REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

En Banc

PEOPLE OF THE PHILIPPINES, *Petitioner,*	**CTA *EB* CRIM. NO. 030** **(CTA Crim. Case No. O-087)** *For: Violation of Section 255, in relation to Sections 253(d) and 256 of the 1997 NIRC*
-versus-	Present: ***Del Rosario, P.J.*** ***Castañeda, Jr.,*** ***Bautista,*** ***Uy,*** ***Casanova,*** ***Fabon-Victorino,*** ***Mindaro-Grulla,*** ***Cotangco-Manalastas,*** *and* ***Ringpis-Liban, JJ.***
EFREN O. DOCENA AND ROLANDO E. PALAD, SOUTH SEA SURETY & INSURANCE CO., INC., *Respondents.*	Promulgated: JAN 04 2016 11:15 a.m.

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D E C I S I O N

BAUTISTA, J.:

This involves a Petition for Review filed pursuant to *Rule 4 of the Revised Rules of the Court of Tax Appeals ("CTA"), A.M. No. 05-11-07-CTA, November 22, 2005*[1] seeking the nullification of the Amended

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[1] RULE 4
JURISDICTION OF THE COURT
xxx xxx xxx
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:
xxx xxx xxx
(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;

Decision[2] dated March 12, 2014 of the Special First Division of this Court ("Court in Division") in the case entitled *"People of the Philippines v. Efren O. Docena and Rolando E. Palad, South Sea Surety & Insurance Co., Inc.," CTA Crim Case No. O-087,* which dismissed the case against deceased accused Efren O. Docena, acquitted accused Rolando E. Palad, and ordered South Sea Surety & Insurance Co., Inc. (the "Corporation") to pay the assessed deficiency Documentary Stamp Tax ("DST") and compromise penalty, plus delinquency interest; as well as its Resolution[3] dated June 30, 2014 which denied the prosecution's Motion for Partial Reconsideration (Re: Amended Decision dated March 12, 2014) for lack of merit.

The Facts

The Court adopts the facts of the case, as stated in the Court in Division's Decision dated July 15, 2013, *viz.*:[4]

> In the Information dated January 24, 2008, but filed with the Court on June 30, 2008, accused **EFREN O. DOCENA** and **ROLANDO E. PALAD** were charged with violation of Section 255 in relation to Sections 253(d) and 256 of the 1997 National Internal Revenue Code [("NIRC")], as amended, for alleged willful failure and refusal to pay deficiency income tax and compromise penalty for taxable year 2003, without any formal protest despite due notice and demand, to the prejudice of the Government in the amount Php5,758,176.07.
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> On October 14, 2009, the case was archived subject to revival upon the apprehension of the two accused.
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> On April 7, 2010, the two accused voluntarily surrendered their persons to the jurisdiction of the Court and posted the recommended bond for their provisional liberty.
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> On May 24, 2010, the prosecution, in compliance with the Resolution dated April 29, 2010, filed an Amended

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(g) Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over criminal offenses mentioned in the preceding subparagraph; and

(h) Decisions, resolutions or orders of the Regional trial Courts in the exercise of their appellate jurisdiction over criminal offenses mentioned in subparagraph (f).

[2] *Rollo, CTA EB No. O-030,* pp. 37-55; penned by Associate Justice Erlinda P. Uy, with Associate Justice Belen M. Ringpis-Liban concurring and Associate Justice Esperanza Fabon-Victorino dissenting.

[3] *Id.,* pp. 57-67.

[4] *Records, CTA Crim No. O-087;* pp. 589-604; penned by Associate Justice Esperanza Fabon-Victorino, with Associate Justice Erlinda P. Uy concurring.

Information dated May 17, 2010 only to change the subject deficiency from income tax to [DST]. The act in violation of Section 255 in relation to Sections 253(d) and 256 of the 1997 NIRC, as amended, is allegedly committed as follows:

> That on or about May 9, 2005, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping each other and being then the President and EVP/COO, respectively, of SOUTH SEA SURETY & INSURANCE CO., INC., with business address at Suite 501 5/F East Tower, Philippine Stock Exchange Center, Exchange Road, Ortigas Complex, Pasig City, having been filed their internal revenue tax for the year 2003, and after an examination and audit of the same, it has been found out that there is due and collectible from said SOUTH SEA SURETY & INSURANCE CO., INC., under Assessment Notice No. LN No. 025-34-2004 dated May 9, 2005, the amounts of Php5,733,176.07 and Php25,000.00 or all valued at Php5,758,176.07 representing **DEFICIENCY [DST] AND [COMPROMISE] PENALTY** for the said year, did then and there willfully and unlawfully fail, refuse and neglect to pay said taxes and without formally protesting against or appealing the same despite due notice and demand to do so, to the damage and prejudice of the Republic of the Philippines, in the aforesaid amount of Php5,758,176.07, Philippine Currency.
>
> Contrary to law.

When arraigned on July 8, 2010, accused, duly assisted by counsel, pleaded "NOT GUILTY" of the crime charged.

To prove its case, the prosecution presented the following employees from the Bureau of Internal Revenue [("BIR")], namely: John V. Abris, Prescila H. Pagayonan, Wilfreda A. Alday and Attorney Ramon B. Lorenzo.

Witness **John V. Abris** testified that prior to his assignment to Regional District Office [("RDO")] 30 in Binondo, Manila, he was a Revenue Officer at the Special Investigation Division, Revenue Region No. 6, Manila. Sometime in November 2004, he served Letter Notice No. 025-34-2004 dated October 25, 2004 to [the Corporation], addressed to its President Efren O. Docena. The Letter Notice signed by Regional Director Alfredo B. Misajon was received by Marites R. Antonio, the [Bookkeeper] of [the] Corporation. In a letter dated November 12, 2004, accused Rolando E. Palad, [Executive] Vice President/Chief Operating Officer [("EVP/COO")] of the Corporation acknowledged its [DST] liability but at a reduced amount of [Php]2,165,380.84. In a letter response dated November 19, 2004, the BIR required the Corporation to submit pertinent documents to reconcile the data. In a letter dated December 14, 2004, the Corporation reiterated their request that it be allowed to pay DST deficiency in 12 monthly installments. When the Corporation failed to meet their undertaking, he prepared a Memorandum dated January 5, 2005 for the Regional Director, RR6 Manila, for the return of the entire docket of the case to the latter's office for appropriate action.

On cross-examination, Abris declared that he was not aware that the case was subsequently filed with Office of the Prosecutor, Manila.

Witness **Prescila H. Pagayonan** testified that as Revenue Officer III in the BIR, she reviewed the docket of this case sometime in January 2005. Thereafter, she prepared the Preliminary Assessment Notice [("PAN")] dated January 24, 2005, subsequently signed by Regional Director Alfredo V. Misajon. She also prepared an Audit Report which was received by the Corporation through mail. In response thereto, the Corporation filed a letter dated February 8, 2005, requesting that the interest be waived and reiterated that the payment be in twelve (12) monthly installments.

Upon her recommendation, a Final Assessment Notice [("FAN")] and Formal Letter of Demand [("FLD")], both dated May 9, 2005 for deficiency DST for the taxable year 2003 were issued against the Corporation. In a reply letter dated July 15, 2005, the Corporation again moved to settle its DST deficiency but this time within a shorter period of six (6) months.

Subsequently, the Corporation filed an Application for Installment Payment dated August 1, 2005 signed by Rolando E. Palad addressed to the Commissioner of Internal Revenue [("CIR")]. In view thereof, she prepared the First Indorsement dated August 3, 2005 signed by Enriqueta R. Rodeles, Chief, Assessment Division for the Regional Director of Revenue Region No. 6. Pursuant thereto, the Corporation paid its first installment on November 3, 2005 which the BIR acknowledged in a letter dated November 15, 2005. In the same letter, the BIR requested the Corporation to update its monthly installment payments.

Since no other payment was made by the Corporation, she prepared the First Indorsement dated December 19, 2005 to the Collection Division and a letter addressed to [the] Corporation informing it that the case would be forwarded to the Collection Division.

Witness **Wilfredo A. Alday** declared that as a Revenue Officer II-Collection assigned at RDO No. 34, he sends notices/demand letters and serves warrant of distraint and/or levy to taxpayers with delinquent accounts.

Sometime in January 2006, the case of South Sea Surety & Insurance Co. Inc. was assigned to him for collection upon recommendation of the Chief of Collection Division *per* Indorsement Letter dated January 5, 2006. He served to the Corporation the Preliminary Collection Letter dated February 15, 2006, a letter dated October 19, 2006, and the Warrant of Distraint and Levy dated June 26, 2007 to effect collection of deficiency DST in the amount of [Php]5,758,176.07.

Subsequent to the receipt of the said documents, accused Rolando E. Palad submitted a Promissory Note dated April 3, 2006, with attached schedule of payments. However, the Corporation failed to make good its undertaking under the promissory note. Consequently, he issued a Memorandum dated June 29, 2007 recommending that the case docket together with a Report on Delinquent accounts, be transferred to the Legal Division for appropriate action.

The last witness **Attorney Ramon B. Lorenzo** testified that he recommends the criminal prosecution of [the] [taxpayer] for violation of the [1997 NIRC].

On August 7, 2007, the Chief of the Collection Division, through a Second Indorsement dated August 1, 2007, forwarded to his office the docket of this case.

After evaluation, he prepared a Demand Letter dated August 9, 2007 addressed to accused Efren O. Docena and Rolando E. Palad, President and EVP/COO, respectively of [the Corporation]. On October 23, 2007, he prepared a Referral Letter to the City Prosecutor of Manila for the indictment of the two accused for their failure to pay DST deficiency for taxable year 2003. In relation thereto, he executed an Affidavit of even date.[]

Attorney Lorenzo admitted that prior to the filing of the instant case, the Corporation already paid three installments to the BIR. However, this was not disclosed when the case was filed with the Prosecutor's Office of Manila. Thus, the Corporation's total payment was not deducted from the total DST liability reflected in the FAN.

On March 1, 2011, or after the prosecution rested its case, both accused filed a Demurrer to Evidence which the Court denied in its Resolution dated May 2, 2011.

Without any pretension, accused **Rolando E. Palad** acknowledged [the Corporation's] receipt of several notices from the BIR and admitted that the Corporation is liable [for] deficiency DST for taxable year 2003. As EVP/COO of the Corporation, he sent several letters to the BIR in response to the notices received. He also filed and signed the Application for Installment Payments of the Corporation's tax liabilities, which the BIR duly approved.

However, he denied that he and his co-accused Efren O. Docena willfully and unlawfully neglected to pay the taxes and liabilities of the Corporation. In fact, they exerted their best efforts to settle the said tax obligation, as evidenced by the arrangement for payment they made with the BIR. They actually paid the BIR the sums of [Php]479,484.00, [Php]300,000.00 and [Php]200,000.00, which the latter duly-acknowledged.

The payments were halted when the Office of the Insurance Commission, in a letter dated September 13, 2006, directed the Corporation to cease and desist from transacting business. Eventually the Corporation was placed under a Receiver who was authorized to run the affairs of the Corporation. Hence, he and his co-accused Docena lost control of the management and operation of the Corporation[,] forcing him to stop reporting for work. Thus, he was not aware of the other notices or communications sent by the BIR to the Corporation after it was placed under receivership.

He did not also receive any notice from the Office of the City Prosecutor of Manila in relation to the filing of the instant case. It was only when his co-accused Docena informed him through the telephone that warrants of arrest had been issued against them [*sic*]. This information was verified by the secretary of his co-accused.

In addition, accused Palad stated that as early as October 25, 2004[,] there was already a demand for payment for DST deficiency for 2003 from the BIR. Upon receipt of the Assessment Notice, he immediately offered to pay the assessed DST deficiency in six (6) equal monthly installments beginning July 15, 2005 to January 15, 2006. But the Cease and Desist Order issued by the Insurance Commission on September 13, 2006 prevented them from meeting this obligation.

Further, business was not good for the Corporation in 2005 causing the impairment of its capital for which it received several warnings for [collection]. The Corporation's poor financial standing later circulated in the insurance industry adversely affecting the Corporation's business considerably. The Corporation's cash flow was further affected making it difficult to meet its undertaking to pay the BIR in six (6) equal monthly installments. This notwithstanding, the Corporation was able to make several payments to the BIR.

Even prior to the Corporation's receipt of the assessment notice from the BIR, it was already suffering from business reverses. But it was the Cease and Desist Order from the Insurance Commission that actually made the subsequent payments to the BIR impossible.

The Corporation was already in financial distress when he joined in its operation in 2003. It was about this time that the deficiency assessment was issued by the BIR. The deficiency assessment, according to the witness, was caused by agents who sold the insurance policies at a reduced rate and pocketed portions belonging to the Corporation. He was not aware if cases were filed against these erring agents. In any event, the Corporation acknowledged its tax liabilities but due to serious financial problems it was unable to meet its obligation with the BIR.

Defense witness **Rosauro Maghirang** testified that as an Executive Assistant to the President, he reviewed the financial condition of [the Corporation] and oversaw its financial transactions, including its collections and disbursements.

In the course of his employment[,] some documents came into his possession, one of which was the Audited Financial Statement of the Corporation for the period ending December 31, 2002. With this document [were] comparative figures for the year 2001, indicating that the Corporation

> suffered a net loss of [Php]7,899,132.87 and [Php]1,075,616.79 for 2002 and 2001, respectively
>
> Upon his request, the then President of the Corporation, Attorney Emerita A. Dazo submitted a list of outstanding losses of the Corporation which showed a total of [Php]30,319,170.43. *Per* his advise[,] the Corporation's legal counsel[,] Attorney Homer Mendoza[,] filed appropriate cases against the erring brokers/agents of the Corporation.
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> On cross-examination, Maghirang pointed out that the Corporation suffered losses in the years 2003, 2004, 2005 and 2006. While he was aware of the DST [] deficiency assessment, he had no part or involvement therein since the person-in-charge was accused Palad. On recall, Maghirang presented to the Court the original Financial Statement of the Corporation.
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> On August 13, 2012, the case was deemed submitted for decision after the parties filed their respective memoranda.

The Court in Division rendered a Decision[5] on July 15, 2013 acquitting accused-respondents, *viz.*:

> **WHEREFORE**, the two accused **EFREN O. DOCENA** and **ROLANDO E. PALAD** are hereby **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt.
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> However, the two named accused are directed to jointly or severally pay the remaining balance of the assessed deficiency DST and compromise penalty in the amount of Php4,778,692.07 plus deficiency interest of twenty (20%) percent thereof from the day of default, as indicated in the schedule of payment pursuant to Section [249(D)], in relation to Section [249(B)] of the [1997 NIRC], as amended.
>
> **SO ORDERED.**

The Court found that accused-respondents, despite the Corporation being on the verge of a financial crisis, still offered to pay the assessment in installments and were on their third installment when the Insurance Commission issued a Cease and Desist Order to transact business, which prevented the Corporation and the two accused from complying with their tax obligation. The

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[5] *Id.*, pp. 589-605.

Court in Division ruled that the erring taxpayer is the Corporation itself, but pursuant to *Section 253 of the 1997 NIRC*, accused-respondents Efren O. Docena and Rolando E. Palad, as its responsible officers, are civilly liable for the unpaid portion of the assessment.

On July 30, 2013, accused-respondents filed their Compliance[6] with the attached Certificate of Death of accused-respondent Efren O. Docena.

On even date, accused-respondents filed their Motion for Reconsideration[7], which argues that accused were mere officers of the corporation and no evidence was provided that they committed any fraud or illegal act which should make them personally liable for the obligations of the corporation; and piercing the veil of corporate fiction should not apply in this case.

In response, plaintiff-petitioner filed by registered mail its Comment/Opposition to Motion for Reconsideration[8] on September 9, 2015.

On March 12, 2014, the Court issued the assailed Amended Decision[9], the dispositive portion thereof reads as follows:

> **WHEREFORE**, all the foregoing considered, the *Motion to Dismiss* and *Motion for Reconsideration* are hereby **GRANTED**. Accordingly, the dispositive portion of this Court's Decision promulgated on July 15, 2013 is hereby **MODIFIED** to read as follows:
>
> > "**WHEREFORE**, the case is DISMISSED insofar as accused **EFREN O. DOCENA** is concerned; while accused **ROLANDO E. PALAD** is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt.
> >
> > With regard to the civil liability, **SOUTH SEA SURETY & INSURANCE CO., INC.** is hereby **ORDERED TO PAY** the amount of **FOUR**

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[6] *Id.*, pp. 606-608.
[7] *Id.*, pp. 609-613.
[8] *Id.*, pp. 617-620.
[9] *Id.*, pp. 624-642.

> **MILLION SEVEN HUNDRED SEVENTY EIGHT THOUSAND SIX HUNDRED NINETY TWO PESOS AND SEVEN CENTAVOS (₱4,778,692.07),** representing the assessed deficiency DST and compromise penalty, plus 20% delinquency interest thereof *per annum,* counted from June 10, 2005 until fully paid, pursuant to Section 249(C)(3) of the [1997 NIRC]."
>
> **SO ORDERED.**

The Court found that the deficiency DST is the obligation of the Corporation and not the personal tax obligation of accused-respondents; and that accused-respondent Efren O. Docena died on April 15, 2013, extinguishing his criminal liability, if any.

On April 1, 2014, plaintiff-petitioner filed its Motion for Partial Reconsideration (Re: Amended Decision dated March 12, 2014)[10], which was denied by the Court in Division on June 30, 2014 for lack of merit.[11]

Not satisfied, plaintiff-petitioner elevated its case before the Court *En Banc* by filing the present Petition for Review[12] on July 23, 2014.

Plaintiff-petitioner prayed that the Amended Decision dated March 12, 2014 and the Resolution dated June 30, 2014 of the Court in Division be partially reconsidered and set aside relating to the civil lability of Php4,778,692.07 plus 20% delinquency interest *per* annum, and that the June 15, 2013 Decision on civil liability be reinstated.

On August 18, 2014, accused-respondents were ordered to file a comment within ten (10) days from receipt thereof[13], to which accused-respondents complied with through its Comment[14] dated October 14, 2014.

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[10] *Id.*, pp. 643-650.
[11] *Id.*, pp. 663-673.
[12] *Rollo*, pp. 1-17, with annexes.
[13] *Id.*, pp. 69-70.
[14] *Id.*, pp. 71-76.

The Petition for Review was given due course in a Resolution[15] dated October 28, 2014, wherein the parties were ordered to submit their respective memoranda within thirty (30) days from receipt thereof.

With the filing of accused-respondents' Joint Memorandum for the Accused[16] on December 5, 2014 and Petitioner's Memorandum[17] on even date, this case was submitted for decision on January 8, 2015,[18] hence, this decision of the Court *En Banc*.

The Issue

WHETHER OR NOT ACCUSED-RESPONDENTS EFREN O. DOCENA AND ROLANDO E. PALAD, IN THEIR CAPACITIES AS PRESIDENT AND EVP/COO, RESPECTIVELY, OF SOUTH SEA SURETY & INSURANCE CO., INC., SHOULD BE HELD LIABLE FOR THE CIVIL LIABILITY OF THE LATTER, ARISING FROM ITS DST ASSESSMENT FOR 2003.[19]

Petitioner's Arguments

The prosecution alleges that both accused-respondents, as responsible officers of the Corporation, are the persons required to pay the tax. Hence, they should be jointly and severally liable to pay the total assessed amount.

Accused-respondents' Counter-Arguments

The two accused, on the other hand, argue that the mere fact that they were officers of the Corporation does not make them automatically liable for the penalty of the corporation; that both accused exerted their utmost best to pay the tax liability of the Corporation; and that there was no evidence that the accused assented to patently unlawful acts of the Corporation.

Ruling of the Court En Banc

[15] *Id.*, pp. 78-79
[16] *Id.*, pp. 80-88.
[17] *Id.*, pp. 89-101.
[18] *Id.*, pp. 103-104.
[19] *Id.*, p. 8.

The Court *En Banc* finds no merit in the present Petition for Review.

In the Amended Information[20], accused-respondents were charged for willful and unlawful failure, refusal and neglect to pay taxes.

Section 255 of the 1997 NIRC, as amended, specifically provides as follows:

> SECTION 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* — <u>Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax</u>, make a return, keep any record, or supply correct and accurate information, <u>who willfully fails to pay such tax</u>, 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, <u>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.</u>
>
> Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of an internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years. [emphases ours]

The offense of willful failure to pay tax is being attributed to the two accused. In accordance with the above-quoted *Section 255 of the 1997 NIRC*, the essential elements of the said offense are:

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[20] *Records*, pp. 107-108.

1. The accused is a person required to pay the tax;

2. The accused failed to pay the tax at the time required by law; and

3. Failure to pay the tax was willful.

The other pertinent provisions on which the Amended Information was based are the following:

> SECTION 253. *General Provisions.* —
>
> xxx xxx xxx
>
> (d) In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation. xxx
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> SECTION 256. *Penal Liability of Corporations.* — Any corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees, shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000). [emphases ours]

The Court *En Banc* sees no reversible error in the Court in Division's finding that the accused are not solidarily liable for the unpaid deficiency tax assessment, as follows:

> Solidary liability will then attach to the directors, officers or employees of the corporation in certain circumstances, such as:
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> 1. When directors and trustees or, in appropriate cases, the officers of a corporation: (a) vote for or assent to patently unlawful acts of the corporation, (b) act in bad faith or with gross negligence in directing the corporate affairs, and (c) are

guilty of conflict of interest to the prejudice of the corporation, its stockholders or members, and other persons;

2. When a director or officer has consented to the issuance of watered stocks or who, having knowledge thereof, did not forthwith file with the corporate secretary his written objection thereto;

3. When a director, trustee or officer has contractually agreed or stipulated to hold himself personally and solidarity liable with the corporation; or

4. When a director, trustee or officer is made, by specific provision of law, personally liable for his corporate action.

Before a director or officer of a corporations can be held personally liable for corporate obligations, however, the following requisites must concur: (1) the complainant must allege in the complaint that the director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith; and (2) the complainant must clearly and convincingly prove such unlawful acts, negligence or bad faith. [Emphases ours]

Looking into the above-cited provisions, it appears that willingness is a common element for the extension of a corporation's tax liability to its responsible officers.

To be deemed a criminal act, the act of non-payment of tax must be "willful," a voluntary, intentional violation of a known legal duty.[21] Willfulness connotes the existence of "knowledge" and "voluntariness," that is, the taxpayer is aware or knows its/his/her tax liability but voluntarily and intentionally refuses to pay.[22]

However, willfulness must be proven beyond reasonable doubt. *Section 2, Rule 133 of the Rules of Evidence*[23] explains, *viz.*:

SECTION 2. *Proof beyond reasonable doubt.* — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as,

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[21] Mertens Law of Federal Income Taxation, Volume 15, 1988 Ed., Chapter 55A, p. 76.
[22] *CTA Crim. Case No. O-114*, May 16, 2012.
[23] [REVISED RULES OF COURT] Revised Rules of Evidence (1997), Rule 133.

excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

The case of *Monteverde v. People of the Philippines*[24] expounded on the nature of "proof beyond reasonable doubt," to wit:

> xxx In all criminal cases, mere speculations cannot substitute for proof in establishing the guilt of the accused. Indeed, suspicion no matter how strong must never sway judgment. Where there is reasonable doubt, the accused must be acquitted even though their innocence may not have been established. The Constitution presumes a person innocent until proven guilty by proof beyond reasonable doubt. When guilt is not proven with moral certainty, it has been our policy of long standing that the presumption of innocence must be favored, and exoneration granted as a matter of right. Although the evidence for the defense may be frail, criminal conviction must come, not from its weakness, but from the strength of that for the prosecution. [Emphases ours]

Therefore, it is not required for the defense to prove their innocence. What is required is for the prosecution to show, with moral certainty and through its own evidence, that the accused is guilty of the criminal charges.

Moreover, willfulness involves the mental state of the offender.[25] The fact that both accused acted in good faith and with best efforts to comply with the demand to pay the assessed deficiency tax will show the absence of the element of willingness, as found by the Court in Division. In fact, only when the circumstances changed, forcing the two accused to vacate their positions, were the payments put to a stop, *viz.*:[26]

> Significantly, accused Palad never denied that DST deficiency exists and humbly admitted that the Corporation was liable for such deficiency. He likewise admitted that the Corporation was never deprived of notice of such deficiency. He stated that Corporation received several notices from the BIR xxx

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[24] *Aurea R. Monteverde v. People of the Philippines,* G.R. No. 139610, August 12, 2002, 387 SCRA 196.
[25] *Realda v. New Age Graphics, Inc.,* G.R. No. 192190, 25 April 2012, 671 SCRA 410.
[26] *Records,* pp. 600-602.

Acting on the said notices, the Corporation, through him or co-accused Docena, wrote the BIR acknowledging such DST deficiency and manifested its intention to pay the assessed tax liabilities but on installment basis. In accord with such manifestation, the Corporation subsequently filed an Application for Installment Payment, which the BIR duly approved.

Pursuant to the undertaking, the Corporation was able to pay the sums of [Php]479,848.00, [Php]300,000.00 and [Php]200,000.00, receipts of which were duly acknowledged by the BIR. Note that the BIR, through its witness Attorney Ramon B. Lorenzo, admitted that these payments[,] albeit received and duly acknowledged by the BIR[,] were not disclosed or brought to the attention of the investigating prosecutor of Manila when the case was filed with the Department of Justice [("DOJ")]. There was even no attempt to rectify this error when the prosecution amended the Information. Attorney Lorenzo was tellingly silent as to the reason for such flaw. In fine, the total tax liability was erroneous as it did not reflect the correct amount with which the Government, the complainant in this case, was supposed to suffer, rendering the Amended Information [infirm].

Evidence also unfolded the cause of the failure of the Corporation to continue paying the remaining installments. It was the Cease and Desist Order to transact business issued by the Insurance Commission against the Corporation shortly or two (2) weeks to be exact, after its third installment to the BIR was made. This effectively leashed the hands of the Corporation as well as the two accused barring them from servicing the tax obligation with the BIR as the power and control to run the corporate affairs were removed from them and bestowed upon the appointed receivers, the first of whom was Attorney Rosario Setias Reyes. That this occurred in the interim was never disputed by the BIR. Neither did the BIR present evidence to prove the contrary.

It was also established that the Corporation was [on] the verge of financial crisis even before the assessment was issued. Nevertheless it offered to spread the payment on the DST deficiency over six (6) months but was prevented by the intervening events, to wit: the issuance of the Cease and Desist Order and subsequent directive placing the Corporation under receivership, both by the Insurance Commission.

> All the foregoing[,] coupled by the demeanor of accused Palad on the witness stand which mirrored his soul[,] do not instill belief that he and his co-accused willfully and feloniously failed and refused to pay the assessed DST and compromise penalty to the damage and prejudice of the Government. In a criminal case, every circumstance favoring the innocence of the accused must be duly taken into account.

Further, the Court *En Banc* sees no reversible error when the Court in Division stated that since the assessment was in the name of the Corporation; and based on the Amended Information, it was the Corporation which was found to be liable for deficiency DST and compromise penalty; the entity required to pay the same under the law is the Corporation itself,[27] *viz.*:

> In the instant case, it is undisputed that [the Corporation] is the corporate taxpayer, which the [BIR] found to have been assessed for DST and compromise penalty covering taxable year 2003.
>
> In this connection, it has been held that *"(a)n assessment fixes and determines the tax liability **of a taxpayer**. As soon as it is served, an obligation arises **on the part of the taxpayer** concerned to pay the amount assessed and demanded."* Thus, considering that the subject assessments have been made against South Sea Surety & Insurance Co., Inc., the obligation to pay the said DST and compromise penalty rests upon said corporation, and not upon the two (2) accused.
>
> Moreover, the Amended Information dated May 17, 2010 itself states that the deficiency [DST] and compromise penalty is due and collectible from [the Corporation] and not from accused Docena and Palad, as corporate officers of said company. xxx [emphases supplied]

Considering the foregoing, the Court *En Banc* finds that the prosecution failed to present sufficient proof to extend the civil liability of the Corporation to the two accused.

Hence, the Court *En Banc* has no choice but to deny the instant Petition for Review.

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[27] *Id.*, p. 628.

WHEREFORE, the assailed Amended Decision promulgated on March 12, 2014 and the Resolution dated June 30, 2014 are hereby **AFFIRMED.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

With Dissenting Opinion
ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to *Section 13 of Article VIII of the Constitution,* it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES Petitioner, -versus- EFREN O. DOCENA and ROLANDO E. PALAD, SOUTH SEA SURETY & INSURANCE CO. INC., Respondents.	CTA EB Crim. No. 030 (CTA CRIM. CASE NO. O-087) Present: DEL ROSARIO, *PJ*; CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALSATAS and RINGPIS-LIBAN, JJ. Promulgated: JAN 04 2016 11:15 a.m.

x- -x

DISSENTING OPINION

Fabon-Victorino, *J.*:

With due respect, I maintain my position in the Decision of July 15, 2013 and as indicated in my Dissenting Opinion dated March 12, 2014.

The said Dissenting Opinion is hereby quoted and reproduced for easy reference, thus:

DISSENTING OPINION

With due respect, I dissent.

In resolving the pending incidents, the majority holds that accused Docena and Palad should not be held solidarily liable for the payment of the remaining balance of the assessed deficiency documentary stamp tax (DST) and compromise penalty in the amount of P4,778,692.07, plus deficiency interest as stated in the assailed Decision of July 15, 2013.

In the Motion to Dismiss, defense counsel claims that the case against accused Docena should be dismissed since the latter's criminal liability has been totally extinguished when he died on April 15, 2013, pursuant to Article 89, paragraph 1 of the Revised Penal Code, which provides that the criminal liability of an offender is totally extinguished by his death as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment.

In the Motion for Reconsideration, defense prays that the two accused be free from paying jointly and severally the remaining balance of the assessed deficiency Documentary Stamp Tax (DST) and compromise penalty, plus deficiency interest of twenty (20%) percent thereof from the day of default, as indicated in the schedule of payment.

The relief prayed for is anchored on the allegation that the prosecution was unable to prove that the two accused committed fraud or any illegal act which would render them personally liable for the tax obligations of South Sea Surety & Insurance Co. Inc. Besides, the Corporation is a juridical entity with separate and distinct personality from its officers accused Docena and Palad. Thus, the conclusion that the remaining tax obligations of the corporation, acting through the two accused, are its sole liabilities. Allegedly, this legal fiction may only be disregarded under the circumstances cited in Section 31 of the Corporation Code of the Philippines which are lacking in the case at bar. There was no fraud, unlawful act or bad faith in not paying the BIR the DST due. The admitted non-payment of the remaining balance was due to the Cease and Desist Order issued by the Insurance Commission against the Corporation.

Moreover, piercing the veil of corporate entity should be done with caution.[1]

For the prosecution however, accused Docena and Palad were the persons required under the Tax Code to pay the deficiency tax assessment as responsible officers of the Corporation, pursuant to Sections 255 and 253(d) of the NIRC of 1997, as amended. In fact, they already paid portions of the obligation by installment from August 15, 2005 to January 15, 2006.

There is no question that the death of accused Efren O. Docena on April 15, 2013 *ipso facto* extinguished his criminal liability as to personal penalties pursuant to Article 89 of the Revised Penal Code.

However, I respectfully submit that this fact and his subsequent acquittal with his co-accused Palad on the ground that the prosecution failed to prove the element of "willfulness" in the commission of the crime charged, do not constitute extinction of their civil liability. In other words, the civil liability of both accused imposed by the Court in the assailed Decision remains notwithstanding the foregoing circumstances. It must be emphasized that death of accused extinguishes only the criminal liability, not the criminal act. Thus, only his personal punishment or the consequences upon his person that is obliterated by reason of his death. The cause and effect subsists and all those with participation in the commission of the crime must suffer the consequences of such participation.[2]

Moreover, the Supreme Court has numerous times held that in case of acquittal, the accused may still be adjudged civilly liable. The extinction of the penal action does not carry with it the extinction of the civil action where (a) the acquittal is based on reasonable doubt as only preponderance of evidence is required; (b) the court declares that the liability of the accused is only civil; and (c) the civil liability of

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[1] G.R. Nos. 166282 and 166283, February 13, 2013.
[2] *People v. Innovero*, 13 CA Rep.74.

the accused does not arise from or is not based upon the crime of which the accused was acquitted.[3]

Further the rule that the acquittal of an accused of the crime charged do not necessarily extinguish his civil liability, unless the court declares in a final judgment that the fact from which the civil liability might arise did not exist.[4] Courts can acquit an accused on reasonable doubt but still order payment of civil damages in the same case.[5]

Notably, the two elements of the crime charged were not only proved by the prosecution but also admitted without qualification by the two accused. Only willful intent to commit the crime charged was not established which caused their acquittal. They were exonerated for absence or lack of willfulness on their part not to pay the taxes due. As stated earlier, they already paid six (6) installments of the tax liability in accordance with their settlement with the BIR when they were legally prevented from paying the balance thereof. In other words, they admitted the existence of the tax liability and their obligation to pay it only that they were prevented from making further payments in accordance with their undertaking by the Cease and Desist Order issued by the Insurance Commission.

Being a criminal case against the Corporation, a juridical person created by legal fiction, it would be the responsible officers such as the two accused who would be charged and penalized, if found guilty. In fine, it is upon the two accused that the corresponding civil liability would be imposed.

In the case of *People vs. Tan Boon Kong*[6] the Supreme Court held that the corporation can act only

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[3] *Jaime Alferez v. People of the Philippines*, G.R. No. 182301, January 31, 2011, 641 SCRA 116, citing *Ambito v. People*, G.R. No. 127327, February 13, 2009, 579 SCRA 69, 94, citing *Hun Hyung Park v. Eung Won Choi*, G.R. No. 165496, February 12, 2007, 515 SCRA 502, 513.
[4] *Bautista v. Court of Appeals*, G.R. No. 46025, 2 September 1992, 213 SCRA 231, 236; *Calalang v. IAC*, G.R. No. 74613, 27 February 1991, 194 SCRA 514.
[5] *Padilla v. Court of Appeals*, G.R. No. L-39999, 31 May 1984, 129 SCRA 558, 567. *People v. Jalandoni*, G.R. No. L-57555, 28 August 1984, 131 SCRA 454; *Maximo v. Garuchi*, G.R. Nos. L-47994-97, 24 September 1986, 144 SCRA 326; *Vizconde v. Intermediate Appellate Court*, G.R. No. L-74231, 10 April 1987, 149 SCRA 226; *People v. Ligon*, G.R. No. L-74041, 29 July 1987, 152 SCRA 419.
[6] G.R. No. L-35262, March 15, 1930.

through its officers and agents and all who participate in the illegal act must necessarily answer for its consequences, thus:

> The question to be decided is whether the information sets forth facts rendering the defendant, as manager of the corporation liable criminally under section 2723 of Act No. 2711 for violation of section 1458 of the same act for the benefit of said corporation. Section 1458 and 2723 read as follows:
>
> > SEC. 1458. *Payment of percentage taxes — Quarterly reports of earnings.* — The percentage taxes on business shall be payable at the end of each calendar quarter in the amount lawfully due on the business transacted during each quarter; and it shall be on the duty of every person conducting a business subject to such tax, within the same period as is allowed for the payment of the quarterly installments of the fixed taxes without penalty, to make a true and complete return of the amount of the receipts or earnings of his business during the preceeding quarter and pay the tax due thereon. . . . (Act No. 2711.)
> >
> > SEC. 2723. *Failure to make true return of receipts and sales.* — Any person who, being required by law to make a return of the amount of his receipts, sales, or business, shall fail or neglect to make such return within the time required, shall be punished by a fine not exceeding two thousand pesos or by imprisonment for a term not exceeding one year, or both.
>
> And any such person who shall make a false or fraudulent return shall be punished by a fine not exceeding ten thousand pesos or by imprisonment for a term not exceeding two years, or both. (Act No. 2711.)

> Apparently, the court below based the appealed ruling on the ground that the offense charged must be regarded as committed by the corporation and not by its officials or agents. This view is in direct conflict with the great weight of authority. **A corporation can act only through its officers and agents, and where the business itself involves a violation of the law, the correct rule is that all who participate in it are liable** (*Grall and Ostrand's* Case, 103 Va., 855, and authorities there cited.)
>
> In case of *State vs. Burnam* (17 Wash., 199), the court went so far as to hold that **the manager of a diary corporation was criminally liable for the violation of a statute by the corporation through he was not present when the offense was committed**.
>
> **In the present case the information or complaint alleges that he defendant was the manager of a corporation which was engaged in business as a merchant, and as such manager, he made a false return, for purposes of taxation, of the total amount of sale made by said false return constitutes a violation of law, the defendant, as the author of the illegal act, must necessarily answer for its consequences, provided that the allegation are proven**. (emphasis supplied)

Clearly, the civil liability of both accused remains. The Government still has the right to collect and be paid the remaining unpaid deficiency DST and compromise penalty assessed against the Corporation of which the two accused were responsible officers at the time of the assessment.

It is also worth to note that South Sea Surety & Insurance Co., Inc. no longer exists or at the very least, had closed shop. In other words, there is no more corporation to speak of to be adjudged liable for the remaining balance of the unpaid deficiency DST.

> Significantly, it was the two accused who made the arrangement with the BIR and provided the manner by which such tax liability would be settled.
>
> It has been ruled that the tax and the obligation to pay the same are created and governed by statute; so are its collection and payment. The payment of taxes is a duty which the law requires. The said obligation is not a consequence of the felonious acts charged in the criminal proceeding nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of non-existence of the criminal acts charged. Hence, the payment and collection of customs duties and taxes in themselves create civil liability on the part of the taxpayer. Such civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him.[7]

On this note, I vote to grant the Petition for Review filed by the prosecution and rule that both accused are jointly and severally liable to pay the total assessed amount of Php5,758,176.07 for deficiency DST and compromise penalty.

Respectfully submitted.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[7] *Petron Pilipinas Corp. v. Republic of the Philippines, represented by the Bureau of Customs*, G.R. No. 165027. October 16, 2006.