REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- *versus* -

REYNALDO Y. DIA and **FRITZ AND MACZIOL ASIA, INC.,**
(Units 3, 4 & 5, 22nd Floor Zuellig Bldg., Paseo de Roxas cor. Makati Ave., Makati City),
Accused.

CTA CRIM. CASE NO. O-1002
For: Violation of Section 255, in relation to Sections 253(d) and 256 of the NIRC, as amended

Members:

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

Promulgated:

JUL 0 8 2025

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DECISION

The Case

Before the Court is the *Amended Information* filed on March 11, 2024 indicting Reynaldo Y. Dia ("accused Dia"), as the President of Fritz and Macziol Asia, Inc. ("accused Corporation"; "FMAI"), for violation of *Section 255*, in relation to *Sections 253(d) and 256 of the National Internal Revenue Code of 1997 ("NIRC"), as amended*, to wit:[1]

> "That on or about February 11, 2019 in Makati City, and within the jurisdiction of this Honorable Court, accused Fritz and Macziol Asia, Inc., a domestic corporation engaged in systems integration and software development and registered taxpayer of the Revenue District Office No. 50-South, Makati City, with Tax Identification No. 245-977-475-000, and accused Reynaldo Y. Dia, its president, required by law to file returns on withholding tax on compensation and pay the taxes due thereon, did then and there, willfully, unlawfully and knowingly fail to pay withholding tax on compensation in the amount of Php44,438,011.67, exclusive of interest, for the return period December 31, 2016 to July 31, 2019, for taxable year 2017, despite prior and post notices and demands, the latest being in the

[1] Docket – Vol. II, pp. 518 to 519.

> Final Collection Notice dated February 11, 2019, to the damage and prejudice of the Government in the aforesaid amount, exclusive of surcharge.
>
> CONTRARY TO LAW."

The Facts

Accused Reynaldo Y. Dia is a Filipino and of legal age, while accused Fritz and Macziol Asia, Inc. is a domestic corporation duly organized and existing under and by virtue of Philippine laws.[2]

On October 10, 2018, a Preliminary Collection Notice ("PCL") dated October 8, 2018 and issued by Revenue Region No. 8 – Makati City Chief of Collection Division, Alice S.A. Gonzales,[3] was received by accused Corporation, informing the latter of its failure to pay the taxes due on various returns, including Withholding Tax on Compensation ("WTC") Returns for the periods January to August 2018, January, February, April, June, September, November, and December 2017, and December 2016.

This was followed by a Final Collection Notice to Taxpayers Availing the eFPS ("FCN") dated February 11, 2019, issued by the same office,[4] and received by accused Corporation on March 4, 2019, giving the latter a last 10 days from its receipt to settle payment of various returns, including WTC returns for the periods February, September, November, and December 2018, January, February, April, June, September, November, and December 2017, and December 2016.

On September 9, 2019, a Certification was issued by the BIR, signed by the Head of Arrears Management Section, Rosita S. Item, and noted by the OIC-Chief of Collection Division, Benilda M. Nicosia, that accused Corporation has no record of payment that has been made to settle for various returns, including WTC returns for the periods March to July 2019, February, September, and November 2018, January, February, April, June, September, November, and December 2017, and December 2016.[5]

On October 10, 2019, the Commissioner of Internal Revenue ("CIR"), on the basis of the Complaint-Affidavit filed by Sylvia A. Bangco, Arturo L. Mateo and Jim V. Young on even date, the designated investigating officers of the Bureau of Internal Revenue ("BIR"), then recommended the criminal prosecution of FMAI and its responsible corporate officer, Dia, its President,

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2 Par. 1 and 2, Joint Stipulation of Facts and Issues ("JSFI"), Docket – Vol. I, p. 259.
3 Exhibit "P-12", Docket – Vol. II, pp. 699 to 701.
4 Exhibit "P-13", Docket – Vol. II, pp. 702 to 704.
5 Exhibit "P-9" to "P-10", Docket – Vol. II, pp. 633 to 635.

for sixteen (16) counts of willful failure to pay/remit tax under *Section 255, in relation to Section 253 and 256, of the NIRC, as amended.*[6]

Thus, on December 6, 2022, the prosecution filed the original *Information*[7] before the Court with the following allegations:

> "That on or about February 11, 2019 in Makati City, and within the jurisdiction of this Honorable Court, accused Fritz and Maczoil Asia, Inc., a domestic corporation engaged in systems integration and software development and registered taxpayer of the Revenue District Office No. 50-South, Makati City, with Tax Identification No. 245-977-475-000, and accused Reynaldo Y. Dia, its president, required by law to file returns on withholding tax on compensation and pay the taxes due thereon, did then and there, willfully, unlawfully and knowingly fail to pay withholding tax on compensation in the amount of Php50,438,509.20, exclusive of interest, for the return period December 31, 2017 to July 31, 2019, for taxable year 2019, despite prior and post notices and demands, the latest being in the Final Collection Notice dated February 11, 2019, to the damage and prejudice of the Government in the aforesaid amount, exclusive of surcharge.
>
> CONTRARY TO LAW."

On January 16, 2023, finding existence of probable cause, the Court resolved to issue a warrant of arrest against the accused Dia.[8]

In view of the voluntary surrender of accused Dia and his submission to this Court's jurisdiction on July 19, 2023, his cash bail bond in the amount of ₱60,000.00 was approved, thereby lifting the warrant of arrest issued against him, declaring the same without further force and effect.[9]

Accused Dia's arraignment was held on August 29, 2023, where he pleaded **NOT GUILTY** to the offenses charged against him.[10] Prior thereto, private complainant BIR filed its Pre-Trial Brief on July 27, 2023,[11] while the Pre-Trial Briefs for Mr. Reynaldo Y. Dia and Fritz and Macziol Asia, Inc. were filed on August 29, 2023.[12]

On September 28, 2023, the parties submitted their Joint Stipulation of Facts and Issues.[13] Eventually, the Pre-Trial Order was issued on May 21, 2024.[14]

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6 Docket – Vol. I, pp. 15 to 23.
7 Docket – Vol. I, pp. 5 to 7.
8 Resolution dated January 16, 2023, Docket – Vol. I, pp. 102 to 103.
9 Resolution dated July 19, 2023, Docket – Vol. I, pp. 138 to 149.
10 Docket – Vol. I, pp.180 to 183.
11 Docket – Vol. I, pp.156 to 162.
12 Docket – Vol. I, pp.184 to 206.
13 Docket – Vol. I, pp. 259 to 263.
14 Docket – Vol. II, pp. 553 to 562.

Trial ensued with plaintiff presenting its witnesses: 1) Rosita S. Item ("Ms. Item"), Head of Arrears Monitoring Section of the Collection Division of the BIR;[15] and 2) Sylvia A. Bangco, Chief of Intelligence and Operations Section of the Regional Investigation Division of BIR Revenue Region No. 8A – Makati City.[16]

Meanwhile, in compliance with the Court's order,[17] an *Amended Information* was filed on March 11, 2024.

Plaintiff filed its Formal Offer of Evidence on June 7, 2024,[18] with accused's Comment/Opposition filed on June 19, 2024.[19] On July 29, 2024, the Court resolved to admit all of plaintiff's exhibits.[20]

Accused presented its witness Jane Frances S. Delfin ("Ms. Delfin"), its Assistant Vice President for Finance from 2016 to 2019,[21] and filed its Formal Offer of Evidence on December 4, 2024,[22] with plaintiff's Comment/Opposition filed on January 2, 2025.[23] On February 3, 2025, the Court resolved to admit all of accused's exhibits.[24]

On March 31 2025, accused filed its Memorandum mainly arguing that plaintiff failed to prove that accused Corporation willfully failed to pay the WTC returns and that accused Dia is not the responsible officer which can be held liable for the accused Corporation's violations as he was not involved in the latter's operations and in the preparation of its tax returns.[25]

On the other hand, plaintiff failed to file its Memorandum.[26] Thus, the case was submitted for decision, with the promulgation of judgment set on July 8, 2025.[27]

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[15] Exhibit "P-17" Docket – Vol. I, pp. 230 to 239; Minutes of Hearing held on and Order dated September 28, 2023, Docket – Vol. I, pp.253 to 254.
[16] Exhibit "P-18" Docket – Vol. I, pp. 269 to 280; Minutes of Hearing held on and Order dated March 19, 2024, Docket – Vol. II, pp. 550 to 551.
[17] Resolution dated February 22, 2024, Docket – Vol. II, pp. 514 to 517.
[18] Docket – Vol. II, pp. 570 to 587.
[19] Docket – Vol. II, pp. 763 to 770.
[20] Docket – Vol. II, pp. 776 to 777.
[21] Exhibit "A-56" Docket – Vol. III, pp. 795 to 823; Minutes of Hearing held on and Order dated November 14, 2024, Docket – Vol. III, pp. 1168 to 1168-B.
[22] Docket – Vol. III, pp. 1170 to 1196.
[23] Docket – Vol. IV, pp. 1406 to 1409.
[24] Docket – Vol. IV, pp. 1429 to 1430.
[25] Docket – Vol. IV, pp. 1432 to 1463.
[26] Judicial Records Verification dated April 4, 2025; Docket – Vol. IV, p. 1466.
[27] Resolution dated April 24, 2025 and Notice of Hearing dated May 30, 2025, Docket – Vol. IV.

The Issues

The parties stipulated on the following issues:[28]

a. Whether the Corporation is guilty of violating *Section 255* in relation to *Section 256 of the National Internal Revenue Code of 1997, as amended*; and

b. Whether Mr. Dia is guilty of violating *Section 255* in relation to *Section 253(d) of the National Internal Revenue Code of 1997, as amended.*

The Ruling of the Court

Based on the original and *Amended Information*, accused is being prosecuted for sixteen (16) counts of willful failure to remit withholding tax on compensation under *Section 255 of the NIRC, as amended*, to wit:

> 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 the 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 (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.
>
> . . . .
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> (Italics, Ours.)

These 16 counts comprise of the following taxable/return periods:

1) July 31, 2019
2) June 30, 2019
3) May 31, 2019
4) April 30, 2019
5) March 31, 2019
6) November 30, 2018
7) September 30, 2018
8) February 28, 2018
9) December 31, 2017
10) November 30, 2017

[28] Issues, JSFI, Docket – Vol. I, p. 260.

11) September 30, 2017
12) June 30, 2017
13) April 30, 2017
14) February 28, 2017
15) January 31, 2017
16) December 31, 2016

The government's right to prosecute the alleged violations were made within the prescriptive period.

Before delving into the determination of whether the prosecution established all the elements of the accused's alleged violation of *Section 255 of the NIRC, as amended*, the Court shall first determine whether all counts of violations is already barred by prescription.

In resolving the issue of prescription of the offense charged, the following should be considered: (1) the period of prescription for the offense charged; (2) the time the period of prescription starts to run; and (3) the time the prescriptive period was interrupted.[29]

Further, *Section 281 of the NIRC, as amended*, serves as Our guide in determining the prescription of the offense charged herein, thus:

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

Verily, as for the first consideration, it is thus clear that all violations under the *NIRC, as amended*, including the alleged violation in this case, shall prescribe after five years.

[29] *Jadewell Parking Systems Corp. v. Lidua, Sr.*, G.R. No. 169588, 07 October 2013, citing *Romualdez v. Hon. Marcelo*, G.R. Nos. 165510-33 (Resolution), April 13, 2011.

As for the second consideration, the foregoing provides that prescription runs from the day of the commission of the violation. In the case of *People vs. Consebido*,[30] ("*Consebido* case") the High Court clarified that where the information, data, or records, from which the crime is based could be plainly discovered or were readily available to the public, or when there are reasonable means to be aware of the commission of the offense, the prescriptive period should be reckoned from the date of commission of the offense:

> It must be stressed, however, that the Discovery Rule does not apply to all offenses punishable under the 1997 NIRC. In cases where the information, data, or records, from which the crime is based could be plainly discovered or were readily available to the public, or when there are reasonable means to be aware of the commission of the offense, the prescriptive period should be reckoned from the date of commission of the offense.
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> Here, the Court finds that the Discovery Rule is not applicable to the present case considering that the BIR had reasonable means to ascertain that Consebido failed to file his quarterly VAT return for the 3rd quarter of the taxable year 2008 given the circumstances, . . .
>
> . . . .
>
> Section 114 of the 1997 NIRC, as amended by Republic Act No. 9337, the applicable law at that time, partly provides that "[e]very person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis."
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> . . . .
>
> Evidently, the *BIR expected Consebido to regularly file his monthly and quarterly VAT returns*. Coupled with the fact that it is mandatory for government contractors, such as Consebido, to file their income and business tax returns and other required information electronically using the BIR's Electronic Filing and Payment System since April 1, 2005, the BIR could readily generate from its system the list of tax returns which Consebido is required to file but failed to do so. *Simply put, Consebido's failure to file his Quarterly VAT return for the 3rd quarter of the taxable year 2008 on the deadline fixed by law, i.e., October 25, 2008, could have easily been discovered by the BIR.*
>
> Verily, the Discovery Rule is not applicable in the case. The prescriptive period should not be counted from the date of discovery of the alleged violation, which the parties all agreed to be January 30, 2014, but on October 25, 2008, the date when Consebido purportedly failed to file his return.
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> (Italics, Ours.)

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[30] G.R. No. 258563, April 2, 2025.

Similarly, in this case, the violation being imputed on the accused is its failure to remit the compensation taxes it withheld from its employees. Consistent with the "*pay-as-you-file*" system, the BIR is expected receive the payments/remittances upon filing of the WTC returns by the accused. Failure to receive or note any payment made by the accused could have easily been discovered by the BIR as it can be readily generated from its system, especially considering that the accused filed its WTC returns thru the BIR's Electronic Filing and Payment System ("eFPS").[31]

Based on the WTC returns which the accused allegedly failed to pay, the five-year prescriptive period on accused's alleged failure to pay should have commenced on the following dates:

	WTC Return Period	**Filing Due Dates (*Reckoning Point of Prescription of Offense*)**
1)	July 31, 2019	August 15, 2019
2)	June 30, 2019	July 15, 2019
3)	May 31, 2019	June 15, 2019
4)	April 30, 2019	May 15, 2019
5)	March 31, 2019	April 15, 2019
6)	November 30, 2018	December 15, 2018
7)	September 30, 2018	October 15, 2018
8)	February 28, 2018	March 15, 2018
9)	December 31, 2017	January 15, 2018
10)	November 30, 2017	December 15, 2017
11)	September 30, 2017	October 15, 2017
12)	June 30, 2017	July 15, 2017
13)	April 30, 2017	May 15, 2017
14)	February 28, 2017	March 15, 2017
15)	January 31, 2017	February 15, 2017
16)	December 31, 2016	January 15, 2017

Lastly, as with the third consideration, Our immediate reference is *Section 2, Rule 9 of the Revised Rules of Court of Tax Appeals ("RRCTA")*, which provides that the prescriptive period of criminal offenses shall be interrupted upon the filing of the *Information* before the Court of Tax Appeals, which is the judicial proceedings contemplated under *Section 281 of the NIRC, as amended,* Thus:

> 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

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[31] Exhibit "P-16" (Certification dated September 5, 2019), Docket – Vol. II, p. 762.

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.
(Italics, Ours.)

Applying the foregoing in this case, six counts of violation under *Section 255 of the NIRC, as amended*, should have already prescribed, as can be analyzed below, considering that the original *Information* was filed before the Court on December 6, 2022.

WTC Return Period	Filing Due Dates (*Reckoning Point of Prescription of Offense*)	5-Year Prescriptive Period	Remarks
1) July 31, 2019	August 15, 2019	August 15, 2024	Not prescribed
2) June 30, 2019	July 15, 2019	July 15, 2024	Not prescribed
3) May 31, 2019	June 15, 2019	June 15, 2024	Not prescribed
4) April 30, 2019	May 15, 2019	May 15, 2024	Not prescribed
5) March 31, 2019	April 15, 2019	April 15, 2024	Not prescribed
6) November 30, 2018	December 15, 2018	December 15, 2023	Not prescribed
7) September 30, 2018	October 15, 2018	October 15, 2023	Not prescribed
8) February 28, 2018	March 15, 2018	March 15, 2023	Not prescribed
9) December 31, 2017	January 15, 2018	January 15, 2023	Not prescribed
10) November 30, 2017	December 15, 2017	December 15, 2022	Not prescribed
11) September 30, 2017	October 15, 2017	October 15, 2022	Prescribed
12) June 30, 2017	July 15, 2017	July 15, 2022	Prescribed
13) April 30, 2017	May 15, 2017	May 15, 2022	Prescribed
14) February 28, 2017	March 15, 2017	March 15, 2022	Prescribed
15) January 31, 2017	February 15, 2017	February 15, 2022	Prescribed
16) December 31, 2016	January 15, 2017	January 15, 2022	Prescribed

However, in light of the *Consebido* case, the High Court revisited the interpretation of *Section 281 of the NIRC, as amended*, ruling that it shall be the filing of the criminal complaint before the Department of Justice ("DOJ") which shall toll the running of the prescriptive period for offenses under the *NIRC, as amended*, whether its commission was immediately known or unknown at the time of the violation. The High Court expounded:

When Act No. 3326 was passed on December 4, 1926, it was the justice of the peace that conducted the preliminary investigation of criminal offenses. Accordingly, the filing of the complaint with the justice of the peace also signified the institution of criminal proceedings against the accused. The prevailing rule then was that the filing of the complaint with the justice of the peace tolled the prescription of the offense. The Court thus clarified in *Panaguiton, Jr. v. Department of Justice* that *the term "proceedings" in Section 2 of Act No. 3326 should now be understood to include those before the executive branch of government. Hence,*

> *preliminary investigation tolls prescription*, the reason being that "to rule otherwise would deprive the injured party the right to obtain vindication on account of delays that are not under his control."
>
> . . . .
>
> Notably, *Lim, Sr.* applied Section 354 of the 1939 NIRC. Associate Justice Japar B. Dimaampao (Associate Justice Dimaampao) astutely noted that the 1939 NIRC was passed when justices of the peace conducted preliminary investigations. This is no longer the case now, as observed in *Panaguiton*. Thus, in consideration of the foregoing, the Court clarifies that under Section 281 of the 1997 NIRC, prescription for criminal offenses where the commission of the violation is not known shall begin to run from its discovery. The adoption of the interpretation in Duque is apt in order to harmonize the second and third paragraphs of Section 281 of the 1997 NIRC. *The institution of proceedings, specifically the commencement of preliminary investigation, shall interrupt the prescriptive period for the offense*. This clarification is necessary as a literal interpretation of the law should be rejected if it would lead to absurd results. Prescription would not run under a literal reading of Section 281 of the 1997 NIRC, as it would both begin and be interrupted by the institution of proceedings. The Court must give effect to the clear intent of the Legislature to set a prescriptive period for violations of the 1997 NIRC. Chief Justice Alexander G. Gesmundo (Chief Justice Gesmundo) judiciously expressed that the prevailing interpretation renders nugatory or lifeless the prescriptive period set by the Legislature itself.
> (Italics, Ours. Citations omitted.)

As early as in *Panaguiton, Jr. vs. Department of Justice*,[32] citing *Securities and Exchange Commission vs. Interport Resources Corporation, et. al.*,[33] it has already been established that any kind of investigative proceeding instituted against the guilty person which may ultimately lead to his prosecution should be sufficient to toll prescription, hence:

> While it may be observed that the term "judicial proceedings" in Sec. 2 of Act No. 3326 appears before "investigation and punishment" in the old law, with the subsequent change in set-up whereby the investigation of the charge for purposes of prosecution has become the exclusive function of the executive branch, the term "proceedings" should now be understood either executive or judicial in character: executive when it involves the investigation phase and judicial when it refers to the trial and judgment stage. With this clarification, any kind of investigative proceeding instituted against the guilty person which may ultimately lead to his prosecution should be sufficient to toll prescription.

Taking cue from the foregoing, the High Court applied in *Consebido* such interpretation with respect to prescription of offenses under the *NIRC, as amended*, particularly on *Section 281*, which consequently extends to *Section 2, Rule 9 of RRCTA*. Verily, the prescriptive period of criminal offenses under

[32] G.R. No. 167571, November 25, 2008.
[33] G.R. No. 135808, October 6, 2008.

the *NIRC, as amended*, is now effectively interrupted upon the filing of complaint-affidavit with the DOJ, triggering the preliminary investigation on the alleged offense committed.

Guided by the pronouncement in *Consebido*, the running of prescription on the alleged violations by the accused Corporation of *Section 255 of the NIRC, as amended*, has been effectively interrupted by the filing of the Complaint-Affidavit of Sylvia A. Bangco, Arturo L. Mateo and Jim V. Young, together with the recommendation from the CIR, on October 10, 2019 before the DOJ.[34]

As can be recalled from the above table analysis on prescription, the earliest offense to prescribe is the failure to pay the WTC return for the taxable period December 31, 2016, which is set to prescribe on January 15, 2022. Thus, with the filing of the Complaint-Affidavit on October 10, 2019, all 16 counts of the alleged violation of *Section 255 of the NIRC, as amended*, are thus instituted within the five-year prescriptive period under *Section 281 of the same Code*. Hence:

	WTC Return Period	**Filing Due Dates (*Reckoning Point of Prescription of Offense*)**	**5-Year Prescriptive Period**	**Remarks**
1)	July 31, 2019	August 15, 2019	August 15, 2024	Not prescribed
2)	June 30, 2019	July 15, 2019	July 15, 2024	Not prescribed
3)	May 31, 2019	June 15, 2019	June 15, 2024	Not prescribed
4)	April 30, 2019	May 15, 2019	May 15, 2024	Not prescribed
5)	March 31, 2019	April 15, 2019	April 15, 2024	Not prescribed
6)	November 30, 2018	December 15, 2018	December 15, 2023	Not prescribed
7)	September 30, 2018	October 15, 2018	October 15, 2023	Not prescribed
8)	February 28, 2018	March 15, 2018	March 15, 2023	Not prescribed
9)	December 31, 2017	January 15, 2018	January 15, 2023	Not prescribed
10)	November 30, 2017	December 15, 2017	December 15, 2022	Not prescribed
11)	September 30, 2017	October 15, 2017	October 15, 2022	Not prescribed
12)	June 30, 2017	July 15, 2017	July 15, 2022	Not prescribed
13)	April 30, 2017	May 15, 2017	May 15, 2022	Not prescribed
14)	February 28, 2017	March 15, 2017	March 15, 2022	Not prescribed
15)	January 31, 2017	February 15, 2017	February 15, 2022	Not prescribed
16)	December 31, 2016	January 15, 2017	January 15, 2022	Not prescribed

[34] Docket – Vol. I, pp. 15 to 23.

Nevertheless, the prosecution failed to prove all the elements of the offense charged.

To recall, accused is being charged with violation under *Section 255*, in relation to *Sections 253(d) and 256, of the NIRC, as amended*, which provides:

> 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 the 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 (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.
>
> . . . .
>
> SEC. 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.*
>
> . . . .
>
> 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).
> (Italics, Ours.)

To successfully prosecute a violation of *Section 255*, it must be shown that: (1) the taxpayer is required to pay any tax, make or file 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; (2) the taxpayer failed to do so; and (3) the act is willful.[35]

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[35] *People v. Mendez*, G.R. Nos. 208310-11 & 208662, 28 March 2023.

A. The accused Corporation is required to remit WTC

It is undeniable that the accused Corporation is required to remit WTC as can be shown by the WTC returns it filed thru eFPS for the following taxable periods:[36]

1) July 31, 2019
2) June 30, 2019
3) May 31, 2019
4) April 30, 2019
5) March 31, 2019
6) November 30, 2018
7) September 30, 2018
8) February 28, 2018
9) December 31, 2017
10) November 30, 2017
11) September 30, 2017
12) June 30, 2017
13) April 30, 2017
14) February 28, 2017
15) January 31, 2017
16) December 31, 2016

B. The accused Corporation failed to pay/remit WTC

Likewise, it can be verified from the testimony of plaintiff's witness, Ms. Item, in her capacity as the Head of the Arrears Monitoring Section of the Collection Division of the BIR,[37] and from her Certification dated September 9, 2019,[38] that accused Corporation has no record of payment that has been made to settle for various returns, including WTC returns for the foregoing periods.

It is also notable that the accused Corporation, through its witness Ms. Delfin, did not deny its obligation to file the foregoing WTC returns and even the numerous instances of its failure to pay. However, its sole defense was that it did not willfully did so.

36 Exhibits "P-11-1" to "P-11-16".
37 Exhibit "P-17" Docket – Vol. I, pp. 230 to 239; Minutes of Hearing held on and Order dated September 28, 2023, Docket – Vol. I, pp.253 to 254.
38 Exhibit "P-9" to "P-10", Docket – Vol. II, p. 633 to 635.

B. The failure to pay was not willful

In *People vs. Mendez,*[39] it was discussed that the term willful as defined in the Ninth Edition of Black's Law Dictionary means voluntary and intentional, but not necessarily malicious. The term willfully was also construed as voluntary, intentional violation of a known legal duty. Hence, the Supreme Court held that the prosecution must prove that the taxpayer knew his legal duty to file an ITR, yet, the taxpayer knowingly, voluntarily, and intentionally neglected to do so. It must be stressed that the willful neglect to file the required tax return cannot be presumed. It must be established fully as a fact and cannot be attributed to a mere inadvertent or negligent act.

Further in *Commissioner of Internal Revenue, et. al. vs. The Honorable Court of Appeals, et. al.,*[40] "wilful" means "premeditated; malicious; done with intent, or with bad motive or purpose, or *with indifference to the natural consequence . . .*"

In this case, the prosecution failed to prove that the accused Corporation willfully and intently failed to remit its WTC, with indifference to the natural consequences of such failure to remit.

From its own evidence itself, it can already be established that accused Corporation is paying the unsettled WTC returns, albeit not all of them, as can be seen in the following analysis:

WTC Returns Unpaid per PCL dated October 8, 2018[41]	WTC Returns Unpaid per FCN dated February 11, 2019[42]	Certification dated September 9, 2019[43]
January 31, 2018	December 31, 2018	July 31, 2019
February 28, 2018	November 30, 2018	June 30, 2019
March 31, 2018	September 30, 2018	May 31, 2019
April 30, 2018	February 28, 2018	April 30, 2019
May 31, 2018	December 31, 2017	March 31, 2019
June 30, 2018	November 30, 2017	November 30, 2018
July 31, 2018	September 30, 2017	September 30, 2018
August 31, 2018	June 30, 2017	February 28, 2018
January 31, 2017	April 30, 2017	December 31, 2017
February 28, 2017	February 28, 2017	November 30, 2017
April 30, 2017	January 31, 2017	September 30, 2017
June 30, 2017	December 31, 2016	June 30, 2017
September 30, 2017		April 30, 2017

[39] Supra.
[40] G.R. No. 119322, June 4, 1996.
[41] Exhibit "P-12", Docket – Vol. II, p. 699 to 701.
[42] Exhibit "P-13", Docket – Vol. II, p. 702 to 704.
[43] Exhibit "P-9" to "P-10", Docket – Vol. II, p. 633 to 635.

November 30, 2017		February 28, 2017
December 31, 2017		January 31, 2017
December 31, 2016		December 31, 2016

Based on the foregoing, the WTC returns for the months of January and March to August 2018 as listed in the PCL were already paid as they were no longer included in the list of unpaid WTC returns in the FCN. While the December 2018 WTC return was already paid as can be deduced by its non-inclusion in the list of unpaid returns under Certification dated September 9, 2019, which ultimately became the basis for the Complaint-Affidavit filed in this case.

Further, We find that the failure to pay was not out of stubbornness of the accused Corporation, but was brought about by its dire financial constraints and eventual incapacity. As testified by Ms. Delfin, from the year 2017 onwards, its financial statements[44] that its income and cash balances were depleting, while its liabilities were constantly increasing. This financial situation of the accused Corporation was brought about by discontinued projects,[45] termination of client and supplier relationships,[46] local tax assessments,[47] Notice for Garnishment from labor cases ruled in favor of former employees,[48] a civil action for collection of sum of money ruled against it,[49] several demand letters from suppliers,[50] and a failed proposal for debt restructuring.[51]

In addition, accused Corporation directly reached out to private complainant BIR in order to try to settle the unpaid WTC returns. As testified by Ms. Item during her testimony in court:[52]

> JUSTICE SAN PEDRO:
>
> Exactly how? *Paano nyo nakausap itong* petitioner where they tell you that they were going to pay by installment?
>
> WITNESS:
>
> *Noong* Preliminary Collection Letter, *may nagpunta na po na buntis siya*, I cannot recall *na po e, na magbabayad daw po sila.*
>
> JUSTICE SAN PEDRO:
>
> And she represented the petitioners in this case?

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[44] Exhibits "A-2", "A-3", "A-38", "A-39".
[45] Exhibit "36".
[46] Exhibits "37", "37-1", "A-14", "A-14-1", "A-14-2", "A-27", "A-27-1", "A-27-2".
[47] Exhibits "A-7", "A-7-2", "A-7-1".
[48] Exhibit "A-54".
[49] Exhibit "A-9".
[50] Exhibits "A-31", inclusive of sub-markings, to "A-32".
[51] Exhibits "A-10", inclusive of sub-markings, to "A-30", inclusive of sub-markings.
[52] TSN dated September 28, 2023, p. 13.

WITNESS:
Opo.

On the other hand, Ms. Delfin's testimony in court corroborated on the matter, as follows:[53]

ATTY. ROSARIO:
The demand letters sent by your creditor, suppliers, and the cases filed against the company, was the BIR informed of this?

WITNESS (MS. DELFIN):
Yes. We told them about the situation of the company. I actually even went, I remember to the collection department of the Region 8 and then I asked what could possibly the options that we can do for the assessment and the, for that. Unfortunately, she told us that the assessed taxes were already filed. So, they said that the other options for taxes that we can avail are not an option anymore. But I think after a few months we consulted in, back then there was an option of tax amnesty application. That's why we started …

True enough, accused Corporation filed an application for tax amnesty on February 6, 2020, which was intended for the unpaid WTC returns.[54] But, as admitted by Ms. Delfin in her testimony in court, accused Corporation was not able to push through with it as its funds were lacking to settle the WTC portion of the unpaid taxes it sought to be part of the tax amnesty application.[55]

Verily, due to the foregoing circumstances, the Court finds that there is reasonable doubt on the alleged willfulness of the accused Corporation in its failure to remit its WTC. Instead, We positively find its efforts to settle its unpaid WTC returns with what its remaining funds can muster as acts contrary to willfulness, intentional or just sheer indifference on the natural consequences of non-payment.

In summary, the prosecution failed to sufficiently establish accused Corporation's guilt beyond reasonable doubt on the alleged violation of *Section 255 of the NIRC, as amended.*

[53] TSN dated November 14, 2023, p. 13 to 14.
[54] Exhibits "A-40", "A-40-1", and "A-40-2".
[55] TSN dated November 14, 2023, p. 11 and 18.

Even assuming that willful failure to pay was proven, prosecution failed to prove that accused Dia was a responsible officer in commiting the violation.

While Section *253(d) of the NIRC, as amended*, specifically mentions the president as one of the criminally liable officer, such liability was qualified by the phrase "responsible for the offense".

People vs. E & D Parts Supply, Inc., et. al.,[56] citing *Suarez vs. People*,[57] explained that to be criminally liable for the acts of a corporation, there must be a showing that its officers, directors, and shareholders actively participated in or had the power to prevent the wrongful act and that mere membership of the Board or being President *per se* does not mean knowledge, approval, and participation in the act alleged as criminal. There must be a showing of active participation, not simply a constructive one.

In this case, the prosecution failed to prove that accused Dia was an officer responsible for the commission of the offense. Other than obtaining his name from the General Information Sheets for the years 2018 and 2019 and Annual Financial Statement for the year 2017[58] as the President of the accused Corporation, the prosecution did not show any other proof that his tasks as President of accused Corporation includes an active involvement in the preparation and payment of its tax returns.

Without any proof directly linking accused Dia to the commission of the accused Corporation's violation under *Section 255 of the NIRC, as amended*, he cannot be made criminally liable therefor.

However, accused Corporation is still civilly liable to pay the deficiency WTC.

A person acquitted of a criminal charge, however, is not necessarily civilly free because the quantum of proof required in criminal prosecution (proof beyond reasonable doubt) is greater than that required for civil liability (mere preponderance of evidence). In order to be completely free from civil liability, a person's acquittal must be based on the fact that he did not commit the offense. If the acquittal is based merely on reasonable doubt, the accused may still be held civilly liable since this does not mean he did not commit the

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[56] G.R. No. 259284, January 24, 2024.
[57] G.R. No. 253429, October 6, 2021.
[58] Exhbits "P-1", "P-2", and "P-14".

act complained of. It may only be that the facts proved did not constitute the offense charged.[59]

In this case, the accused's acquittal is based merely on reasonable doubt, that is prosecution failed to prove the last element to of the offense charged (i.e. willful failure to pay tax). Nevertheless, the act of failure to remit the WTC was clearly established and even undisputed.

Given so, accused Corporation still remains civilly liable to pay the unpaid taxes. However, the Court cannot sufficiently determine the extent of the accused Corporation's civil liability due to lack of evidence on the matter.

While the prosecution presented the summary of unpaid WTC returns per Certification dated September 9, 2019, which shows the amount of taxes which remain unpaid, and copies of these WTC returns itself as generated from the BIR's system, the same cannot be the sole basis in determining the civil liability as accused Corporation did not expressly accede thereon and was not given sufficient opportunity to present its account as to how much it must necessarily settle.

As such, in the interest of justice, the Court deems it necessary to reopen the trial for reception of evidence for the sole purpose of determining the amount of civil liability of accused Corporation herein.

ACCORDINGLY, accused **Reynaldo Y. Dia** and **Fritz and Macziol Asia, Inc.** are **ACQUITTED** of the crime charged on the ground of reasonable doubt. However, let the case be **RE-OPENED for TRIAL** for reception of evidence on FMAI's civil liability.

Further, the cash bail bond posted by accused **Reynaldo Y. Dia** for his provisional liberty in the amount of ₱60,000.00 is hereby **DISCHARGED** and ordered to be **RELEASED** to him upon presentation of proper documents, in accordance with the usual accounting rules and regulations.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[59] *Nuguid v. Nicdao*, G.R. No. 150785, September 15, 2006.

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

I attest 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's Division.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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