presumed to be private respondent's income.

Furthermore, the assessment incorrectly portrayed the Private Respondent as a "seller", which is inconsistent with its business as a service provider. This vital error, along with the reliance on uncorroborated information, demonstrates that the assessment was made arbitrarily and without a rational foundation.

As discussed in the preceding paragraphs, the Supreme Court has consistently held that although tax assessments are generally accorded a presumption of correctness, this presumption is not absolute. It is defeated upon a showing that the assessment is without foundation or is based on mere presumptions. Petitioner's admission that it failed to validate the information and merely relied on unverified data places the assessment in the nature of a "naked assessment".

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[49] CTA Case No. 9076, January 5, 2018.

In failing to provide a proper factual basis for the assessment, the Petitioner violated the due process requirement under *Section 228 of the NIRC*. Consequently, the assessment is void and without legal effect.

All told, We cannot grant the Petition. Petitioner fails to persuade the Court *En Banc* that the Court in Division acted with grave abuse of discretion in acquitting herein Private Respondent and absolving her from the deemed instituted civil aspect of the case as both the Assailed Decision and the Assailed Resolution were rendered in accordance with existing laws and jurisprudence.

ACCORDINGLY, premises considered, the Petition for Certiorari, filed on July 9, 2024, is hereby **DENIED** for lack of merit. The Decision, dated February 7, 2024, and the Resolution, dated April 29, 2024, both rendered by the Court in Division in CTA Crim. Case No. O-834, are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

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

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice