REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-*versus*-

ROSALINDA VALISNO CANDO, Owner of GASAT EXPRESS, Quirino Hi-way, Sto. Cristo, San Jose Del Monte, Bulacan,
Accused.

CTA Crim. Case No. O-634
For: Violation of Section 255, National Internal Revenue Code of 1997, as amended.

Members:

DEL ROSARIO, *P.J.*, *Chairperson*
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

Promulgated:

SEP 1 1 2019 8:4? A.M.

x- x

DECISION

MANAHAN, *J.:*

This is a case for alleged violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, for willful failure to pay, withhold and/or remit deficiency income tax (IT), value-added tax (VAT), and expanded withholding tax (EWT), all for taxable year 2007.

Antecedents

Indicted is Rosalinda Valisno Cando, owner of Gasat Express for violation of 255 of the 1997 NIRC, as amended, particularly, on her alleged willful failure to pay, withhold and/or remit of the above-mentioned internal revenue taxes for taxable year 2007, allegedly committed as follows:[1]

> "That on or about February 2015, in Caloocan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, being the registered business owner of GASAT EXPRESS, did then and there willfully, unlawfully, and feloniously, **fails to pay, withhold and or to remit to the complainant BUREAU OF**

[1] Docket, CTA Crim. Case No. O-634, Information, pp. 6-7.

> **INTERNAL REVENUE**, Revenue Region No. 5, Caloocan City, herein represented by Atty. Rommel Tolentino, the Deficiency Income Tax for taxable year 2007, Deficiency Value-Added Tax for taxable year 2007 and the Deficiency Expanded Withholding Tax for taxable year 2007, in the total amount of **Php2,248,687.79**, and despite receipt of final assessment notices and formal demand accused did then and there continually and willfully ignored to pay, withhold and or remit said deficiency tax liabilities, in gross violation of said law.
>
> Contrary to law."

Finding probable cause[2] against the accused, This Court issued a Warrant of Arrest on May 24, 2017. However, said warrant of arrest was returned as the serving police officer failed to serve the same because the accused cannot be located at the given address.[3]

Thereafter, the accused voluntarily appeared before this Court and posted the required bail, hence, the warrant of arrest was lifted and declared without further force and effect.[4]

The accused filed a Motion for Re-Investigation on June 19, 2017 that she be allowed to submit a counter-affidavit and evidence.[5] However, said motion was denied for lack of merit.[6] Thus, the accused moved[7] for reconsideration of such denial but was denied[8] anew by the Court for lack of merit.

The accused was arraigned on September 20, 2017 who entered a plea of not guilty.[9] The preliminary conference[10] of the case was held on October 12, 2017 while the Pre-Trial Conference[11] was held on December 6, 2017, hence, the initial presentation of plaintiff's evidence and witnesses was scheduled.[12] A Pre-Trial Order was issued on January 4,

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[2] Docket, Resolution dated May 22, 2017, p. 48.
[3] *Id.*, Return of Warrant of Arrest, p. 65.
[4] *Id.*, Resolution dated June 21, 2017, p. 68.
[5] *Id.* at 62-64.
[6] *Id.*, Resolution dated August 2, 2017, pp. 82-85.
[7] *Id.*, Motion for Reconsideration, pp. 90-94.
[8] *Id.*, Resolution dated September 20, 2017, pp. 110-112.
[9] *Id.*, Certificate of Arraignment dated September 20, 2017, p. 114.
[10] *Id.*, Minutes of Preliminary Conference, pp. 118-121.
[11] *Id.*, Minutes of Pre-Trial Conference, p.132.
[12] *Id.*, Order dated December 6, 2017, p.133-134.

2018[13] where the pre-trial conference was terminated and scheduled the presentation of the prosecution's witness.

The prosecution, after presenting all its witnesses, formally offered the following exhibits or evidence, to wit:[14]

Exhibit Markings	**Description of Exhibits or Evidence**
"P-1"[15]	Letter of Authority
"P-3"[16]	Preliminary Assessment Notice No. 2173 (Faithful Reproduction of the Original)
"P-4"[17]	Registry Return Notice No. 1013 (Faithful Reproduction of the Original)
"P-5"[18]	Final Assessment Notice dated April 1, 2011 (Faithful Reproduction of the Original)
"P-6"[19]	Formal Letters Demand dated April 1, 2011 (Faithful Reproduction of the Original)
"P-7"[20]	Registry Receipt No. 745 (Faithful Reproduction of the Original)
"P-9"[21]	Warrant of Distraint and/or Levy
"P-16"[22]	Judicial Affidavit of Angelita M. Saloritos
	Judicial Affidavit of Hernani Paguio

All the exhibits offered were admitted by this Court.[23]

After the prosecution rested its case, the accused moved[24] for the filing of demurrer to evidence[25] but was denied[26] by this court for lack of merit. Hence, accused presented her own evidence. Subsequently, accused orally

[13] Docket, pp. 152-156.
[14] *Id.*, Formal Offer of Exhibits for the Prosecution, pp. 184-187.
[15] *Id.* at 188.
[16] *Id.* at 189-190.
[17] *Id.* at 191.
[18] *Id.* at 192-194.
[19] *Id.* at 195-197.
[20] *Id.* at 198.
[21] *Id.* at 199.
[22] *Id.* at 171-175.
[23] *Id.*, Resolution dated June 5, 2018, pp. 212-213.
[24] *Id.*, Motion for Leave of Court to File Demurrer to Evidence with Attached Demurrer to Evidence, pp. 222-224.
[25] *Id.* at 225-232.
[26] *Id.*, Resolution dated February 15, 2019, pp.244-251.

offered the same to this Court which consisted of the following:[27]

Exhibit Markings	Description of Exhibits or Evidence
"A-1"	Pertaining to the Letter of Authority (LOA) to prove that the accused did not receive same as shown by the blank space for the signature of the recipient, or that assuming the accused did receive the same, such LOA which was issued on May 28, 2009 is void for having been served only on November 23, 2009 or beyond the 30-day period
"A-2"	Pertaining to Registry Return Notice No. 1013 to prove that the accused did not receive the Preliminary Assessment Notice (PAN) as shown by the signature of the recipient which neither belongs to the accused nor to her authorized representative
"A-3"	Pertaining to Registry Receipt No. 745 to prove that the accused did not receive the Final Assessment Notice (FAN) with Formal Letter of Demand (FLD) as shown by the signature of the recipient which neither belongs to the accused nor to her authorized representative

The Court admitted all the above-cited exhibits and the parties were directed to submit their respective Memoranda.[28] The accused filed her Memorandum[29] on April 26, 2019 while the prosecution did not file[30] the required memorandum despite having been granted[31] its motion[32] for an extension of time to file the same. Hence, the Court declared that such filing had rendered the case submitted for decision.[33]

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[27] Docket, Order dated March 27, 2019, pp. 255-257.
[28] *Id.*
[29] *Id.* at 259-284.
[30] *Id.*, Records Verification dated May 31, 2019, p. 290.
[31] *Id.*, Order dated May 10, 2019, pp. 288-289.
[32] *Id.*, Motion for Time to File Memorandum, pp. 285-286.
[33] *Id.*, Resolution dated June 13, 2019, p. 292.

Issues[34]

Whether the accused is guilty of the crime charged.

Ruling of the Court

The accused is being charged of an offense under Section 255 of the 1997 NIRC, as amended, which provides the following:

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

Based on the foregoing provision, the following constitutes the elements of the said offense to be considered committed or consummated, to wit:

1. The offender is required under the 1997 NIRC, as amended, or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information;

2. The offender 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; and

3. Such failure was willful.

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[34] Docket, Pre-Trial Order, p. 152; Transcript of Stenographic Notes of the Hearing dated December 6, 2017, p. 139.

As to the first element, the records of the case reveal that the accused, in her judicial affidavit, admitted that she is the owner of GASAT EXPRESS, to wit:[35]

> Question 1: Gng. Rosalinda Valisno Cando, may alam po ba kayong kumpanyang GASAT EXPRESS?
>
> Answer: Opo, sir.
>
> Question 2: Paano nyo po nalaman itong kumpanyang GASAT EXPRESS?
>
> Answer: Ako po ang registered owner nito.

In the Information, it was stated that the accused is liable for the alleged deficiency value-added tax (VAT) assessment but the prosecution failed to present the VAT Registration of the accused. On the contrary, the Preliminary Assessment Notice (PAN)[36], Final Assessment Notice (FAN)[37], and Formal Letter of Demand (FLD) issued by the Bureau of Internal Revenue (BIR) to the accused assessed the latter of deficiency percentage tax instead of VAT.[38]

On the alleged deficiency expanded withholding tax (EWT) due to non-withholding and non-remittance, the rule is trite that indeed the liability for payment of the tax rests primarily on the payor as a withholding agent. On this point, the Supreme Court in *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*[39] declared:

> It is, therefore, indisputable that the withholding agent is merely a tax collector and not a taxpayer, as elucidated by this Court in the case of *Commissioner of Internal Revenue v. Court of Appeals,* to wit:
>
> > In the operation of the withholding tax system, the withholding agent is the payor, a separate entity acting no more than an agent of the government for the collection of the tax in order to ensure its payments; the payer is the taxpayer - he is the person subject to tax imposed by law; and the payee is the taxing authority. In other words, the withholding agent is merely a tax collector, not a taxpayer. Under the withholding

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[35] Docket, Judicial Affidavit, pp. 214-215.
[36] Docket, Exhibit "P-3", pp. 189-190.
[37] *Id.*, Exhibit "P-5", p. 193.
[38] *Id.*, Exhibit "P-6", pp. 195-197.
[39] G.R. No. 170257, September 07, 2011.

> system, however, the agent-payor becomes a payee by fiction of law. **His (agent) liability is direct and independent from the taxpayer, because the income tax is still imposed on and due from the latter. The agent is not liable for the tax as no wealth flowed into him - he earned no income.** The Tax Code only makes the agent personally liable for the tax arising from the breach of its legal duty to withhold as distinguished from its duty to pay tax since:
>
> > "**the government's cause of action against the withholding agent is not for the collection of income tax, but for the enforcement of the withholding provision of Section 53 of the Tax Code**, compliance with which is imposed on the withholding agent and not upon the taxpayer." (Emphases supplied)

Records, however, disclosed that the prosecution failed to adduce evidence if indeed the accused is actually the withholding agent for the alleged EWT.

Thus, although element no. 1 is satisfied with the personal admission of the accused[40], element no. 2 is undoubtedly replete with inaccuracies and presumptions devoid of empirical evidence.

As to the third element, that the failure to pay the alleged deficiency tax assessments was willful, the prosecution failed to prove the validity of the deficiency tax assessments by failing to rebut with concrete evidence the adamant denial of accused that she received the Letter of Authority (LOA) for the conduct of the tax examination and investigation, as well as the resulting PAN, FAN, and FLD. Accused avers the following in her judicial affidavit which was subsequently admitted by this Court:[41]

> Question 3: Gng. Rosalinda Valisno Cando, mayroon po ba kayong natanggap na Letter of Authority na may petsang May 28, 2009 na galing sa Bureau of Internal Revenue?

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[40] *Supra*, Note 37.
[41] Docket, Judicial Affidavit, pp. 214-218.

> Answer: Wala po, sir.
>
> xxx xxx xxx
>
> Question No. 8: Dito sa Complaint Affidavit na may petsang June 23, 2015 na ginawa ni Atty. Rommel T. Tolentino, sa paragraph 6.4 nito ay nakasaad na noong November 23, 2009 ay ibinigay sa iyo ang kopya ng letter of authority. Ano po ang masasabi ninyo dito?
>
> Answer: Hindi po totoo yan. Una wala nga silang naipakitang ibidensya na tinanggap ko ang letter of authority noong November 23, 2009. Ikalawa, kung sakali man na natanggap ko nga ang letter of authority noong petsa na iyon ay expired na ang letter of authority na iyon dahil lampas na sa tatlumpung araw buhat sa petsa nito.
>
> Question 9: Mayroon po ba kayong natanggap na Preliminary Assessment Notice dated February 19, 2010 na galing sa Bureau of Internal Revenue?
>
> Answer: Wala po, sir.
>
> xxx xxx xxx
>
> Question No. 13: Mayroon po ba kayong natanngap na Final Assessment Notice and Formal Letter of Demand dated April 01, 2011 na galing sa Bureau of Internal Revenue?
>
> Answer: Wala po, sir.

To prove her allegation, the accused presented the copy of the LOA[42] without her signature in the "RECEIVED BY" portion of said document. She also adduced as her evidence, copies of the Registry Return Notice Nos. 1013[43] and 745[44] purportedly for the service of PAN, FAN and FLD, respectively, denying that the signatures therein were hers, to wit:

> Question 10: Mayroon po ba kayong ebidensiya na masasabi na hindi kayo nakatanggap nito?
>
> Answer: lyon po mismong kopya ng Registry Return Notice with Billing No. 1013 na sinasabi ng BIR na ibidensya nila sa pag mail ng Preliminary Assessment Notice. Makikita dito na wala din po akong pirma na magpapatunay na wala akong natanggap na Preliminary Assessment Notice.
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> xxx xxx xxx
>
> Question 11: Saan po ninyo nakuha itong registry return notice na ito?

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[42] *Id.*, Exhibit "A-1", p. 219.
[43] Docket, Exhibit "A-2", p. 220.
[44] *Id.*, Exhibit "A-3", p. 221.

Answer: Sa korte din po, nung pina-xerox ko ang records ng kasong ito.

Question 12: May nakalagay na pirma dito sa Exhibit A-2. Kaninong pirma ito?

Answer: Hindi po aking pirma yan at hindi ko rin po kilala kung sino ang nakapirma dyan. Wala po akong binigyan ng authority na tumanggap ng sulat para sa akin.

xxx xxx xxx

Question 14: Mayroon po ba kayong ebidensiya na magsasabi na hindi kayo nakatanggap nito?

Answer: Iyon po mismong kopya ng Registry Return Notice with Billing No. 745 na sinasabi ng BIR na ibidensya nila sa pag mail ng Final Assessment Notice and Formal Letter of Demand. Makikita dito na wala din po akong pirma na magpapatunay na wala akong natanngap na Final Assessment Notice and Formal Letter of Demand.

xxx xxx xxx

Question 15: Saan po ninyo nakuha itong registry return notice na ito?

Answer: Sa korte din po, mung pina-xerox ko ang records ng kasong ito.

Question 16: May nakalagay na pirma dito sa Exhibit A-3. Kaninong pirma ito?

Answer: Hindi po aking pirma yan at hindi ko rin po kilala kung sino ang nakapirma dyan. Wala po akong binigyan ng authority na tumanggap ng sulat para sa akin.

On the other hand, when the prosecution presented its witness, Ms. Angelita M. Saloritos, during cross-examination, she admitted that the LOA, PAN, FAN and FLD were all mailed and that she has no evidence that the accused actually received said documents. She also failed to identify the person who purportedly received and signed in the registry return notices of the PAN, FAN and FLD, to wit:[45]

ATTY. BORNASAL

Q Now, Madam Witness, in this Exhibit "P-4" for the prosecution and Exhibit "P-A-2" for the defense, there

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[45] Transcript of Stenographic Notes, Hearing dated March 14, 2018 (1:30 P.M.), pp. 12-22.

is a signature on top of the signature of the addressee agent, do you know whose signature is that?

MS. SALORITOS

A No.

ATTY. BORNASAL

Q So, you do not know whether that is the signature of the accused?

MS. SALORITOS

A Because this is only mailed.

ATTY. BORNASAL

Q So you really have no proof and you are really not sure whether the accused received the same, the said Preliminary Assessment Notice?

MS. SALORITOS

A Yes.

xxx xxx xxx

ATTY. BORNASAL

Q Now, Madam Witness, in your Judicial Affidavit, you mentioned that this Exhibit "P-7" is your proof that the accused received the Formal Letter of Demand and Final Assessment Notices. Now, do you know whose signature appears on top of the printed name/signature of addressee agent?

MS. SALORITOS

A No.

ATTY. BORNASAL

Q So, you do not know whether that is the signature of the accused?

MS. SALORITOS

A No.

ATTY. BORNASAL

Q And therefore, you are not sure whether the accused received the said Final Assessment Notices and Formal Letters of Demand, correct? You are not sure?

May we ask the witness to speak, your Honor, and not just nod?

JUSTICE LIBAN

You are not sure?

MS. SALORITOS

A This signature, your Honor? Yes, your Honor.

JUSTICE LIBAN

Because you just received that?

xxx xxx xxx

ATTY. BORNASAL

Q Now, in your Judicial Affidavit, you mentioned that after the issuance of the Letter of Authority what you did was you conducted an audit/investigation, is that correct?

MS. SALORITOS

A Yes, sir.

ATTY. BORNASAL

Q You did not give a copy of this Letter of Authority to the accused?

MS. SALORITOS

A This was mailed because we were not authorized.

ATTY. BORNASAL

Q And what is your proof that that is mailed? May we ask the witness to answer?

MS. SALORITOS

A It's in the docket.

JUSTICE LIBAN

In the docket.

ATTY. BORNASAL

Q Right now you have no proof?

MS. SALORITOS

A Because we are not allowed to go to the taxpayer, we are only allowed to conduct examination in the office.

JUSTICE LIBAN

So, you mailed...

MS. SALORITOS

A Yes, all communications are mailed.

JUSTICE LIBAN

All communications were duly mailed but the proof that you mailed it, its not...

MS. SALORITOS

A It's not in here.

ATTY. BORNASAL

Q Are you the one who mailed the copy of the letter of Authority to the accused? Are you the one, ikaw ba? Yes or no.

JUSTICE LIBAN

Are you the one or there is another division who handles that?

MS. SALORITOS

A Yes, there is, we are not authorized.

ATTY. BORNASAL

Q You are not the one who mailed?

JUSTICE LIBAN

So, you are not the one who mailed it?

MS. SALORITOS

A Yes, your Honor.

ATTY. BORNASAL

Q So right now you have no proof that that Letter of Authority was sent to the accused? Yes?

MS. SALORITOS

A Yes.

Thus, there was no proof that the accused received the LOA, PAN, FAN and FLD. In *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue,*[46] it was ruled by the Supreme Court that although there is a presumption of constructive service in registered mailing, the Court is not precluded to determine whether said notices were indeed received by the respondent, *viz.*:

> Under Section 203 of the National Internal Revenue Code (NIRC), respondent had three (3) years from the last day for the filing of the return to send an assessment notice to petitioner. In the case of *Collector of Internal Revenue v. Bautista*, this Court held **that an assessment is made within the prescriptive period if notice to this effect is released, mailed or sent by the CIR to the taxpayer within said period**. Receipt thereof by the taxpayer within the prescriptive period is not necessary. **At this point, it should be clarified that the rule does not dispense with the requirement that the taxpayer should actually receive**, even beyond the prescriptive period, **the assessment notice which was timely released, mailed and sent**.
>
> In the present case, records show that petitioner filed its Annual Income Tax Return for taxable year 1987 on 14 April 1988. The last day for filing by petitioner of its return was on 15 April 1988, thus, giving respondent until 15 April 1991 within which to send an assessment notice. While respondent avers that it sent the assessment notice dated 1 February 1991 on 6 February 1991, within the three (3)-year period prescribed by law, petitioner denies having received an assessment notice from respondent. Petitioner alleges that it came to know of the deficiency tax assessment only on 17 March 1992 when it was served with the Warrant of Distraint and Levy.
>
> In *Protector's Services, Inc. v. Court of Appeals*, this Court ruled that when a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3(v), Rule 131 of the Rules of Court, that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. **While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee**. (*Emphases supplied*)

[46] G.R. No. 157064, August 07, 2006.

Further, in *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*,[47] the Supreme Court ruled that:

> **To prove the fact of mailing, it is essential to present the registry receipt** issued by the Bureau of Posts or the **Registry return card which would have been signed by the taxpayer or its authorized representative. And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention.** <u>The Court does not put much credence to the self-serving documentations made by the BIR personnel, especially if they are unsupported by substantial evidence establishing the fact of mailing.</u> While it is true that an assessment is made when the notice is sent within the prescribed period, the release, mailing, or sending of the same must still be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or control, and without adequate supporting evidence cannot suffice. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices. (*Emphasis and underscoring supplied*)

In the instant case, the prosecution failed to counter the allegation of the accused that she did not receive said documents, hence, such will substantially affect the validity of the alleged deficiency tax assessments.

In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*[48], the Supreme Court ruled that the failure to inform the taxpayer, the accused in this case, of the assessment made is a violation of his or her right to due process, hence, subsequent notices are all null and void, to wit:

> "From the provision quoted above, it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the "due process requirement in the issuance of a deficiency tax assessment," the absence of which renders nugatory any assessment made by the tax authorities. The use of the word "*shall*" in subsection 3.1.2 describes the mandatory nature of the service of a PAN. **The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the**

[47] G.R. No. 202695, February 29, 2016.
[48] G.R. No. 185371, December 08, 2010.

> **requirements laid down by law and its own rules is a denial of Metro Star's right to due process. Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void.**
>
> The case of *CIR v. Menguito* cited by the CIR in support of its argument that only the non-service of the FAN is fatal to the validity of an assessment, cannot apply to this case because the issue therein was the non-compliance with the provisions of R. R. No. 12-85 which sought to interpret Section 229 of the old tax law. RA No. 8424 has already amended the provision of Section 229 on protesting an assessment. The old requirement of merely *notifying* the taxpayer of the CIR's findings was changed in 1998 to *informing* the taxpayer of not only the law, but also of the facts on which an assessment would be made. Otherwise, the assessment itself would be invalid. The regulation then, on the other hand, simply provided that a notice be sent to the respondent in the form prescribed, and that no consequence would ensue for failure to comply with that form.
>
> The Court need not belabor to discuss the matter of Metro Star's failure to file its protest, for it is well-settled that a void assessment bears no fruit.
>
> It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude..." (*Emphasis supplied*)

The failure of the BIR to prove that the accused received the LOA, PAN, FAN and FLD has rendered the alleged deficiency tax assessments null and void.

Thus, the invalidity of said assessments has further cast doubt to the liability of the accused for such deficiency tax assessments as charged in the Information.

In *Guilbemer Franco v. People of the Philippines,*[49] the Supreme Court ruled that the prosecution has the burden to prove that all the elements of the offense are present and that the accused actually committed said offense, to wit:

> "The burden of such proof rests with the prosecution, which must rely on the strength of its case rather than on the weakness of the case for the defense. Proof beyond reasonable doubt, or that quantum of proof sufficient to produce a moral certainty that would convince and satisfy the conscience of those who act in judgment, is indispensable to overcome the constitutional presumption of innocence.
>
> In every criminal conviction, the prosecution is required to prove two things beyond reasonable doubt: *first,* the fact of the commission of the crime charged, or the presence of all the elements of the offense; and *second,* the fact that the accused was the perpetrator of the crime."

In *Capistrano Daayata et al. v. People of the Philippines,*[50] the Supreme Court ruled that the quantum of such evidence must be beyond reasonable doubt or with moral certainty, to wit:

> "Conviction in criminal actions demands proof beyond reasonable doubt. Rule 133, Section 2 of the Revised Rules on Evidence states:
>
> > Section 2. Proof beyond reasonable doubt. — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.
>
> While not impelling such a degree of proof as to establish absolutely impervious certainty, the quantum of proof required in criminal cases nevertheless charges the prosecution with the immense responsibility of establishing moral certainty, a certainty that ultimately appeals to a person's very conscience. While indeed imbued with a sense of altruism, this imperative is borne, not by a mere abstraction, but by constitutional necessity:

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[49] G.R. No. 191185, February 01, 2016.
[50] G.R. No. 205745, March 08, 2017.

> This rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused. Requiring proof beyond reasonable doubt finds basis not only in the due process clause of the Constitution, but similarly, in the right of an accused to be "presumed innocent until the contrary is proved." "Undoubtedly, it is the constitutional presumption of innocence that lays such burden upon the prosecution." Should the prosecution fail to discharge its burden, it follows, as a matter of course, that an accused must be acquitted..."

The nullity of the alleged tax deficiency assessments and other notices issued by the BIR has rendered the alleged acts or omission of the accused from which the civil liability allegedly arises nonexistent.[51]

WHEREFORE, accused is hereby **ACQUITTED** in CTA Crim. Case No. O-634 for failure of the prosecution to establish the crime committed and to prove the guilt of the accused beyond reasonable doubt. Further, considering that the criminal act from which the civil liability of the accused might arise did not exist, the collection of the alleged tax deficiency assessments amounting to Php2,248,687.79 is accordingly **DISMISSED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[51] Section 2, Rule 120 of the Rules of Court.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

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