24-000311-0008

**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

**FIRST DIVISION**

**CTA CRIM. CASE NO. A-22**

**PEOPLE OF THE PHILIPPINES,**
Plaintiff-Appellant,

- versus -

**NOTICE OF DECISION**

**DEXTER C. LAO,**
Accused-Appellee.

**To:**

**ATTY. RAMON B. LORENZO**
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**DEXTER C. LAO**
1729 Yakat Street
Tondo, Manila

**HON. JOHN BENEDICTO D. MEDINA**
Presiding Judge
**Thru: Atty. Rosalie M. Pueca**
Clerk of Court
Regional Trial Court
National Capital Judicial Region
Branch 47 - Manila

***GREETINGS:***

You are hereby notified by these presents that on **Decision 17, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **December 22, 2025.**

**Atty. Maria Johoanna F. Chan-Te**
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
Quezon City

**FIRST DIVISION**

**PEOPLE OF THE PHILIPPINES,**
Plaintiff-appellant,

- versus -

**DEXTER C. LAO,**
Accused-appellee.

**CTA Crim. Case No. A-22**

Re: Violation of Sec. 255 in relation to Sec. 253(d) and 256 of the NIRC of 1997, as amended

Members:

**BACORRO-VILLENA,** *Acting Chairperson, and*
**CUI-DAVID,** *JJ.*

Promulgated:
DEC 17 2025, 11:30AM

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# DECISION

***BACORRO-VILLENA, J.:***

Before the Court is plaintiff-appellant People of the Philippines' (**plaintiff-appellant**'s) appeal[1] filed on 05 June 2024, pursuant to Section 9(a)[2], Rule 9 of the Revised Rules of the Court of Tax Appeals[3] (**RRCTA**) and Sections 3(a) and 6[4], Rule 122 of the Revised Rules of Criminal

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[1] Notice of Appeal, RTC Records, p. 520.

[2] **RULE 9**
**PROCEDURE IN CRIMINAL CASES**

...

**SEC. 9.** *Appeal; period to appeal.* —
(a) An appeal to the Court in criminal cases decided by a Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal pursuant to Sections 3(a) and 6, Rule 122 of the Rules of Court within fifteen days from receipt of a copy of the decision or final order with the court which rendered the final judgment or order appealed from and by serving a copy upon the adverse party. The Court in Division shall act on the appeal.

[3] A.M. No. 05-11-07-CTA.

[4] **RULE 122**
**APPEAL**

...

**SEC. 3.** *How Appeal Taken.* —

Procedure; contesting the Decision dated 16 April 2024[5] (**assailed Decision**) and the Resolution dated 28 May 2024[6] (**assailed Resolution**), issued by the Regional Trial Court (**RTC**) of Manila City, Branch 47 (**court *a quo***), in Criminal Case No. 16-324822 entitled *People of the Philippines v. Dexter C. Lao.*

## FACTS OF THE CASE

On 28 April 2016, the Office of the City Prosecutor of Manila (**OCP-Manila**) filed before the court *a quo* an Information dated 10 November 2015[7] against accused-appellee Dexter C. Lao (**accused-appellee**), in his capacity as President or responsible officer of Bluebasic Marketing Corporation (**BMC**), for violation of Section 255[8], in relation to Sections 253(d)[9] and 256[10] of the National Internal Revenue Code (**NIRC**) of 1997, as amended. The Information reads:

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(a) The appeal to the Regional Trial Court, or to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction, shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and by serving a copy thereof upon the adverse party.

...

**SEC. 6.** *When Appeal to be Taken.* — An appeal must be taken within fifteen (15) days from promulgation of the judgment or from notice of the final order appealed from. This period for perfecting an appeal shall be suspended from the time a motion for new trial or reconsideration is filed until notice of the order overruling the motion has been served upon the accused or his counsel at which time the balance of the period begins to run.

5 RTC Records, pp. 478-486.

6 Id., pp. 511-512.

7 Id., p. 1.

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

9 **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.

10 **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).

...

That on or about December 28, 2010, in the City of Manila, Philippines, the said accused, DEXTER C. LAO, as the President/responsible officer of Bluebasic Marketing Corporation, located at 1729 Yakal St., Sta. Cruz, this City, did then and there willfully and unlawfully fails, refuses and neglects, as he still fails, refuses and neglects to pay his deficiency internal revenue tax liabilities for the year 2007, to wit:

| Kind of Tax | Assessment No./ Demand Letter | Date | Amount |
|---|---|---|---|
| Def. Income | 31-07-IT-0636 | 12-28-2010 | ₱375,818.52 |
| Def. VAT | 31-07-IT-0637 | 12-28-2010 | ₱152,907.43 |

or in the total amount of P528,725.95, despite notice and service of said assessment and Warrant of Distraint and/or Levy dated 16 December 2013, without formally protesting against or appealing the same, and repeated demands made upon him to do so, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount of ₱528,725.95, Philippine Currency.

Contrary to law.

...

As plaintiff-appellant has alleged, prior to the institution of the criminal action, the Bureau of Internal Revenue (**BIR**) sent *via* registered mail Assessment Notices (**ANs**) (particularly, AN No. 31-07-IT-0636[11] and AN No. 31-07-VT-0637[12]) and a Formal Letter of Demand (**FLD**) dated 28 December 2010[13] with Details of Discrepancies[14], to BMC's business address, *i.e.*, 1729 Yakal St., Sta. Cruz, Manila, as allegedly specified in its corporate Income Tax Return (**ITR**) for the taxable year (**TY**) 2007. These ANs and FLD demanded the payment of deficiency income tax (**IT**) and value-added tax (**VAT**) for TY 2007.

BMC allegedly failed to heed the BIR's demand and did not file any administrative protests. As a result, the deficiency tax assessment purportedly became final, executory and demandable. This failure prompted the BIR to issue a Preliminary Collection Letter (**PCL**) dated 20 May 2011[15] and a Final Notice Before Seizure (**FNBS**) dated 16 June 2011[16] against BMC. Thereafter, on 26 July 2011, the BIR issued a Warrant

11 Exhibit "A", RTC Records, p. 173.
12 Exhibit "B", id., p. 174.
13 Exhibit "C", id., pp. 175-176.
14 Exhibit "C-1", id., p. 177.
15 Exhibit "E", id., p. 179.
16 Exhibit "F", id., p. 180.

of Distraint and/or Levy (**WDL**) No. RR6-031-07-28-2011-00014[17], which it constructively served on accused-appellee through Marian P. Dueñas (**Dueñas**) on 04 August 2011. Subsequently, the BIR issued a Warrant of Garnishment (**WOG**) No. AMT-WG-2013 dated 23 September 2013[18] and served it on various banks to inform them of accused-appellee's alleged tax liabilities. Despite these notices and demands, BMC apparently left its tax obligations unpaid, prompting the BIR to file a criminal complaint with the Department of Justice (**DOJ**) on 14 September 2015.[19]

On 12 May 2016, after finding probable cause[20], the court *a quo* ordered the issuance of a warrant of arrest[21] (**WOA**) against accused-appellee. Once accused-appellee posted a surety bail[22] in the amount of ₱24,000.00, the court *a quo* recalled the WOA and set the case for arraignment.[23] Accused-appellee then entered a plea of not guilty during arraignment.[24]

In the trial that ensued, plaintiff-appellant presented its sole witness, Revenue Officer Yolanda H. Receno (**RO Receno**). Through her Judicial Affidavit dated 04 December 2017[25], RO Receno testified that she was assigned to enforce the collection of BMC's deficiency tax liabilities, with accused-appellee acting as its President. She averred that while accused-appellee received the ANs and FLD, he failed to pay the assessed deficiency taxes, prompting the BIR to initiate collection efforts. She sent the PCL and FNBS to accused-appellee's business address *via* registered mail. When the said tax liabilities remained unpaid, she proceeded to constructively serve the WDL to accused-appellee.

Although the court *a quo* set the cross-examination of RO Receno for several hearing dates, it did not push through due to the parties' and/or their respective counsels' repeated absence. Eventually, upon plaintiff-appellant's oral motion and manifestation that the hearings had been cancelled, the court *a quo* deemed accused-appellee to have waived the right to cross-examine RO Receno.[26]

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17 Exhibit "G", id., p. 181.
18 Id., pp. 21-26.
19 See Joint Complaint-Affidavit (JCA) subscribed and sworn on 14 September 2015, id., pp. 5-10.
20 See Order dated 12 May 2016, id., p. 81.
21 Id., p. 82.
22 See bail and surety bond documents, id., pp. 83-125.
23 See Order dated 27 May 2016, id., p. 126.
24 See Certificate of Arraignment dated 20 October 2016, id., p. 138.
25 Exhibit "H", id., pp. 169-172.
26 See Order dated 11 April 2023, id., p. 313.

With no other witnesses to present, plaintiff-appellant filed its Formal Offer of Evidence[27] (**FOE**) on 18 April 2023, which the court *a quo* subsequently admitted.[28]

Similarly, the hearing for the initial presentation of the defense's evidence was repeatedly cancelled due to accused-appellee's recurring absences. Despite this, on 25 September 2023, he filed a "Motion to Dismiss based on Demurrer to Evidence with Leave of Court"[29] (**Demurrer**) and requested the court *a quo* to allow him to file a demurrer, alleging that plaintiff-appellant presented insufficient evidence to establish his guilt. However, the court *a quo* denied the Demurrer considering that accused-appellee did not specify the reasons for the alleged insufficiency of plaintiff-appellant's evidence, in violation of the requirement under Section 23[30], Rule 119[31] of the Revised Rules of Criminal Procedure that a motion for leave to file a demurrer must distinctly state its legal and factual grounds.[32]

Subsequently, after accused-appellee posted another bail[33], which the court *a quo* approved[34], he appeared on 30 January 2024 and testified as the sole witness for the defense. Accused-appellee claimed that he did not receive any notices or demand letters from the BIR and asserted that the assigned RO/s failed to execute any affidavits of service to show that they properly served the notices or that he ever received them.[35]

To support his testimony, accused-appellee submitted a certified true copy (**CTC**) of the Decision dated 22 June 2016[36] rendered by the Metropolitan Trial Court (**MeTC**) of Manila, Branch 11, in a separate case

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27 See Plaintiff's Formal Offer of Evidence, id., pp. 320-323.

28 See Order dated 09 May 2023, id., p. 333.

29 Id., p. 345.

30 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**.

...

**The motion for leave of court to file demurrer to evidence shall specifically state its grounds** and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt. (Emphasis and underscoring supplied)

31 Trial.

32 See Order dated 18 October 2023, RTC Records, p. 351.

33 See bail and surety bond documents, id., pp. 360-409,

34 See Order dated 18 January 2024, id., p. 413.

35 See Judicial Affidavit of Dexter Lao dated 29 January 2024, Exhibit "1", id., pp. 415-417.

36 Exhibit "2", id., pp. 425-430.

where he had been charged with violations of Sections 5[37], 14[38] and 266[39], in relation to Sections 253(d) and 256 of the NIRC of 1997, as amended. In that case, the MeTC acquitted him on reasonable doubt solely because plaintiff therein likewise failed to prove that the ANs were actually sent to him.

On cross-examination, accused-appellee averred that although he served as BMC's President, he relied on the company's accountants to apprise him of any taxes due for a given period.[40] No redirect examination followed.[41]

Subsequently, accused-appellee formally offered his Judicial Affidavit dated 29 January 2024[42] together with the aforesaid MeTC Decision.[43] Over plaintiff-appellant's objection, the court *a quo* admitted these pieces of evidence and thereafter considered the case submitted for decision.[44]

On 16 April 2024, the court *a quo* rendered the assailed Decision acquitting accused-appellee of the offense charged.[45] The dispositive portion of the assailed Decision reads:

> ...
>
> **WHEREFORE**, premises considered, for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt, the Court finds accused DEXTER C. LAO, **ACQUITTED** of the crime charged. The corresponding civil liability for unpaid taxes is likewise **DISMISSED**, for lack of merit.
>
> **SO ORDERED.**
>
> ...

On the other hand, the assailed Resolution provides:

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37 **SEC. 5.** *Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons.*

38 **SEC. 14.** *Authority of Officers to Administer Oaths and Take Testimony.*

39 **SEC. 266.** *Failure to Obey Summons.*

40 TSN dated 30 January 2024, id., pp. 461-463.

41 Id., p. 464.

42 Exhibit "1", supra at note 35.

43 Exhibit "2", supra at note 36.

44 See Order dated 30 January 2024, id., pp. 437-438.

45 See Order dated 16 April 2024, id., pp. 476-477.

...

**WHEREFORE**, foregoing premises considered, the *Motion for Reconsideration* is hereby **DENIED**.

**SO ORDERED.**

...

In the assailed Decision[46], citing the case of *People of the Philippines v. Joel C. Mendez*[47] (**Mendez**), the court *a quo* discussed that three (3) elements must be established to successfully prosecute a violation of Section 255[48] of the NIRC of 1997, as amended, namely: *(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 regulation; (2) the taxpayer failed to do so; and (3) the act is willful.*

The court *a quo* held that, based on the evidence presented, plaintiff-appellant failed to prove that accused-appellee was required to pay the alleged deficiency IT and VAT because the BIR failed to inform or notify him of the assessment. The court *a quo* noted that an examination of the proffered evidence, *i.e.*, the ANs, FLD, PCL and FNBS, did not show that accused-appellee actually received them, as required to satisfy the procedural due process safeguards under Section 228[49] of the NIRC of 1997, as amended.

The court *a quo* also observed that the assigned ROs did not personally serve the ANs and FLD on accused-appellee, as mandated under Section 3.1.6[50] of Revenue Regulations (**RR**) No. 18-2013.[51] Plaintiff-appellant likewise did not allege, much less prove, that personal service was impracticable; hence, its resort to substituted service or service by registered mail could not be justified. Given these circumstances, the court *a quo* held that the deficiency tax assessment against accused-appellee was void due to his non-receipt of the relevant notices. Consequently, the court *a quo* concluded that accused-appellee could not be convicted of the offense charged because plaintiff-appellant failed

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46 Supra at note 5.
47 G.R. Nos. 208310-11 & 208662, 28 March 2023 [Per J. M.V. Lopez, *En Banc*].
48 Supra at note 8.
49 SEC. 228. *Protesting of Assessment*.
50 3.1.6 *Modes of Service*.
51 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

to establish the ***first (1st) element*** under Section 255[52] of the NIRC of 1997, as amended — specifically, that he was required to pay any tax due.

Lastly, the court *a quo* ruled that plaintiff-appellant also failed to adduce competent evidence to preponderantly establish accused-appellee's civil liability for the unpaid taxes.

Aggrieved, on 30 April 2024, plaintiff-appellant filed a "Motion for Reconsideration on the Civil Aspect of the Resolution"[53] (**MR**), asserting that accused-appellee should be held civilly liable for the deficiency IT and VAT. Unconvinced, the court *a quo* denied the MR.[54]

Hence, this appeal.[55]

On 30 August 2024, plaintiff-appellant filed its Appellant's Brief[56] before this Court. On the other hand, accused-appellee failed to file any appellee's brief despite due notice.[57] In a Minute Resolution dated 17 December 2024[58], the Court submitted the case for decision.

## ISSUES

In its Appellant's Brief, plaintiff-appellant raised the following issues[59] for this Court's resolution:

I.

WHETHER THE HONORABLE COURT *A QUO* ERRED IN RULING THAT PLAINTIFF-APPELLANT FAILED TO ADDUCE PROOF THAT THE ASSESSMENT NOTICES (ANs), FORMAL LETTER OF DEMAND (FLD), DETAILS OF DISCREPANCIES, PRELIMINARY COLLECTION LETTER (PCL) AND FINAL NOTICE BEFORE SEIZURE (FNBS) WERE SERVED TO ACCUSED-APPELLEE; AND

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52 Supra at note 8.
53 RTC Records, pp. 496-502.
54 See Resolution dated 28 May 2024, supra at note 6.
55 See Notice of Appeal dated 03 July 2024, supra at note 1.
56 Division Docket, pp. 127-138.
57 *Per* Records Verification dated 29 October 2024, id., p. 150.
58 Id., p. 151.
59 See Assignment of Errors, Appellant's Brief, id., pp. 130-131.

II.
WHETHER THE HONORABLE COURT *A QUO* ERRED IN RULING THAT PLAINTIFF-APPELLANT FAILED TO PROVE ALL THE ELEMENTS OF THE CRIME.

Plaintiff-appellant mainly argues that the assessment for the deficiency IT and VAT became final and executory because accused-appellee failed to file a protest in accordance with Section 228[60] of the NIRC of 1997, as amended. As a result, the assessment became indisputable and the BIR could validly enforce its collection against BMC, with accused-appellee acting as its President.

Plaintiff-appellant further asserts that, contrary to the court *a quo*'s finding, it sufficiently proved that the notices were validly served at BMC's registered address through registered mail and that accused-appellee received them. It avers that all the elements of a violation of Section 255[61] of the NIRC of 1997, as amended, or willful failure to pay tax, were established, and that the assailed Decision and Resolution should therefore be reversed and set aside with respect to the civil aspect.

On the other hand, having failed to file an appellee's brief, accused-appellee offered no response to plaintiff-appellant's arguments.

## RULING OF THE COURT

Before addressing the merits of the instant appeal, We find it propitious to first determine whether this Court validly acquired jurisdiction over it.

THE COURT HAS JURISDICTION OVER THE CASE.

Section 7(b)(2)(a) of Republic Act (**RA**) No. 1125[62] as amended by RA 9282[63], provides for the exclusive appellate jurisdiction of Court of Tax Appeals (**CTA**) in criminal offenses —

60 Supra at note 49.
61 Supra at note 8.
62 AN ACT CREATING THE COURT OF TAX APPEALS.
63 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR

> ...
> Sec. 7. *Jurisdiction.* — The CTA shall exercise:
> ...
>
> b. Jurisdiction over cases involving criminal offenses as herein provided:
> ...
>
> 2. Exclusive appellate jurisdiction in criminal offenses:
>
> a. Over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax cases originally decided by them, in their respected territorial jurisdiction.
> ...

Relative thereto, Section 9, Rule 9 of the RRCTA states the reglementary period to file a notice of appeal in criminal cases decided by the RTC in the exercise of its original jurisdiction, *viz*:

> ...
> SEC. 9. *Appeal; Period to Appeal.* — (a) An appeal to the Court in criminal cases decided by a Regional Trial Court in the exercise of its original jurisdiction shall be taken by **<u>filing a notice of appeal</u> pursuant to Sections 3(a) and 6, Rule 122 of the Rules of Court <u>within fifteen days</u> from receipt of a copy of the decision or final order with the court which rendered the final judgment or order appealed from** and by serving a copy upon the adverse party. The Court in Division shall act on the appeal.[64]
> ...

Applying the foregoing in this case, the assailed Resolution of 28 May 2024 was sent to plaintiff-appellant through electronic mail on 29 May 2024.[65] Counting fifteen (15) days therefrom, plaintiff-appellant had until 13 June 2024 within which to file a notice of appeal. On **05 June 2024**, plaintiff-appellant duly filed its Notice of Appeal.[66] Since the filing was well within the prescribed period, this Court validly acquired jurisdiction to act on the appeal.

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REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

64 Italics in the original text, emphasis and underscoring supplied.

65 See Notice of Resolution, RTC Records, p. 513.

66 Supra at note 1.

After a careful evaluation of the records and the plaintiff-appellant's arguments, We find the appeal lacking in merit.

THE ASSESSMENT NOTICES (ANs) AND FORMAL LETTER OF DEMAND (FLD) ARE VOID FOR VIOLATING ACCUSED-APPELLEE'S RIGHT TO DUE PROCESS.

Plaintiff-appellant insists that the ANs and FLD were properly served on BMC at its registered address at 1729 Yakal St., Sta. Cruz, Manila through registered mail, and that accused-appellee received said notices.

We disagree.

On this note, it bears stressing that the period involved in this case is *TY 2007* and that the ANs and FLD were issued on *28 December 2010*. Accordingly, We shall apply the relevant rules and regulations that were prevailing and effective during the said period.

Section 228 of the NIRC of 1997, as amended, explicitly provides that when the BIR finds that proper taxes should be assessed, it must properly notify the taxpayer of its findings[67] —

> ...
>
> 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: ...
>
> ...
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**[68]
>
> ...

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[67] See *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*, G.R. No. 244202, 10 July 2023 [Per J. Dimaampao, Third Division].

[68] Italics in the original text and emphasis supplied.

Relative thereto, Section 3.1.4 of RR No. 12-99[69], provides the authorized modes of service for the subject FLD and ANs, to wit:

> ...
> SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> ...
>
> 3.1.4 *Formal Letter of Demand and Assessment Notice.* — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void* (see illustration in ANNEX B hereof). **The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.**[70]
>
> ...

Section 3 of RR No. 12-99 authorizes the Commissioner of Internal Revenue (**CIR**) to serve the assessment notices on the taxpayer either by personally or by registered mail.[71] Under Section 3(v), Rule 131 of the Rules on Evidence, as amended[72], there is a disputable presumption that "a letter duly directed and mailed was received in the regular course of the mail."[73] However, this presumption is subject to controversion and direct denial, in which case the burden is shifted to the party favored by the presumption to establish that the subject mailed letter was actually received by the addressee.[74]

69 Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

70 Italics in the original text and emphasis supplied.

71 *Commissioner of Internal Revenue v. Arturo E. Villanueva, Jr.*, G.R. No. 249540, 28 February 2024 [Per J. Caguioa, Third Division], citing *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*, G.R. No. 240729 (Resolution), 24 August 2020 [Per J. Inting, Second Division].

72 A.M. No. 19-08-15-SC or the 2019 Amendments to the 1989 Revised Rules on Evidence.

73 *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*, supra at note 71.

74 Id.

In *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*[75] (**Barcelon**), the Supreme Court declared that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the concerned taxpayer.

Correspondingly, in *Commissioner of Internal Revenue v. Arturo E. Villanueva, Jr.*[76] (**Villanueva**), the Supreme Court enumerated the pieces of evidence that the BIR may present to prove that the taxpayer received the assessment notices sent through registered mail, *viz*:

> ...
> To discharge this burden, it is essential for the BIR to present independent evidence, such as the registry receipt issued by the Bureau of Posts, or the **registry return card which would have been signed by the taxpayer or the latter's authorized representative, showing that the assessment notice was released**, mailed, or sent **to the taxpayer**. If such document cannot be located, **the BIR may submit a certification issued by the Bureau of Posts and other pertinent document which is executed with the latter's intervention**. Thus, in *Barcelon*, the Court found the BIR record book showing the name of the taxpayer, the kind of tax assessed, the registry receipt number, and the date of mailing of the assessment as incompetent evidence to prove actual receipt by the taxpayer.
>
> In the more recent case of *Commissioner of Internal Revenue v. T Shuttle Services, Inc.* (*T Shuttle*) where the taxpayer also denied receipt of the PAN and FAN, the Court, reiterating the doctrine in *Barcelon*, clarified that **mere presentation of registry receipts, absent any authentication or identification that the signature appearing therein is the taxpayer's or his or her authorized representative's, is insufficient to prove actual receipt by the taxpayer.**
>
>> As ruled by the CTA *En Banc, the CIR's mere presentation of Registry Receipt Nos. 5187 and 2581 was insufficient to prove respondent's receipt of the PAN and the FAN.* It held that the witnesses for *the CIR failed to identify and authenticate the signatures appearing on the registry receipts; thus, it cannot be ascertained whether the signatures appearing in the documents were those of respondent's authorized representatives. It further noted that Revenue Officer Joseph V. Galicia (Galicia), the CIR's witness, had in fact*

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[75] G. R. No. 157064, 07 August 2006 [Per J. Chico-Nazario, First Division].
[76] Supra at note 71; Citations omitted, italics in the original text and emphasis supplied.

> *admitted during cross-examination that he was uncertain whether the PAN and FAN were actually received by respondent.*
>
> Applying the foregoing, the CTA [*En Banc*] was correct in ruling that the CIR failed to discharge its burden in this case.
>
> While the CIR presented a copy of the registry receipt of the FAN/FLD, it failed to identify or authenticate whether the signature appearing therein belongs to respondent or his authorized representative. In addition, apart from the registry receipt, no other independent and competent evidence was presented by the CIR to prove respondent's actual receipt of the assessment notices. Indeed, as ruled in *T Shuttle*, mere presentation by the CIR of the registry receipts does not automatically prove actual receipt by the taxpayer. It must be clearly shown that the assessment notices were properly served to and received by only the taxpayer or his or her duly authorized representative. This exacting standard guarantees the due process mandate that the taxpayer be informed of the basis of the assessment.
>
> ...

Here, as alleged in the Joint-Complaint Affidavit[77] (**JCA**) of RO Leo Castillo and RO Receno, the subject ANs, FLD and Details of Discrepancies were sent to BMC's registered address on 28 December 2010 through registered mail. To substantiate this claim, they attached a copy of the transmittal slip issued by the BIR's Assessment Division, which bears Registry Receipt No. 921948. This registry receipt implies that AN No. 31-07-IT-0636[78] and AN No. 31-07-VT-0637 were sent to BMC (and, by extension, to accused-appellee) at 1729 Yakal St., Sta. Cruz, Manila *via* registered mail.[79]

Nonetheless, since accused-appellee categorically denied having received the said notices, the burden of proof shifted to plaintiff-appellant to establish that the former, in his capacity as BMC's President, actually received them.

Applying the above judicial pronouncements, it appears that plaintiff-appellant failed to discharge the said burden of proof for the reasons essayed below.

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77 RTC Records, supra at note 19, p. 7.
78 Exhibit "A", RTC Records, p. 173.
79 Attached as Annex "D" in the Joint Complaint-Affidavit, id., p. 16.

*First*, plaintiff-appellant did not formally offer in evidence either the transmittal slip bearing Registry Receipt No. 921948 (a copy of which was attached to the JCA) or Registry Receipt No. 921948 itself. Under Section 34[80], Rule 132 of the Revised Rules on Evidence, as amended, "[t]he court shall consider no evidence which has not been formally offered". Thus, the transmittal slip and the registry receipt cannot be considered in resolving the merits of this case.

*Second*, even if We disregard the fact that the transmittal slip and the registry receipt were not formally offered, they still could not be considered because neither document was identified nor authenticated by a competent witness. As ruled in *Villanueva*[81], citing *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*[82], **the mere presentation of the registry receipts, absent any authentication or identification that the signature appearing therein is the taxpayer's or his or her authorized representative's, is insufficient to prove actual receipt by the taxpayer**. Such evidence, therefore, is insufficient to give rise to the presumption that the ANs and the FLD were received in the regular course of mail.[83]

*Third*, aside from the transmittal slip that was not offered and the registry receipt that was not authenticated, the records are bereft of any other proof showing that accused-appellee received the ANs and the FLD. Taking cue from *Barcelon*[84], as cited in *Villanueva*[85], plaintiff-appellant could have presented the registry return card (signed by the taxpayer or his or her authorized representative) or a certification from the Philippine Postal Corporation (formerly the Bureau of Posts) confirming that the notices were delivered to and received by accused-appellee.

Well-settled is the rule that an assessment that fails to strictly comply with the due process requirements outlined in Section 228[86] of the NIRC of 1997, as amended, and its implementing rules, is void and

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80 Section 34. *Offer of evidence*. — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

81 Supra at note 76.

82 Supra at note 71.

83 *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*, supra at note 75.

84 Supra at note 75.

85 Supra at note 71.

86 Supra at p. 11.

produces no effect.[87] This is because while it is true that taxation is the lifeblood of the government, the power of the State to collect tax must be balanced with the taxpayer's right to substantial and procedural due process.[88] This Court has consistently recognized that, between the power of the State to tax and an individual's right to due process, the scale favors the right of the taxpayer to due process.[89] We have repeatedly urged the BIR's strict observance of the prescribed procedure for issuance of the assessment notices to uphold the taxpayers' constitutional rights.[90]

As plaintiff-appellant failed to prove that accused-appellee duly received the subject ANs and FLD, the resulting deficiency tax assessment is void and produces no legal effect against him.

Incidentally, it is worthy to point out that the BIR's issuance of the PCL, FNBS, WDL and WOG violated accused-appellee's right to due process because no valid ANs were sent to him. It has long been settled that an invalid assessment bears no valid fruit.[91] The law imposes a substantive, not merely a formal, requirement.[92] To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence.[93] Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made.[94]

Indeed, because the deficiency tax assessment is void for plaintiff-appellant's failure to prove that accused-appellee received the ANs — thereby violating his right to due process — plaintiff-appellant likewise failed to establish the ***1st element*** of the offense of willful failure to pay tax under Section 255[95] of the NIRC of 1997, as amended.

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87 *Commissioner of Internal Revenue v. Fort 1 Global City Center, Inc.*, G.R. No. 263811, 26 November 2024 [Per J. M.V. Lopez, Second Division], citing *Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue*, G.R. No. 249153, 12 September 2022 [Per J. Dimaampao, Third Division].
88 Id.
89 Id.
90 Id.
91 *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, 26 November 2014 [Per J. Peralta, Third Division].
92 Id.
93 Id.
94 Id.
95 Supra at note 8.

Incidentally, We underscore that, as held in *People of the Philippines v. Rebecca S. Tiotangco*[96] (**Tiotangco**), the invalidity of an assessment arising from a violation of due process does not automatically foreclose the Court's authority to rule on a taxpayer-accused's civil liability for unpaid taxes in a criminal prosecution for tax law violations. The amount of unpaid taxes and the corresponding penalties may still be established through competent evidence independent of a formal assessment. The pertinent ruling in *Tiotangco* states:

> ...
>
> Here, the prosecution did not file a civil action for collection of deficiency taxes apart from the criminal case for violation of Section 255 of the 1997 Tax Code. The criminal action is deemed a collection case. Therefore, **a prior assessment is not required for the CTA to rule on Rebecca's deficiency tax liability. The amount of unpaid taxes and the corresponding penalties can be determined <u>by competent evidence, other than the formal assessment</u>**.
>
> At this juncture, we clarify that the order for payment of taxes in the criminal case despite the absence of a valid assessment is not a violation of the taxpayer-accused's right to due process. The essence of due process is that taxpayers are able to present their case and adduce supporting evidence. Since both the civil and criminal liabilities will be tried jointly, the taxpayer-accused can dispute the alleged deficiency taxes in the same criminal action by presenting competent evidence. Unlike in a civil case for collection, where notices of the assessment are part of the due process requirement, a precise computation and final determination of a deficiency tax is not required in a criminal case for tax violations. **As decreed in *Mendez*, in a criminal action for tax violation, the government must prove not only the guilt of the accused by proof beyond reasonable doubt, but also the civil liability for taxes <u>by competent evidence (other than an assessment)</u>.**
>
> ...

Accordingly, notwithstanding the invalidity of the deficiency tax assessment in this case, this Court must still examine the evidence adduced by plaintiff-appellant, together with any evidence presented by accused-appellee to dispute the alleged deficiency taxes, to determine — by competent evidence — the existence and amount of any civil liability for unpaid taxes.

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96 G.R. No. 264192, 13 November 2023 [Per J. M.V. Lopez, Second Division]; Citations omitted, italics in the original text, emphasis and underscoring supplied.

THERE IS NO BASIS FOR THE IMPOSITION OF CIVIL LIABILITY AGAINST ACCUSED-APPELLEE.

Despite accused-appellee's acquittal, plaintiff-appellant contends that he should nonetheless be held civilly liable for the assessed deficiency IT and VAT in his capacity as BMC's President, asserting that the evidence on record sufficiently proves such liabilities.

We cannot sustain plaintiff-appellant's position.

In determining whether plaintiff-appellant has sufficiently adduced evidence to support the imposition of civil liability, it bears reiterating that the Supreme Court clarified in *Mendez*[97] that, with the advent of RA 9282[98], a formal assessment is no longer a condition precedent to the imposition of civil liability for unpaid taxes in relation to a criminal tax case, *viz*:

> ...
> [T]he institution of the criminal action **shall** carry with it the corresponding civil action for taxes and penalties. We have repeatedly held that the use of "shall" in a statute connotes the mandatory nature of the requirements and denotes an imperative obligation. Its use rendered the provision mandatory. Therefore, **the government cannot file a civil suit for tax collection independently from the related criminal case.** Simply, the filing of a complaint for an offense that involves liability for unpaid taxes, such as willful neglect to file a return and pay the tax, willful failure to supply correct information in the return, and willful failure to withhold, account for or remit withholding taxes, automatically carries with it the filing of a collection case for deficiency taxes.
>
> It may be asked: **since the civil action for collection is deemed instituted in the criminal tax case, is a final decision of the CIR on the disputed assessment still required for the BIR to collect delinquent tax in the same criminal case pursuant to Section 205?**
>
> We answer in the **negative.**

97 Supra at note 47; Citations omitted, emphasis, italics and underscoring in the original text.
98 Supra at note 63.

Section 17 of RA No. 9282 is a general repealing clause as it fails to identify or designate the laws or rules intended to be repealed. As such, the presumption against implied repeals will be applied. It must be noted that repeals by implication are not favored in our jurisdiction. The legislature is presumed to know the existing laws so that if repeal is intended, the proper step is to express it. The failure to add a specific repealing clause indicates that the intent was not to repeal any existing law unless there is a showing that a plain, unavoidable, and irreconcilable inconsistency and repugnancy exists in the terms of the new and old laws.

**There is an implied repeal of Section 205 of the Tax Code (1) requiring a prior finding of delinquency for the government to exercise its remedy to collect in a criminal action and (2) allowing a separate civil suit for collection and criminal action by Section 7 (b)(1) of RA No. 9282.**

To begin with, Section 205 of the Tax Code specifically prescribes the "civil remedies for the <u>collection</u> of internal revenue taxes, fees, or charges, and any increment thereto <u>resulting from delinquency</u> x x x by criminal action." Further, "[t]he judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case as finally decided by the Commissioner." Next, Section 205 gives the CIR <u>discretion</u> to pursue the civil and criminal action simultaneously. On the other hand, the clear import of Section 7 (b)(1) of RA No. 9282 is to treat the <u>criminal action as a collection case</u> for unpaid taxes relative to the criminal case. Verily, both provisions cover the institution of a collection case for delinquent taxes in a criminal case.

There is a substantial inconsistency between the terms of the two laws. Section 205 requires delinquency, meaning the taxpayer must have failed to pay the assessed tax within the period stated in the **notice and demand**. On the other hand, RA No. 9282 mandates "the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action." However, **a formal assessment is not required** in the prosecution of criminal cases for violation of tax laws. Therefore, by requiring the simultaneous institution of the criminal case for violation of the tax laws and the civil case for collection of taxes and penalties relative to the criminal case in the same proceeding with the CTA, **Congress dispensed with the requirement of delinquency as a pre-condition to collection**. In other words, while Section 205 of the Tax Code mandates a final decision of the CIR on the disputed assessment so that "[t]he judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case *as finally decided by the* [*CIR*]," Section 7(b)(1) of RA No. 9282 impliedly repealed the same by allowing the government to collect from the taxpayer its tax liabilities without the formal assessment.

...

> It is observed that Section 7(b)(1) of RA No. 9282 and Section 11, Rule 9 of Revised Rules of the Court of Tax Appeals (RRCTA) contemplate a scenario **where no civil suit for collection has yet been instituted at the time of filing the criminal action**. In case the civil action was filed before the institution of the criminal action, or the government filed an answer to the taxpayer's petition for review before the CTA, the civil action (or the resolution of the taxpayer's petition) shall be suspended before judgment on the merits, and shall last until final judgment is rendered in the criminal action. However, before judgment on the merits is rendered in the civil action, it may be consolidated with the criminal action. Section 2, Rule 111 of the Rules of Court, which applies suppletory to the RRCTA, reads:
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> ...
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> Therefore, **the government is not precluded from assessing the taxpayer for deficiency taxes in accordance with Section 228 of the Tax Code** — the issuance of Preliminary and Final Assessment Notices, allowing the taxpayer to respond to the notices and contest the assessment, and the issuance of the final notice and demand — ***while the criminal case is pending***. It may then introduce in evidence the taxpayer-accused's liability for unpaid taxes as finally determined by the CIR in the same criminal case. The taxpayer, on the other hand, may avail itself of the remedies outlined in the law to prevent the assessment from becoming final and executory — file its protest to the Final Assessment Notice within 30 days from receipt and thereafter appeal to the CTA within 30 days the decision or inaction of the CIR on the disputed assessment. ...
>
> ...
>
> Accordingly, the CTA erroneously refused to make a determination on the civil liability for unpaid taxes on the part of accused Joel on the ground of lack of a formal assessment duly issued by the CIR. Under RA No. 9282, a formal assessment is no longer a condition precedent to the imposition of civil liability for unpaid taxes relative to the criminal tax case.
>
> ...

In *Mendez*[99], the Supreme Court further outlined the governing guidelines for the prosecution of criminal tax offenses and the corresponding civil liability, as follows:

> ...
>
> ***Guidelines in the prosecution of criminal actions for violation of tax laws.***

[99] Supra at note 47; Italics and emphasis in the original text and supplied.

For the guidance of the bench and bar, the following rules shall govern the prosecution of criminal tax law violations and the corresponding civil liability for unpaid taxes:

(1) **When a criminal action for violation of the tax laws is filed, a prior assessment is not required. Neither a final assessment is a precondition to *collection* of delinquent taxes in the criminal tax case. The criminal action is deemed a collection case.** Therefore, the government must prove two things: *one*, the guilt of the accused by proof beyond reasonable doubt, and *two*, **the accused's civil liability for taxes by competent evidence (other than an assessment).**

(2) If *before* the institution of the criminal action, the government filed (1) a civil suit for collection, or (2) an answer to the taxpayer's petition for review before the CTA, the civil action or the resolution of the taxpayer's petition for review shall be suspended before judgment on the merits until final judgment is rendered in the criminal action. However, before judgment on the merits is rendered in the civil action, it may be consolidated with the criminal action. In such a case, the judgment in the criminal action shall include a finding of the accused's civil liability for unpaid taxes relative to the criminal case.

...

In this case, there is no basis to impose civil liability because the records contain no factual or competent evidence that establishes BMC's alleged tax liabilities. Even if this Court sets aside its separate conclusion that plaintiff-appellant failed to prove actual receipt of the ANs and the FLD — an omission that rendered the deficiency tax assessment void — in light of the ruling in *Mendez* that a finding of civil liability for unpaid taxes need not hinge on the existence of an assessment or a prior declaration of delinquency, plaintiff-appellant still failed to discharge its burden. The documents that plaintiff-appellant submitted before the court *a quo* are insufficient to substantiate any claim for unpaid taxes or to support a factual finding of civil liability.

Based on the Details of Discrepancies[100] attached to the FLD[101], the deficiency IT of ₱375,818.52 arose from the 50% disallowance amounting to ₱667,349.50 of BMC's alleged unsupported expenses

[100] Exhibit "C-1", supra at note 14.
[101] Exhibit "C", supra at note 13.

totalling ₱1,334,699.00, sanctioned under Section 6(b)[102] of the NIRC of 1997, as amended, in relation to Revenue Memorandum Circular (**RMC**) No. 23-2000[103], which provides for the instances when an assessment may be based on the best evidence obtainable (**BEO**), for failure to present supporting evidence during the investigation. Likewise, plaintiff-appellant attributed the alleged deficiency VAT of ₱152,907.43 to the disallowance of input tax arising from the same supposed failure to present substantiating documents.

However, in view of accused-appellee's unrebutted testimony[104] that he did not receive "any notice and demand letter" from the BIR and that "no affidavit of service was accomplished by the responsible revenue district officers who caused the service of the summons and/or [*Subpoena Duces Tecum* (**SDT**)]," this Court cannot treat the FLD[105] and the Details of Discrepancies[106] as competent evidence capable of supporting a factual finding of civil liability. BMC, through accused-appellee, could not reasonably be expected to produce the documents required to refute the BIR's findings for TY 2007 in the absence of any showing that accused-appellee received the SDT or any notice directing the submission of such documents. This improper service was precisely the basis for accused-appellee's acquittal in the separate case filed before the MeTC (involving the same parties and taxable period).[107]

As such, the BIR's resort to the BEO rule to justify the 50% disallowance that produced the alleged deficiency IT, as well as the disallowance of input tax that resulted in the supposed deficiency VAT, cannot be sustained. Any failure to submit supporting records is directly attributable to the BIR's own omission to validly serve its notices and directives; hence, BMC and, by extension, accused-

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102 SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —

...

(B) *Failure to Submit Required Returns, Statements, Reports and other Documents.* — **When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by laws or rules and regulations** or when there is reason to believe that any such report is false, incomplete or erroneous, **the Commissioner shall assess the proper tax on the best evidence obtainable**. (Emphasis and underscoring supplied)

103 Existing Revenue Procedures on the Assessment of Deficiency Internal Revenue Taxes Based on the "Best Evidence Obtainable."

104 Exhibit "1", supra at note 35.

105 Exhibit "C", supra at note 13.

106 Exhibit "C-1", supra at note 14.

107 Exhibit "2", supra at note 36.

appellee, could not reasonably be expected to comply with investigative requirements it never received.

Plaintiff-appellant, therefore, failed to present any competent evidence establishing that BMC incurred deficiency IT or deficiency VAT. Absent such proof independently demonstrating both the existence and the amount of the alleged deficiencies, this Court has no factual basis to impose civil liability.

Even assuming *arguendo* that plaintiff-appellant submitted competent evidence to support a factual finding of civil liability, this Court still cannot impose such liability on accused-appellee, in his personal capacity, for the alleged tax deficiencies of BMC. It is a well-established principle that a corporation is a juridical entity which is vested with a legal personality <u>separate</u> and <u>distinct</u> from <u>those acting for</u> and <u>in its behalf</u> and, in general, from the people comprising it.[108] The rule is that obligations incurred by the corporation, acting through its directors, officers, and employees, are its sole liabilities.[109]

Consistent with the foregoing principle, corporate officers do not ordinarily incur personal liability for corporate acts. Obligations incurred by a corporation bind the corporation itself, not the individuals who manage or represent it. Jurisprudence, however, recognizes limited and exceptional instances when courts may hold corporate officers personally liable, such as: (1) when the officer assents to patently unlawful acts of the corporation, or is guilty of gross negligence or bad faith in directing corporate affairs, or when there is a conflict of interest resulting in damages to the corporation, its stockholders or other persons[110]; (2) when the officer consents to the issuance of watered down stocks or when, having knowledge of such issuance, does not forthwith file with the corporate secretary a written objection[111]; (3) when the officer

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108 *Heirs of Fe Tan Uy v. International Exchange Bank*, G.R. No. 166282, 13 February 2013 [Per J. Mendoza, Third Division].

109 *Malayang Samahan ng mga Manggawa sa M. Greenfield (MSMG-UWP), et al. v. Hon. Cresencio J. Ramos, et al.*, G.R. No. 113907 (Resolution), 20 April 2001 [Per J. Gonzaga-Reyes, Third Division].

110 SECTION 30. *Liability of Directors, Trustees or Officers.* — Directors or trustees who **<u>willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees</u>** shall be **liable jointly and severally** for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons. (Emphasis and underscoring supplied)

111 Republic Act (RA) No. 11232 or the Revised Corporation Code of the Philippines.

agrees to hold himself or herself personally and solidarily liable with the corporation; (4) when the officer is made by specific provision of law personally answerable for his or her corporate action; and (5) when the factual circumstances justify the piercing of the corporate veil, such as when the corporation is used to defeat public convenience, justify a wrong, protect fraud, or defend crime.[112]

The Supreme Court has consistently held that courts may pierce the corporate veil only upon clear and convincing evidence that the corporate fiction was used to commit fraud or wrongdoing. Absent such showing, the separate and distinct juridical personality of the corporation must be respected.[113]

It is likewise necessary to clarify that Section 253(d)[114] of the NIRC of 1997, as amended, merely prescribes the penalty for criminal tax violations that may be imposed upon the president and other corporate officers responsible for the violation. In cases involving willful failure to pay tax under Section 255[115] of the NIRC of 1997, as amended, the penalty consists of a fine of not less than ₱10,000.00 and imprisonment of not less than one (1) year but not more than ten (10) years. This penalty arises from the offense or violation itself and is distinct from the civil liability for deficiency taxes, for which BMC alone remains liable — unless the

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SECTION 64. *Liability of Directors for Watered Stocks.* — A director or officer of a corporation who: (a) **consents to the issuance of stocks for a consideration less than its par or issued value**; (b) **consents to the issuance of stocks for a consideration other than cash, valued in excess of its fair value**; or (c) **having knowledge of the insufficient consideration, does not file a written objection with the corporate secretary**, shall be **liable to the corporation or its creditors, solidarily with the stockholder concerned** for the difference between the value received at the time of issuance of the stock and the par or issued value of the same. (Emphasis and underscoring supplied)

112 *John F. McLeod v. National Labor Relations Commission (First Division), et al.*, G.R. No. 146667, 23 January 2007 [Per J. Carpio, Second Division], citing *H.L. Carlos Construction, Inc. v. Marina Properties Corporation, et. al.*, G.R. No. 147614, 29 January 2004 [Per J. Panganiban, First Division], *Powton Conglomerate, Inc. and Philip C. Chien v. Johnny Agcolicol*, G.R. No. 150978, 03 April 2003 [Per J. Ynares-Santiago, First Division] and *Malayang Samahan ng mga Manggawa sa M. Greenfield (MSMG-UWP), et al. v. Hon. Cresencio J. Ramos, et al.*, supra at note 109.

113 See *Philippine National Bank & National Sugar Development Corporation v. Andrada Electric & Engineering Company*, G.R. No. 142936, 17 April 2002 [Per J. Panganiban, Third Division], *Solidbank Corporation v. Mindanao Ferroalloy Corporation, et al.*, G.R. No. 153535, 28 July 2005 [Per J. Panganiban, Third Division] and *Maricalum Mining Corporation v. Ely G. Florentino, et al.*, G.R. Nos. 221813 & 222723, 23 July 2018 [Per J. Gesmundo, Third Division].

114 **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 employees **responsible for the violation**. (Emphasis and underscoring supplied)

115 Supra at note 8.

evidence clearly establishes grounds to hold the responsible officer jointly and severally liable with BMC.

In this case, plaintiff-appellant failed to present any competent evidence establishing that accused-appellee committed any act that would place him under any of the foregoing exceptions as to render him liable personally. The records do not yield proof that he acted in bad faith, engaged in fraud, willfully breached corporate duties, expressly assumed personal liability, or participated in any conduct that would warrant piercing BMC's corporate veil.

In view of these circumstances, this Court finds no reversible error in the court *a quo*'s assailed Decision and Resolution, which correctly held that no civil liability for the alleged unpaid taxes may be imposed against accused-appellee.

**WHEREFORE**, the foregoing considered, plaintiff-appellant's appeal, filed on 05 June 2024, is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision dated 16 April 2024 and the assailed Resolution dated 28 May 2024 issued by the Regional Trial Court of Manila City, Branch 47 in Criminal Case No. 16-324822 entitled *People of the Philippines v. Dexter C. Lao*, are **AFFIRMED**.

**SO ORDERED.**

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**I CONCUR:**

**LANEE S. CUI-DAVID**
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.

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice
First Division Acting Chairperson

## CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the First Division Acting 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's Division.

**MA. BELEN M. RINGPIS-LIBAN**
Acting Presiding Justice