REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

-versus-

ROBUST SECURITY CORP., VILMA M. MABILANGAN, SHARLYN FUENTES, EDUARDO DELA MEJIA and RUDILYN OLENDO,
Respondents.

CTA *EB* Crim No. 098
(CTA Crim Case Nos. O-739 & O-740)

Members:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
MAR 26 2024 3:10pm

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DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review* filed on December 5, 2022 by the People of the Philippines[1] assailing the *Resolution* dated August 5, 2022[2] (**first assailed Resolution**) and the *Resolution* dated October 25, 2022[3] (**second assailed Resolution**) rendered by the Court's First Division (**Court in Division**) in CTA Crim Case Nos. O-739 & O-740 entitled *People of the Philippines v. Robust Security Corporation, Vilma M. Mabilangan, Sharlyn Fuentes, Eduardo Dela Mejia, and Rudilyn*

[1] Received by the Court on December 5, 2022; *En Banc* (*EB*) Docket, pp. 5-13.
[2] *EB* Docket, pp. 15-29; on-leave Presiding Justice Roman G. Del Rosario, signed by Associate Justice Catherine T. Manahan, and Associate Justice Marian Ivy F. Reyes-Fajardo.
[3] *EB* Docket, pp. 30-35.

Olendo, for violation of Section 255 in relation to Section 256 of the National Internal Revenue Code ("**NIRC**") of 1997, as amended.

Petitioner prays for the reversal of the assailed *Resolutions* insofar as the civil aspect is concerned.

The dispositive portions of the assailed *Resolutions* read:

First assailed Resolution dated August 5, 2022:

> **WHEREFORE**, premises considered, the *Demurrer to the Evidence* filed by accused Sharlyn Fuentes on June 15, 2022 is hereby **GRANTED**.
>
> Accordingly, the Informations filed against the accused Sharlyn Fuentes on June 19, 2019 are **DISMISSED**, and the herein accused is **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt.
>
> **SO ORDERED**.

Second assailed Resolution dated October 25, 2022:

> **WHEREFORE**, in light of the foregoing considerations, plaintiff's *Motion for Reconsideration (Re: Resolution dated 05 August 2022)* filed on August 30, 2022 is **DENIED** for lack of merit.
>
> **SO ORDERED**.

THE PARTIES

The People of the Philippines (**People**) is represented by the Bureau of Internal Revenue (**BIR**) acting as Special Prosecutor duly deputized by the Department of Justice (**DOJ**), with office address at Legal Division, Revenue Region No. 6 – Manila, BIR Building I, Solana Street, Intramuros, Manila.

Robust Security Corp., and Sharlyn Fuentes, with address at 2/F Daily Express Building, 371 Bonifacio Drive, Port Area, Manila and 320 Regina Building, Escolta, Manila are the accused in CTA Crim Case Nos. O-739 & O-740.

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THE FACTS

The facts as narrated in the *first assailed Resolution* dated August 5, 2022, in CTA Crim Case Nos. O-739 & O-740, are as follows:[4]

> The accused was charged under Informations filed with the Court on June 19, 2019 docketed as Criminal Case Nos. O-739 to O-740 for failure to pay deficiency income tax (IT) and value-added tax (VAT) for taxable year (TY) 2007, committed as follows:
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> **<u>CRIMINAL CASE NO. O-739</u>**
>
> "That on or about November 27, 2011, and thereafter, in Manila and within the jurisdiction of this Honorable Court, herein accused, Robust Security Corporation and Vilma Mabilangan, Eduardo dela Mejia, Sharlyn Fuentes and Rudilyn Olendo, Presidents and Treasurers, respectively, in their capacities as responsible corporate officers of Robust Security Corporation, a domestic corporation duly registered with the Securities and Exchange Commission, and required by law, rules and regulations to pay the required income tax at the time or times required by law, rules and regulations for taxable year 2007, did, then and there, willfully, unlawfully and knowingly fail to pay the corresponding deficiency income tax due for taxable year 2007 despite receipt of Preliminary Assessment Notice (PAN), Final Assessment Notice (FAN), Preliminary Collection Letter (PCL) and Final Notice Before Seizure (FNS), and as a result, failed to pay the correct tax in violation of the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, to the damage and prejudice of the Government of the Republic of the Philippines in the amount of Two Million Two Hundred Forty Six Thousand Seven Pesos and 38/100 (P2,246,007.38), exclusive of interests and surcharges."
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> Contrary to law."
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> **<u>CRIMINAL CASE NO. O-740</u>**
>
> "That on or about November 27, 2011, and thereafter, in Manila and within the jurisdiction of this Honorable Court, herein accused, Robust

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[4] *Supra* at note 2.

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> Security Corporation and Vilma Mabilangan, Eduardo dela Mejia, Sharlyn Fuentes and Rudilyn Olendo, Presidents and Treasurers, respectively, in their capacities as responsible corporate officers of Robust Security Corporation, a domestic corporation duly registered with the Securities and Exchange Commission, and required by law, rules and regulations to pay the required income tax at the time or times required by law, rules and regulations for taxable year 2007, did, then and there, willfully, unlawfully and knowingly fail to pay the corresponding Value-Added Tax for taxable year 2007, despite receipt of Preliminary Assessment Notice (PAN), Final Assessment Notice (FAN), Preliminary Collection Letter (PCL) and Final Notice Before Seizure (FNS), and as a result, failed to pay the correct tax in violation of the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, to the damage and prejudice of the Government of the Republic of the Philippines in the amount of Two Million One Hundred Ninety Nine Thousand Five Hundred Forty Two Pesos and 05/100 (P2,199,542.05), exclusive of interests and surcharges.
>
> Contrary to law."

On July 15, 2019, the First Division of this Court issued a Resolution, finding the existence of probable cause to hold accused Sharlyn Fuentes for trial and ordered the issuance of Warrant of Arrests [*sic*] against her and her co-accused in CTA Crim. Case No. O-739.

On July 18, 2019, the Second Division of this Court issued a Resolution, finding the existence of probable cause to hold accused Sharlyn Fuentes for trial and ordered the issuance of Warrant of Arrests [*sic*] against her and her co-accused in CTA Crim. Case No. O-740.

On July 26, 2019, the Second Division of this Court issued a Resolution consolidating CTA Crim. Case No. O-740 with CTA Crim. Case No. O-739, considering that both cases are founded on the same facts and involve the same parties.

On December 4, 2019, the First Division of this Court granted plaintiff's Motion for Consolidation approving the consolidation of CTA Crim. Case No. O-740 with CTA Crim. Case No. O-739.

Warrants of Arrest were issued against accused Sharlyn Fuentes, Vilma Mabilangan, Eduardo Dela Mejia and Rudilyn

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Olendo on September 11, 2019 for CTA Crim. Case No. O-739 and on July 19, 2019 for CTA Crim. Case No. O-740 and Alias Warrants of Arrest on January 2, 2020 for CTA Crim. Case No. O-739 and on January 11, 2021 for CTA Crim. Case Nos. O-739 and O-740.

Among the accused, it was only Sharlyn Fuentes who voluntarily surrendered and submitted herself to the jurisdiction of the Court on February 3, 2021 and who also posted the required cash bail bond in the total amount of Php120,000 for her provisional liberty. Thereafter, the Court issued an Order dated February 3, 2021, lifting the Warrant of Arrest issued against accused Sharlyn Fuentes and set her arraignment and the pre-trial conference on March 3, 2021.

On March 2, 2021, plaintiff filed its Amended Pre-Trial Brief while accused Sharlyn Fuentes filed her Pre-Trial Brief on March 3, 2021.

Upon arraignment for CTA Crim. Case Nos. O-739 and O-740 which was held on March 3, 2021, accused Sharlyn Fuentes, assisted by counsel, entered a plea of "Not Guilty" to the charges filed against her.

Pre-trial for the consolidated cases was thereafter held after the arraignment on the same date.

An Order dated March 3, 2021 was consequently issued setting the case for hearing on April 14, 2021 for the presentation and reception of the prosecution's evidence which was later reset to May 26, 2021 via videoconference.

On May 24, 2021, plaintiff electronically filed an Urgent and Ex-Parte Motion to Reset (Re: Hearing dated May 26, 2021) claiming that its office is not equipped with the required internet connection thereby hindering its counsels to participate in the hearing to be held via videoconference and requested that the same be reset to a later date upon resumption of in-court hearings.

During the hearing held on May 26, 2021, the Court took note of plaintiff's Urgent and Ex-Parte Motion to Reset (Re: Hearing dated May 26, 2021) but found the grounds relied upon to be insubstantial and dilatory, hence said motion was denied and consequently ordered the dismissal of CTA Crim. Case Nos. O-739 and O-740 against accused Sharlyn Fuentes for failure to prosecute.

On July 5, 2021, a Motion for Reconsideration was filed by plaintiff seeking the reversal of the Order of the Court dated May 26, 2021 and for the reopening of the consolidated cases to allow the presentation of its witnesses in open court. This was granted by the Court in a Resolution dated December 16, 2021 and reinstated CTA Crim. Case Nos. O-739 and O-740. The Court set the case for hearing on February 16, 2022 for the presentation of plaintiff's witnesses.

During the hearing held on February 16, 2022, plaintiff presented its witnesses: Mr. Reino de Guia, Administrative Assistant, Printing and Operations Mailing Section of the Bureau of Internal Revenue (BIR), National Office Building, and Revenue Officer, Ms. Emilia M. Nava.

After the presentation of plaintiff's witnesses, the Court gave plaintiff a period of ten (10) days from February 16, 2022 or until February 26, 2022 within which to file its Formal Offer of Evidence.

On February 24, 2022, plaintiff filed its Formal Offer of Evidence as follows:

Exhibits	Description
"P-1"	General Information Sheet of Robust Security Corporation for year 2007
"P-2"	General Information Sheet of Robust Security Corporation for year 2011
"P-3"	Letter Notice No. 033-RLF-07-00-00092
"P-4"	Notice of Informal Conference (NIC)
"P-5"	Registry Receipt No. 904493 dated February 9, 2011
"P-6"	Preliminary Assessment Notice dated May 24, 2011
"P-7"	Transmittal from the Mailing Unit of the BIR General Services Division to the BIR Post Office dated October 11, 2011.
"P-8"	Final Assessment Notice with Details of Discrepancies dated October 28, 2011
"P-9"	Transmittal from the Mailing Unit of the BIR General Services Division to the BIR Post Office dated November 9, 2011.
"P-10"	Preliminary Collection Letter (PCL) dated January 9, 2013
"P-11"	Registry Receipt No. 919609 dated January 10 2013
"P-12"	Final Notice Before Seizure (FNBS) dated August 8, 2013
"P-13"	Registry Receipt No. 903442
"P-14"	Warrant of Distraint and/or Levy dated April 6, 2015.
"P-15"	Warrant of Garnishment-Metropolitan Bank & Trust Company
"P-16"	Warrant of Garnishment- Banco de Oro Universal Bank

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"P-17"	Warrant of Garnishment - United Coconut Planters Bank
"P-18"	Warrant of Garnishment- Bank of the Philippine Islands
"P-19"	Warrant of Garnishment- Land Bank of the Philippines
"P-20"	Warrant of Garnishment- BPI Family Bank
"P-21"	Warrant of Garnishment- Security Bank
"P-22"	Warrant of Garnishment - China Banking Corporation
"P-23"	Warrant of Garnishment - Robinsons Bank
"P-24"	Warrant of Garnishment-Union Bank of the Philippines
"P-25"	Memorandum
"P-26"	Consolidated Complaint Affidavit with Annexes
"P-27"	Judicial Affidavit of Mr. Reino de Guia
"P-27-A"	Signature above the printed name "Reino de Guia"
"P-28"	Letter to Postmaster dated 28 May 2013 of Final Assessment Notice/Demand Letters
"P-28-A"	Signature above the printed name of "Emilia M. Nava"

On April 19, 2022, the Court issued a Resolution admitting all of the foregoing exhibits of plaintiff with a notation that Exhibits "P-27", "P-27-A", "P-28" and "P-28-A" are actually marked as Exhibits "P-28", "P-28-A", "P-29" and "P-29-A."

On April 22, 2022, accused Sharlyn A. Fuentes filed a Motion for Leave of Court to File Demurrer to Evidence which was granted by the Court in a Resolution dated May 24, 2022.

As mentioned earlier, plaintiff filed the instant *Demurrer to the Evidence* on June 15, 2022 (via private courier).

On July 11, 2022, the Court issued a Resolution submitting accused Sharlyn Fuentes' *Demurrer to the Evidence* for the resolution of the Court.

On August 5, 2022, the Court in Division promulgated the *first assailed Resolution,* granting respondent Fuentes' *Demurrer to the Evidence.*

On August 30, 2022, petitioner filed its *Motion for Reconsideration (Re: Resolution dated 05 August 2022),* to which respondent Fuentes filed her *Comment/Opposition To the Prosecution's Motion for Reconsideration* on September 22, 2022.

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On October 25, 2022, the Court in Division promulgated the *second assailed Resolution,* denying petitioner's *Motion for Reconsideration.*

PROCEEDINGS BEFORE THE COURT *EN BANC*

On November 23, 2022, petitioner filed a *Motion for Extension of Time to File Petition for Review,* which the Court granted in a *Minute Resolution* dated November 25, 2022.

On December 5, 2022, petitioner filed the present *Petition for Review.*

On April 24, 2023, respondent Fuentes filed her *Comment/Opposition* To the *Petition for Review*, which the Court noted in a *Minute Resolution* dated May 9, 2023.

Records Verification dated August 2, 2023, reveals that respondents Robust Security Corp., Vilma Mabilangan, Eduardo Dela Mejia, and Rudilyn Olendo failed to file their comment on the *Petition for Review.*

On September 26, 2023, the Court submitted the instant case for decision.

Hence, this *Decision.*

THE ISSUE

Petitioner submits the lone error allegedly committed by the Court in Division as follows:

> WITH ALL DUE RESPECT, THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT PETITIONER FAILED TO PROVE SERVICE OF THE PRELIMINARY ASSESSMENT NOTICE (PAN) AND FINAL ASSESSMENT NOTICE (FAN) TO RESPONDENT CORPORATION.

PETITIONER'S ARGUMENTS

Petitioner argues that, as duly testified by petitioner's witness, Mr. Reino de Guia, the Preliminary Assessment Notice (**PAN**) and the Final Assessment Notice (**FAN**) were duly

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transmitted to the Post Office for mailing.[5] Citing the Rules of Court, petitioner argues that when mail matter is sent by registered mail, there exists a presumption that it was received in the regular course of mail.[6]

According to petitioner, despite the service of the PAN and the FAN, respondents-accused did not file any administrative protest thereto, rendering the assessment final and executory.[7]

RESPONDENTS' ARGUMENTS

In her *Comment*, respondent Fuentes argues that petitioner did not duly establish the elements of the offense as charged.[8] According to her, to establish that the accused is a person required to pay tax, which is the first element of the offense as charged, it is necessary to determine who is required to file an income tax and value-added tax (**VAT**) return.[9]

Respondent Fuentes argues that petitioner failed to prove that respondents-accused received the notices from the BIR.[10] She points out that no registry return cards exist for the PAN and the FAN.[11] According to her, in civil cases, service made through registered mail is proved by the registry receipt issued by the mailing office and an affidavit of the person mailing.[12] Citing jurisprudence, she argues that receipt of the assessment is a requirement of due process.[13]

Thus, respondent Fuentes suggests that the element of "willfulness" cannot be duly established, considering that there exists "a palpable doubt that the tax deficiencies for the particular taxable period were related to the respondent corporation."[14]

Respondent Fuentes also argues that the civil liability must likewise be extinguished in light of the criminal liability having been extinguished.[15] She continues by stating that if there is a liability, the corporation remains civilly liable, citing

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[5] Petition for Review, par. 29.
[6] *Id.*, par. 30.
[7] *Id.*, par. 32-36.
[8] Comment/Opposition, par. 2.1.
[9] *Id.*, par. 2.5.
[10] *Id.*, par. 2.11.
[11] *Id.*, par. 2.13.
[12] *Id.*, par. 2.17.
[13] *Id.*, pars. 2.14 to 2.16.
[14] *Id.*, par. 2.23.
[15] *Id.*, par. 2.24.

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the doctrine of "Separate Juridical Entity."[16] She additionally contends that the doctrine of piercing the corporate veil is inapplicable.[17]

As to the arguments of the other respondent, the Court reiterates its observation that Robust Security Corp., failed to file its comment on the *Petition for Review.*

THE COURT *EN BANC'S* RULING

The Court *En Banc* finds the instant *Petition for Review* without merit.

The instant Petition for Review was timely filed.

On August 5, 2022, the Court in Division promulgated a *Resolution* granting respondent Sharlyn Fuentes' *Demurrer to the Evidence.*[18] The resolution was received by petitioner, represented by the Legal Division of Revenue Region No. 6, on August 16, 2022. Accordingly, petitioner had fifteen (15) days from receipt of said resolution, or until August 31, 2022, to file a Motion for Reconsideration.

Within the reglementary period, on August 30, 2022, petitioner filed its *Motion for Reconsideration (Re: Resolution dated 05 August 2022).*

On October 25, 2022, the Court in Division promulgated a *Resolution* denying petitioner's *Motion for Reconsideration.* Petitioner received the resolution on November 10, 2022. Accordingly, petitioner had fifteen (15) days from receipt of said resolution, or until November 25, 2022, to file a *Petition for Review* before the Court *En Banc.*

Within the reglementary period, on November 23, 2022, petitioner filed its *Motion for Extension of Time to File Petition for Review.* To reiterate, the said *Motion* was granted, and subsequently, petitioner filed its *Petition for Review* within the extended period on December 5, 2022.

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[16] *Id.*, pars. 2.27 to 2.28.
[17] *Id.*, pars. 2.31 to 2.34.
[18] *Supra* at note 2.

Accordingly, We rule that the present *Petition* was timely filed.

The Court in Division did not err in ruling that petitioner failed to prove service and receipt of the PAN and FAN to respondent corporation or any of its responsible officers.

Petitioner failed to proffer sufficient evidence against respondent Sharlyn Fuentes; thus, the Court in Division correctly granted her Demurrer to evidence.

We proceed to determine whether the Court in Division erred in ruling that petitioner failed to prove service and receipt of the assessment notices to respondent corporation or any of its responsible officers and in granting respondent Fuentes' demurrer to evidence for insufficiency of evidence.

Section 23, Rule 119 of the Rules of Court provides:

> SECTION 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.
>
> If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. ...
>
> ...
>
> 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.

Accordingly, when the Court finds that the evidence presented is insufficient, the Court may dismiss the action.

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An information is an accusation in writing charging a person with an offense, subscribed by the prosecutor and filed with the court.[19] In order to sustain a conviction for as many offenses as are alleged, it is elementary that all the allegations must be proven with moral certainty.[20]

Thus, for this Court to determine the propriety of the Court in Division's grant of respondent Fuentes' *Demurrer to the Evidence,* reference shall be made to the *Informations* filed, which charge respondents-accused for violation of Section 255[21] in relation to Section 256[22] of the NIRC of 1997, as amended.

Moreover, Sections 253 (d) of the 1997 NIRC, as amended, provides:

> Section 253. **General Provisions.** ...
>
> d. In the case of associations, partnerships or corporations, **the penalty shall be imposed on the** partner, president, general manager, branch manager, **treasurer,** officer-in-charge and the employees **responsible for the violation."** [*Emphasis supplied*]

As stated in the *first assailed Resolution,* to sustain a conviction of the crime of violation of Section 255, in relation to Sections 253 and 256 of the NIRC of 1997, as amended, the following *elements* must be established by the prosecution:[23]

> (1) The corporate taxpayer is required 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 compensation, at the time or times required by law or rules and regulations;

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[19] Section 4, Rule 110, Rules of Court.
[20] *People v. Cedenio y Rasonable*, G.R. No. 93485, June 27, 1994, 303 PHIL 366-380.
[21] 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 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 ([P]10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.
[22] SEC. 256. Penal Liability of Corporations. - Any corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000).
[23] *Kingsam Express, Incorporation v. People*, G.R. No. 254086 (Notice), September 7, 2022; Suarez v. People, G.R. No. 253429, October 6, 2021.

(2) The corporate taxpayer failed to do so;

(3) Such failure to pay was willful; and

(4) The accused is the responsible officer of the corporate taxpayer.

The Court in Division's *Resolutions* granting respondent Fuentes' *Demurrer to the Evidence* hinges on petitioner's failure to prove the element of *willfulness* in relation to respondent corporation's alleged failure to pay its income tax and VAT liabilities for taxable year (**TY**) 2007.

According to respondent Fuentes, echoing the *Resolution* of the Court in Division, the fact that petitioner failed to prove proper service and receipt of the assessment notices resulted in its consequent failure to prove the element of willfulness.

We rule in favor of respondent.

The term "willful" is defined in the Ninth Edition of Black's Law Dictionary as voluntary and intentional, but not necessarily malicious, *viz.*:

> The word "Wilful" or "Wilfully" when used in the definition of a crime, it has been said time and again, means **only intentionally or purposely as distinguished from accidentally or negligently** and does not require any actual impropriety; while on the other hand it has been stated with equal repetition and insistence that the requirement added by such a word is not satisfied unless **there is a bad purpose or evil intent**. Rollin M. Perkins & Ronald N. Boyce, Criminal Law 875-76 (3d ed. 1982).
>
> Almost all of the cases under [Bankruptcy Code § 523(a)(6)] deal with the definition of the two words "willful" and "malicious." Initially one might think that willful and malicious mean the same thing. If they did, Congress should have used one word and not both. Most courts feel compelled to find some different meaning for each of them. David G. Epstein, et al., Bankruptcy § 7-30, at 531 (1993). [*Emphasis supplied*]

As alleged in the *Informations*, petitioner must prove beyond reasonable doubt that respondent corporation and its responsible officers *willfully* failed to pay the deficiency income tax and VAT for TY 2007, despite receipt of the PAN, FAN,

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Preliminary Collection Letter (**PCL**) and Final Notice Before Seizure (**FNBS**).

Petitioner argues that, as duly testified by petitioner's witness de Guia, the PAN and the FAN were duly transmitted to the Post Office for mailing.[24] Citing the Rules of Court, petitioner argues that when mail matter is sent by registered mail, there exists a presumption that it was received in the regular course of mail.[25] On the other hand, respondent Fuentes argues that there were no registry return cards for the PAN and the FAN.[26]

After a painstaking review of petitioner's evidence, We concur with the Court in Division that the prosecution failed to establish the *third* element of the crime, *i.e.*, that the failure to pay tax was *willful*. We quote below the relevant portion of the *first assailed Resolution, viz.*:

> A careful review of the documentary exhibits as well as the testimonies of plaintiff's witnesses shows that the official notices, more importantly, the PAN and the FAN with Details of Discrepancies for taxable year 2007 were not shown to have been duly served and received by accused corporation and its responsible officers, hence, the **essential element of willfulness was not sufficiently proven** by the prosecution.
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> During the hearing held on February 16, 2022, plaintiff's witness, Mr. Reino de Guia, testifying on the statements made in his Judicial Affidavit, affirmed that the subject PAN and FAN with Details of Discrepancies were transmitted to the BIR Post Office for mailing on October 11, 2011 and October 28, 2011, respectively, to the registered address of Robust Security Corporation, and we quote: ...
>
> Upon re-cross examination, plaintiff's witness, Mr. Reino de Guia, admitted that there was no proof of receipt of the subject PAN and the FAN for taxable year 2007 by accused corporation. We quote portions of his testimony, thus: ...
>
> In the instant case, accused Sharlyn Fuentes is charged in her capacity as treasurer of accused corporation, for the latter's alleged failure to pay its income tax and VAT liabilities for taxable year 2007. Its failure or willful refusal to pay is anchored on the proper service and receipt of the PAN and the FAN outlining its tax liabilities for taxable year 2007. Absent such proof, **the elements of willfulness cannot be duly established.** The prosecution in the instant case did not

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[24] Petition for Review, par. 29, *EB* Docket, p. 9; Exhibit "P-28", CTA Crim Case No. O-749, Division Docket – Vol. I, pp. 375-378.
[25] *Id.*, par. 30.
[26] *Id.*, par. 2.13; Transcript of Stenographic Notes (TSN) during the hearing held on February 16, 2022, pp. 26-28.

> present any evidence to prove that the PAN and the FAN were duly served and received by accused corporation or any of its responsible officers.
>
> It is a basic rule in evidence that the burden of proof lies on the party who makes the allegations.
>
> Under Section 23, Rule 119 of the Revised Rules of Court, the Court is required to ascertain whether the evidence presented by the prosecution is sufficient to support a verdict of guilt against the accused. [*Emphasis supplied*]

In addition, We rule that the prosecution failed to establish the *fourth* element that respondent Fuentes is the treasurer of respondent corporation who should be held responsible for the alleged violation under Section 253 of the NIRC of 1997, as amended.

At the outset, respondent Fuentes denied that she was the treasurer of respondent corporation.[27] While petitioner offered as evidence respondent corporation's General Information Sheets for the years 2007[28] and 2011[29] to prove that the individual respondents are its responsible officers, the same were not duly identified and authenticated by petitioner's witnesses.

Given the foregoing, We find no error or grave abuse of dicretion in the Court in Division's ruling in the assailed Resolutions granting respondent Fuentes' *Demurrer to the Evidence* and dismissing the case for insufficiency of evidence.

The prosecution's failure to prove the crime of violation of Section 255, in relation to Sections 253 (d) and 256 of the NIRC of 1997, as amended, also extinguished the civil liability arising therefrom.

As regards the civil aspect of the case, Section 7(b)(1) of Republic Act No. 9282 states that the *civil action* for the recovery of the civil liability of respondent corporation and

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[27] TSN during the arraignment held on March 3, 2021, p.5.
FUENTES:
A. Your Honors, *hindi po ako naging Treasurer kahit kailan.*
[28] Exhibit "P-1", Plaintiff's Formal Offer of Evidence, Division Docket, Vol. II, p. 918.
[29] Exhibit "P-2", *id.*

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its responsible officers is deemed instituted with the filing of the criminal cases against them before the Court in Division, thus:

> **SEC. 7.** *Jurisdiction.* — The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> ... ...
>
> 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 ... and other laws administered by the Bureau of Internal Revenue ... . 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, <u>the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action</u>, and no right to reserve the filing of such civil action separately from the criminal action will be recognized.** [*Emphasis supplied*]

Based on the foregoing, the corresponding civil action arising from the crime of violation of Section 255, in relation to Sections 253 (d) and 256 of the NIRC, as amended, was likewise instituted with the criminal cases filed before the Court in Division in this case.

Considering the Court's finding that the prosecution *failed* to prove the *third* and *fourth* elements of the crime, there can be no conviction of the crime charged. The *omission* punished under Section 255, in relation to Sections 253 (d) and 256 of the NIRC, from which the civil liability may arise, did *not* exist. This is explicit in Section 253 (a) of the NIRC of 1997, as amended, *viz.*:

> **Sec. 253.** *General Provisions.* —
>
> (a) **Any person convicted of a crime penalized by this Code shall, in addition to being liable for the payment of the tax, be subject to the penalties imposed herein:**

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> *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. [*Emphasis supplied*]

It is settled that the civil aspect of the criminal case can survive an acquittal when it is based on reasonable doubt.[30] In this case, the Court finds no reason to ascribe any civil liability to respondent Fuentes since her acquittal had already extinguished her supposed civil liability. It bears emphasizing that her acquittal came with the Court's finding that the prosecution failed to prove that the assessment notices, *i.e.*, PAN and FAN, were duly served and received by respondent corporation or any of its responsible officers, including respondent Fuentes. Thus, the said assessment notices could not be considered as final, demandable, and executory, which would give rise to an obligation to pay the assessed deficiency taxes on the part of respondents. Verily, the fact from which respondent Fuentes' civil liability might arise did not exist.

In fine, petitioner's appeal on the civil aspect of the case must fail.

Even if the FAN was duly served and received, the instant case would still be dismissed because the offense charged had already prescribed.

After taking a second hard look at the records of the case, the Court *En Banc* finds that if petitioner's argument – that the PAN and FAN, respectively mailed on October 11, 2011, and November 9, 2011, were duly served to and received by respondents - would be given credence, the instant case would still be dismissed on the ground of prescription.

Section 281 of the NIRC of 1997, as amended, provides:

> *SEC. 281. Prescription for Violations of any Provision of this Code.* - **<u>All violations of any provision of this Code shall prescribe after five (5) years</u>**.

[30] *Supra*, note 19.

> Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, **from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.**
>
> The prescription shall be interrupted when proceedings are instituted against the guilty persons and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.
>
> The term of prescription shall not run when the offender is absent from the Philippines. [*Emphases and underscoring supplied.*]

The foregoing provision presents two (2) modes for the commencement of the period of prescription:

1. *First Mode*: From the *day of the commission* of the violation of the law; or

2. *Second Mode*: When the day of the commission is unknown, from the *discovery* of the commission and the institution of judicial proceedings for its investigation and punishment.

Here, the *Informations* filed against accused Robust Security Corporation and Vilma Mabilangan, Eduardo dela Mejia, Sharlyn Fuentes, and Rudilyn Olendo, Presidents and Treasurers, respectively, in their capacities as responsible corporate officers of Robust Security Corporation, were for *willful* failure to pay income tax and VAT for TY 2007, under Section 255, in relation to Section 256 of the NIRC of 1997, as amended.

In the case of *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals* ("*Lim*"),[31] the Supreme Court ruled the crime of failure to pay tax is committed only after receipt of the final notice and demand for payment, coupled with the willful refusal to pay the taxes due within the allotted period, *viz.*:

> Relative to Criminal Cases Nos. 1788 and 1789 which involved petitioners' **refusal to pay the deficiency income taxes due**, again both parties are in accord that by their nature, the violations as charged **could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayers**. Petitioners maintain

[31] G.R. Nos. 48134-37, October 18, 1990, 268 PHIL 680-692.

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> that the five-year period of limitation under Section 354 should be reckoned from April 7, 1965, the date of the original assessment while the Government insists that it should be counted from July 3, 1968 when the final notice and demand was served on petitioners' daughter-in-law.
>
> We hold for the Government. Section 51 (b) of the Tax Code provides:
>
> > "(b) Assessment and payment of deficiency tax. — After the return is filed, the Commissioner of Internal Revenue shall examine it and assess the correct amount of the tax. *The tax or deficiency in tax so discovered shall be paid upon notice and demand from the Commissioner of Internal Revenue.*" (*Emphasis on the original*)
>
> Inasmuch as the final notice and demand for payment of the deficiency taxes was served on petitioners on July 3, 1968, it was only then that the cause of action on the part of the BIR accrued. **This is so because prior to the receipt of the letter-assessment, no violation has yet been committed by the taxpayers. The offense was committed only after receipt was coupled with the willful refusal to pay the taxes due within the allotted period**. The two criminal informations, having been filed on June 23, 1970, are well-within the five-year prescriptive period and are not time-barred. [*Emphasis and underscoring supplied.*]

The BIR circularized the pronouncement in *Lim* through the issuance of Revenue Memorandum Circular (RMC) No. 101-90,[32] which states:

> For the information and guidance of all concerned, the following are the salient features of the decision promulgated by the Supreme Court on October 19, 1990, in the case entitled "*Emilio E. Lim, Sr. et al. v. Court of Appeals, et al.,*" G.R. Nos. L-48134-37.
>
> 1. *When cause of action for willful failure to pay deficiency tax occurs.*
>
> The cause of action for willful failure to pay deficiency tax occurs when the final notice and demand for the payment thereof is served on the taxpayer. Prior thereto, no violation is committed. The offense is ***committed*** only after receipt is coupled with refusal to pay the tax within the allotted period.

[32] SUBJECT: *Determination of When Cause of Action for Willful Failure to Pay Deficiency Tax Occurs; and Prescription under Section 280 of the Tax Code.*

2. *Prescription under Section 280 of the Tax Code.*

> (a) **The 5-year prescriptive period in** an offense or **willful failure to pay a deficiency tax assessment commences to *run* only <u>after the receipt of the final notice and demand by the taxpayer, and he refuses to pay.</u>** [*Emphasis supplied*]

This interpretation was further applied by the Supreme Court in *Petronila C. Tupaz v. Honorable Benedicto B. Ulep, Presiding Judge of RTC Quezon City, Branch 105, and People of the Philippines,*[33] where it was ruled that the crime of willful failure to pay tax, "by its nature[,] the violation could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayer."

Actual receipt of final notice and demand is indispensable. Absent any proof that the final notice and demand for payment was received by the taxpayer, it cannot be said that the offense has been committed because prior to the receipt of the letter-assessment, no violation has yet been committed.

As to what interrupts prescription, Section 281 of the NIRC of 1997, as amended, provides that it is "when proceedings are *instituted* against the guilty persons." This is explained in *Lim* to mean *the time when the Information is filed with the Court.*[34]

On November 22, 2005, the Supreme Court approved the Revised Rules of the Court of Tax Appeals (**RRCTA**), where Section 2, Rule 9 thereof provides that the institution of criminal action is done by filing the information with the Court, which, in turn, interrupts the prescriptive period. [35]

From the foregoing, when the offense charged involves a taxpayer's refusal to pay the taxes due, the five (5)-year prescriptive period begins to run from the time the payment period had lapsed without any payment or appeal being made

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[33] G.R. No. 127777, October 1, 1999.
[34] G.R. Nos. L-48134-37, October 18, 1990.
[35] RULE 9 - PROCEDURE IN CRIMINAL CASES

...

SEC. 2. Institution of criminal actions. — All criminal actions before the Court in Division in the exercise of its original jurisdiction shall be instituted by the filing of an information in the name of the People of the Philippines. In criminal actions involving violations of the National Internal Revenue Code and other laws enforced by the Bureau of Internal Revenue, the Commissioner of Internal Revenue must approve their filing. In criminal actions involving violations of the Tariff and Customs Code and other laws enforced by the Bureau of Customs, the Commissioner of Customs must approve their filing.

The institution of the criminal action shall interrupt the running of the period of prescription. [Emphasis supplied]

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by the taxpayer. Prescription continues to run until the filing of the Information in Court.

As testified by petitioner's witness, Mr. Reino de Guia, during the hearing held on February 16, 2022, the subject PAN and FAN with Details of Discrepancies were transmitted to the BIR Post Office on **October 11, 2011**,[36] and **November 9, 2011**,[37] respectively, for mailing to respondent Robust Security Corporation's registered address.

Under prevailing regulations, service of the PAN and the FAN may be made through registered mail, and there is created a disputable presumption that such assessment notice was received by the addressee in the regular course of the mail.[38] The estimated turnaround time for such registered mail to be delivered is seven (7) working days.[39]

Moreover, it was alleged in the Consolidated Complaint-Affidavit that:

> 10. Thereafter, on 28 October 2011, Final Assessment Notices with Details of Discrepancies was issued, served upon, and duly received by **ROBUST SECURITY CORPORATION** at its registered business address;
>
> 11. Despite service of the Final Assessment Notices with Details of Discrepancies, the subject corporate taxpayer did not file any administrative protest prescribed under Section 228 of the NIRC of 1997, as amended, hence, the subject corporate taxpayer's tax assessments have become, final, executory, and demandable. Consequently, the said tax liabilities of Builders have long been overdue and delinquent and have become incontestable with the Prosecutor's Office and ordinary courts.

Nothing in the records would show the date when respondents-accused received the assessment notices. As insisted by petitioner, assuming the FAN was received by respondent corporation or any of its duly authorized representatives within thirty (30) days from mailing on November 9, 2011, or on December 9, 2011, and no protest was filed within thirty (30) days from such date, or until January 8,

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[36] Exhibit P-7, Division Docket, Vol. II, p. 919.
[37] Exhibit P-9, Division Docket, Vol. II, p. 920.
[38] *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*, G.R. No. 240729, August 24, 2020.
[39] Philippine Postal Corporation, *Post Office Delivery Lead Time*, available at https://phlpost.gov.ph/postal-office-delivery-lead-time/.

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2012, the FAN attained finality on **January 9, 2012,** in accordance with Section 228 of the NIRC of 1997, as amended.[40]

The Supreme Court enunciated in *Lim* that tax criminal cases are basically imprescriptible. However, violations shall nevertheless prescribe if more than five (5) years have lapsed from the time of commission of the offense if known, and as applicable in this case, *i.e.*, the date of finality of the FAN, up to the date of filing of the *Information* before the Court.

Thus, pursuant to the *Lim* case and RMC No. 101-90, petitioner had five (5) years counted from January 9, 2012, or until **January 9, 2017**, to file the *Informations* in Court. The *Informations* dated January 29, 2019, were filed with this Court only on **June 19, 2019**.

Clearly, the government's right to institute a criminal action against respondents-accused had already prescribed for *more than two (2) years* when the *Informations* were filed on **June 19, 2019**.

It must be stressed that prescription in criminal cases is a matter of substantive law.[41] Although prescription has not been raised as an issue, it is well-settled that if the pleadings or the evidence on record show that the claim is barred by prescription, the Court may *motu proprio* order its dismissal on said ground.[42]

WHEREFORE, in light of the foregoing, the instant *Petition for Review* is **DENIED** for lack of merit.

The *Resolutions* dated August 5, 2022 and October 25, 2022, rendered by the Court's First Division in CTA Crim. Case Nos. 0-739 and 0-740 are **AFFIRMED**.

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[40] 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: Provided, however. That a pre-assessment notice shall not be required in the following cases:

... ...

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**.

[41] *Reodica v. Court of Appeals*, G.R. No. 125066, July 8, 1998, 354 PHIL 90-111.

[42] *Commissioner of Internal Revenue v. Nippon Express (Phils.) Corp.*, G.R. No. 212920, September 16, 2015, 769 PHIL 861-871.

SO ORDERED.

LANEE CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
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.

ROMAN G. DEL ROSARIO
Presiding Justice