REPUBLIC OF THE PHILIPPINES
*Court of Tax Appeals*
QUEZON CITY

*Second Division*

**PEOPLE OF THE PHILIPPINES,**
*Plaintiff,*

-*versus*-

**I.T. CITI SERVICES, INC., RISTOPHER L. QUINTANA, ALLAN SANTOS FRANCO, LEONIE S. LIMON,**
*Accused*

**CTA Crim. Case No. O-860**
(NPS Docket No. XVI-INV-19G-00273)

For: Violation of Sec. 255 of the NIRC of 1997, as amended

Members:

**RINGPIS-LIBAN,** *Chairperson,*
**MODESTO-SAN PEDRO,** *and*
**FERRER-FLORES,** *JJ.*

Promulgated:

AUG 14 2024

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# RESOLUTION

Before the Court is accused Ristopher L. Quintana and Allan Santos Franco's *Demurrer to Evidence (With prior leave of Court)* ("*Demurrer*"), officially filed[1] with their *Manifestation and Motion* on May 17, 2024, with plaintiff's *Comment/Opposition to Accused's Demurrer to Evidence*, filed via licensed courier on May 20, 2024.

I.T. Citi Services, Inc. ("accused corporation"), along with its alleged president, Ristopher L. Quintana, corporate secretary, Alan Santos Franco, and treasurer, Leonie S. Limon, are charged with violation of *Section 255 of the National Internal Revenue Code of 1997, as amended* ("*NIRC*"), by failing to pay the correct income tax ("IT") for taxable year ("TY") 2012, as follows:

> That on 05 June 2018 and thereafter, in Pasig City and within the jurisdiction of this Honorable Court, accused I.T. CITI SERVICES, INC., a registered taxpayer of BIR RDO No. 43-A Pasig City, under Tax Identification No. 208-104-712, with obligation under the law to file and pay the corresponding Income Tax (IT) Return for the taxable year/period

[1] Accused had also attached a copy of the Demurrer to their earlier submitted *Motion for Leave of Court to File and Admit Attached Demurrer to Evidence*, filed on April 22, 2024. However, said pleading was raised precisely to ask for this Court's permission to file the instant Demurrer, which is only intended to be submitted "[w]ith prior leave of Court." We thus treat the later filing of the Demurrer, as attached to the Manifestation and Motion, as its actual date of filing.

> 01 January to 31 December 2012, and accused RISTOPHER L. QUINTANA, ALLAN SANTOS FRANCO and LEONIE S. LIMON, its president, corporate secretary and treasurer, respectively, and responsible officers, did then and there, willfully and knowingly fail to pay the correct IT based on Letter of Authority (LoA) No. 043A-2015-00000314, in the amount of P1,296,004.00, exclusive of surcharges and interest, despite final assessment notice, including prior and post notices and formal demand to pay, the last being in the nature of final notice for them to pay the said tax, to the damage and prejudice of the Government.
>
> CONTRARY TO LAW.

Accused Quintana and Franco raise the following grounds in support of their Demurrer:

(1) The deficiency IT assessment against accused corporation is void for being issued beyond the 3-year period set by *Section 203 of the NIRC*, with the extended 10-year period of *Section 222(a) of the NIRC* being inapplicable as plaintiff failed to establish falsity or fraud;
(2) The assessment is void as Revenue Officer ("RO") Melodie Bernandine I. Fernandez was not properly authorized by a Letter of Authority ("LOA");
(3) The assessment is void as the various letters and notices that constitute the assessment were not properly served upon accused corporation; and
(4) Accused Quintana and Franco were not required to pay the assessment as they were merely employed as an assistant and driver, respectively, of accused corporation and are not the latter's president and corporate secretary.

Plaintiff counters the above with the following arguments:

(1) It has proven beyond reasonable doubt that accused are guilty of a willful failure to pay tax;
(2) *Sections 203 and 222(a) of the NIRC* are inapplicable to this case as it involves a violation of *Section 255 of the NIRC* specifically; and
(3) A LOA is not necessary to properly authorize a RO to audit a taxpayer when a Memorandum of Assignment ("MOA") was already issued in favor of said RO.
(4) Accused corporation's General Information Sheet ("GIS") clearly identify accused Quintana and Franco as accused corporation's president and corporate secretary, respectively.

In criminal cases, a demurrer to evidence is a challenge posed to the prosecution's evidence, in effect contending that such evidence is insufficient to sustain a verdict of guilty. It is governed by *Rule 119, Section 23 of the Revised Rules of Court, as amended*, to wit:

> **SEC. 23. *Demurrer to evidence.*** — After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.
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> If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.
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> The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.
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> If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (1 0) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.
>
> The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by certiorari before judgment.

The present case, meanwhile, involves an alleged violation of *Section 255 of the NIRC*, reproduced below:

> SEC. 255. Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation. - *Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax*, make a return, keep any record, or supply correct and accurate information, *who **willfully** fails to pay such tax*, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations *shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.*
> (Emphasis and italics supplied.)

Applying these provisions to the present case, plaintiff's evidence must prove the following three elements to sufficiently sustain a verdict of guilty:

(1) Accused are required by the *NIRC* or its rules and regulations to pay the assessed deficiency IT;

(2) Accused failed to pay such tax within the required period; and
(3) Such failure was done *willfully*.

For the instant Demurrer to succeed, then, accused must show that plaintiff's evidence is insufficient to establish all the above three elements beyond reasonable doubt.

With this in mind, the Court finds that plaintiff's evidence failed to prove that accused are required to pay the assessed IT for TY 2012. The Demurrer must thus be granted.

*Plaintiff failed to establish the timeliness, and thus validity, of the assessment against accused, raising doubt as to whether they were required to pay any deficiency IT at all*

Accused argue that the Bureau of Internal Revenue's ("BIR") reliance on a computer-generated report, without further verification from other procedures, means the alleged underdeclaration of more than 30% of accused's declared IT lacks factual and legal basis. Consequently, the BIR's use of the extended 10-year period to assess, as provided by *Section 222(a) of the NIRC*, was unjustified, and its right to assess accused had already prescribed when it issued the corresponding Preliminary Assessment Notice ("PAN") beyond the 3-year period required by *Section 203 of the NIRC*.

Plaintiff counters this by claiming that discussions of *Section 203 and 222(a) of the NIRC* are irrelevant here as it already proved that accused violated *Section 255 of the NIRC*.

Both arguments are erroneous, but We ultimately find for accused.

Dealing first with plaintiff's argument, the same ignores how the timeliness of the corresponding assessment is *necessary* for a tax liability to arise. Accused's claim that the assessment was untimely issued thus amounts to a claim that they were *not required* to pay the deficiency IT at issue.

In brief, *Sections 203 and 222(a) of the NIRC* deal with the prescriptive periods for assessments. *Section 203* gives the BIR three years to assess a tax, counted from either (a) the last day required by law to file the relevant tax return; or (b) the actual date on which the return was filed, if it was filed beyond that last day required by law for such. Meanwhile, *Section 222(a)* extends this period to 10 years but is only applicable "[i]n the case of a false or fraudulent return with intent to evade tax or of failure to file a return." Significantly, any assessment issued beyond the applicable prescriptive period is void and without force or effect, for having failed to comply with the requirements laid down by law.

In the present case, accused are charged with failure to pay deficiency IT for TY 2012, *i.e.* the amount of IT they paid for TY 2012 was allegedly less than the amount of IT actually due. The finding that the IT they paid was deficient, that they are *required to pay deficiency IT*, is the result of an assessment. If the assessment was void, however, then they were never required to pay any deficiency IT. No tax liability can arise if no valid assessment for it exists.

The above is why it may be necessary to show falsity or fraud with intent to evade taxes on the part of accused's tax returns in order to successfully convict them. The assessment notices and letters against accused claim that the 10-year period under *Section 222(a) of the NIRC* is applicable to their case, as their failure to declare revenues, receipts, or income in an amount exceeding 30% of the declared amount is *prima facie* evidence of a false or fraudulent return under *Section 248(b) of the NIRC*.[2] If no falsity or fraud are present in accused's tax returns, however, then the 10-year period would be inapplicable, and the assessment may be void for being issued late. Consequently, accused would never have been required to pay any deficiency IT and would thus be innocent of the crime charged.

Given the above, was the BIR justified in its use of the extended 10-year period for assessing accused? Was accused's IT return ("ITR") a "false or fraudulent return with intent to evade tax?" Most importantly, did it issue the assessment against accused on time?

Accused answer in the negative, yet their reasoning is flawed. They claim that the alleged underdeclaration has no factual or legal basis as the same was assessed using a mere computer-generated report. However, they cite no law or jurisprudence that specifically holds out that computer-generated reports as insufficient for this purpose. The passage they cite from *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*[3] covers arbitrary assessments but nowhere equates the use of computer-generated reports with such arbitrariness. Indeed, given that the use of such reports is standard procedure, its utilization here *supports* the presumption of the *prima facie* correctness of an assessment as discussed by the Supreme Court. Accused's argument in this issue is thus unconvincing.

That said, we still find plaintiff's evidence insufficient to prove the timeliness of the assessment.

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2 *See* Details of Discrepancies, p. 1, *Rollo*, p. 36; *see also* Formal Letter of Demand, p. 2, *id.* at 41.

3 G.R. No. 136975, March 31, 2005.

First, plaintiff does not identify when accused filed their ITR. There is thus uncertainty as to when the prescriptive period for assessing accused actually began and ended. Given that said ITR is supposed to report accused's income from "01 January to 31 December 2012," the earliest the prescriptive period could have started would have been April 15, 2013, the last day for filing the ITR. Given that the Letter Notice where the BIR first raised the alleged discrepancy was issued on July 22, 2014, the latest the prescriptive period could have started, the latest that the ITR could have possibly been filed, was on July 21, 2014. If the 3-year period is applicable here, then the deadline for the issuance of the assessment would have been some time from April 15, 2016 to July 21, 2017. Given that the PAN was issued on December 12, 2017, it would have been belatedly issued, rendering the assessment void. However, if the 10-year period is applicable here, said deadline would have been some time from April 15, 2023 to July 21, 2027. In such a case, the PAN would have been timely issued. The validity of the assessment, and whether or not accused were actually required to pay the assessed tax, consequently depends on which of the two periods to assess is applicable.

Complicating matters further is that the application of the 10-year period has long been a contentious topic. Following the recent case of *McDonald's Philippines Realty Corporation v. Commissioner of Internal Revenue*[4] ("*McDonald's*"), an intent to evade taxes accompanying the falsity or fraud in a tax return must be shown to justify the 10-year period. Such intent is *not* automatically proven by the substantial underdeclaration identified in *Section 248(b) of the NIRC*. Following this, the BIR should not have followed the extended prescriptive period, given the lack of any proof that the substantial underdeclaration in accused's ITR was paired with any willful intent. However, the discussion in *McDonald's* itself shows that jurisprudence has not been consistent on the matter, frequently holding the opposite position that the mere existence of substantial underdeclaration is enough to support using the 10-year period. It is thus possible that the BIR was just following the prevailing jurisprudence of the time when it decided to use said extended period.

The problem now is that the Court cannot determine what the prevailing jurisprudence was during the relevant period. The years 2013 to 2017 were a tumultuous time for the interpretation of *Section 222(a) of the NIRC*. The period saw the promulgation of *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*[5] ("*Samar-I*") *Commissioner of Internal Revenue v. Fitness By Design, Inc.*,[6] *Commissioner of Internal Revenue v. Asalus Corporation*,[7] and *Commissioner of Internal Revenue v. Philippine Daily Inquirer*[8] ("*PDI*"), each decision espousing an interpretation of the provision opposed to that of its direct predecessor.

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4 G.R. No. 247737, August 8, 2023.
5 G.R. No. 193100, May 10, 2014.
6 G.R. No. 215957, November 9, 2016.
7 G.R. No. 221590, February 22, 2017.
8 G.R. No. 213943, March 22, 2017.

Determining which of these constituted the prevailing jurisprudence of the time, however, would require knowing exactly when the 3-year period to assess ended. If, for example, the 3-year period ended on April 15, 2016, then the BIR would be justified in *ignoring* said 3-year period and instead using the 10-year period: *Samar-I* was the prevailing jurisprudence at that point and allowed treating a substantial underdeclaration as justification for the extended period. If the period instead ended on July 21, 2017, then *PDI* would be the prevailing jurisprudence. As *PDI* requires the presence of intent to justify following the 10-year period, the BIR's ignoring of the lapse of the 3-year period, its use of the 10-year period instead, would contradict such jurisprudence. Given that plaintiff failed to identify and prove the date that accused corporation filed its ITR, however, We lack enough information to determine which of the aforementioned decisions were in effect at the relevant time, whether the BIR was justified in using the 10-year period, and, ultimately, whether the assessment was timely issued.

The point of all this procedural talk is that there is still *doubt* as to whether or not the assessment was timely issued. While it is possible that the BIR's use of the 10-year period was justified and that the PAN was timely issued, it is also possible that the PAN was issued beyond the lapse of the prescriptive period, rendering the assessment void. In other words, plaintiff's evidence is insufficient to prove beyond reasonable doubt that accused were actually required to pay any deficiency IT. To repeat, a taxpayer is *not* required to pay any deficiency tax if the same is based on a void assessment. Plaintiff's evidence consequently failed to prove element (1), identified above, and is thus insufficient to sustain a verdict of guilty.

This insufficiency leads the Court to conclude that the instant Demurrer must be granted and that accused must be acquitted.

Further, given the discussion above, the Court need not address accused's other arguments. We do note that the falsification of public documents, such as a GIS, by private individuals is a violation of *Article 172 of the Revised Penal Code* and that if accused individuals are aggrieved by the alleged misinformation in the GIS, they may raise charges against the responsible parties before the appropriate court.

*Accused Leonie S. Limon must also be acquitted as the evidence did not prove the corporation's guilt*

Finally, the Court finds it proper to extend the acquittal to accused Limon, despite her not being a movant for the instant Demurrer.

Procedurally, *Rule 119, Section 23 of the Revised Rules of Court* allows the Court to, *on its own initiative*, dismiss criminal cases due to an insufficiency in the prosecution's evidence. We are thus not constrained by the fact that accused Limon took no part in the instant Demurrer.

Substantially, accused Limon was only impleaded here in her alleged capacity as the treasurer of accused corporation. The Court already found plaintiff's evidence insufficient to prove that accused corporation and its officers committed any crime, however. As it is uncertain if accused corporation violated the *NIRC* in the first place, it is consequently uncertain if accused Limon was involved in any crime either. Plaintiff's evidence thus cannot sustain a guilty verdict for accused Limon, who must be acquitted as well.

All told, plaintiff's evidence is insufficient to successfully convict any of the accused in the case at bar.

**ACCORDINGLY**, the instant Demurrer to Evidence (With prior leave of Court) is hereby **GRANTED**. The Information, filed on January 14, 2021, is hereby **DISMISSED** for insufficiency of evidence. Accused I.T. Citi Services, Inc., Ristopher L. Quintana, Allan Santos Franco, and Leonie S. Limon are **ACQUITTED**.

Let an entry of judgment be immediately issued in this case.

**SO ORDERED.**

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

**CORAZON G. FERRER-FLORES**
Associate Justice