REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM CASE NO. O-844** For violation of Section 255 of the National Internal Revenue Code of 1997, as amended
-versus-	Members: **RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** and **FERRER-FLORES,** *JJ.*
ANGELITO O. DELA PEÑA, *Accused.*	Promulgated: JUN 20 2024 9:N G.A

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DECISION

MODESTO-SAN PEDRO, J.:

Before the Court is an Information filed on November 10, 2020, charging the accused, ANGELITO O. DELA PEÑA, with Violation of *Section 255 of the National Internal Revenue Code of 1997, as amended* ("*NIRC*"), allegedly committed, as follows –

> "That on or about 16 April 2014 and thereafter, in Valenzuela City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, accused ANGELITO O. DELA PEÑA, with business address at KM 17, McArthur Highway, Malanday, Valenzuela City, who is required by law, rules and regulations to file tax return and pay the tax thereon, did then and there wilfully, unlawfully and feloniously fail and refuse to pay his value-added tax for the taxable year 2008 in the amount of Php37,629,191.62, exclusive of surcharges and interests, without formally protesting against or appealing the same, and despite due assessment, including post and prior notices and formal demand to pay, the latest being in the nature of final notice before seizure 16 April 2014, to the damage and prejudice of the Government of the aforesaid amount of Php37,629,191.62, exclusive of surcharges and interests."
>
> CONTRARY TO LAW."[1]

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[1] *Rollo*, p. 5.

When arraigned on March 1, 2023, accused entered a plea of not guilty to the charge.

In the ensuing Pre-Trial Conference, the following matters were stipulated upon –

1. The jurisdiction of the Court over the person of the accused ad over the subject matter of the case;
2. The identity of the accused as the one charged in the instant criminal complaint;
3. That Revenue Officers Alma Verna D. Buenaventura and Marriane P. Bañaga would be able to identify the Joint Complaint Affidvit they executed and their signatures thereon.[2]

The issues were then defined as follows –

1. Whether or not accused is guilty of the crime as charged in the Information;
2. Whether or not accused is civilly liable to pay deficiency value added tax in the amount of P37,629,191.62 for taxable year 2008, exclusive of surcharges and interest.[3]

The prosecution presented its lone witness, Revenue Officer Anna Marie A. Claveria, on October 5, 2023, while accused took the witness stand on February 20, 2024, on which date the case was set for promulgation of Judgment on June 20, 2024.

The Prosecution submitted its Memorandum on March 15, 2024[4] while accused submitted his on March 19, 2024[5]. On April 4, 2024, the case was submitted for decision.

Following a painstaking review of evidence presented by both parties, the Court finds that the evidence of the prosecution fails to fulfill the test of moral certainty needed to support a conviction.

The provision of law alleged to have been violated by accused is *Section 255 of the National Revenue Code* which provides as follows –

> SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* - Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax make a return, keep any record, or supply correct the accurate information, who willfully

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[2] See March 1, 2023 Order, pp. 1-2, *id.* at 124-125; *see also* Pre-Trial Order, p. 1, *id.* at 166.
[3] *Id.* at 2 and 125; *see also* Pre-Trial Order, pp. 1-2, *id.* at 166-167.
[4] *Id.* at 230-233.
[5] *Id.* at 234-241.

> 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.
>
> Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years.

To sustain a conviction for willful failure to pay taxes punishable under *Section 255 of the NIRC*, above, the prosecution must prove beyond reasonable doubt the existence of the following elements: (1) the taxpayer is required to pay any tax, make a return, keep any record, or supply correct and accurate information or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations; (2) the taxpayer failed to do so; and (3) such failure is willful.[6]

Here, the prosecution failed to prove that accused was required to pay the subject value added taxes.

In the Complaint-Affidavit of prosecution witness Revenue Office Anna Marie A. Claveria, she narrated as follows –

> 5.5. On October 4, 2013, Preliminary Assessment Notice (PAN) No. 4498 was issued and sent via registered mail at respondent's known addresses, to wit: (a) Km. 17 Mc Arthur Highway, Malanday, Valenzuela City (respondent's registered business address); (b) 5E St. John Street, LFS, Viente Reales, Valenzuela City (address indicated at respondent's 2008 ITR) and (c) Prenza 1, Marilao, Bulacan (respondent's address found during investigation). The PAN sent at Marilao, Bulacan was duly received by respondent's representative on November 12, 2013 as evidenced by Registry Notice Billing No. 963;
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> 5.6. Subsequently, a Final Assessment Notice (FAN) with Formal Letter of Demand (FLD) both dated December 12, 2013, issued by the Commissioner of Internal Revenue through the Regional Director of RR5, were served at the above addresses. The FAN sent at Marilao, Bulacan was duly received by the latter's representative in the person of Stretucilla Anthony. . . .[7]

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[6] See *Kingsam Express, Inc. v. People,* G.R. No. 254086 (Notice), September 7, 2022.

[7] Exhibit "P-9", Complaint-Affidavit, p. 4, *Rollo*, p. 179.

In support of her allegations, the prosecution presented in evidence the Preliminary Assessment Notice[8] ("PAN") with the corresponding Registry Return Notice[9] and the Formal Letter of Demand[10] ("FLD") with the corresponding Registry Return Receipt.[11]

Do these suffice to establish that the PAN and FLD were duly served upon accused? The Court finds they do not.

To begin with, in his Judicial Affidavit which served as his direct examination, accused categorically stated that –

> 10. Q – What else, if any, made you say that the charges against you are not true?
>
> A – I was never afforded with due process, Sir.
>
> 11. Q – Why do you say so?
>
> A – Sir, I have no knowledge of the assessment and other documents allegedly sent to me by the Bureau of Internal Revenue (BIR). I became aware of it only when I was criminally charged before the Department of Justice in Manila.
>
> 12. Q – What else can you say, if any?
>
> A – In the face of the documents attached to the Joint Complaint-Affidavit of the personnel fo the BIR, as well as the registry returns of such, my name nor my signature never appeared in any single document from them.
>
> 13. Q – What else, if any?
>
> A – Sir, there seems to be a receipt in the documents that the BIR presented in order to prove their case. However, I never authorized anyone to receive on my behalf. And, I never executed any document that authorizes a person to receive in my behalf.[12]

Thus, it behooved the prosecution to present clear proof that such service of these documents was, indeed, made upon the accused. The Supreme Court emphasized this in *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*[13] where it ruled as follows:

> As can be gleaned from the above provisions, service of the PAN or the FAN to the taxpayer may be made by registered mail. Under Section 3 (v), Rule 131 of the Rules of Court, there is a disputable presumption that

[8] Exhibit "P-5", *id.* at 186-187.
[9] Exhibit "P-5-1", *id.* at 188.
[10] Exhibit "P-6-1", *id.* at 190-192.
[11] Exhibit "P-6-2", *id.* at 193.
[12] Exhibit "A-4", Judicial Affidavit of Angelito O. Dela Peña, p. 3, *id.* at 79.
[13] G.R. No. 240729 (Resolution), August 24, 2020.

> "a letter duly directed and mailed was received in the regular course of the mail." However, the 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.
>
> In view of respondent's categorical denial of due receipt of the PAN and the FAN, the burden was shifted to the CIR to prove that the mailed assessment notices were indeed received by respondent or by its authorized representative.

Unfortunately for plaintiff, it failed prove that the PAN and FLD were indeed received by the accused or his authorized representative.

The Registry Return Notice supposedly evidencing service of the PAN upon the accused, however, fails to show who received the same. The only markings thereon are the numbers "11-12-13" above the blank on Date of Delivery and an undecipherable initial above the blank on Printed Name and Signature. There is no printed name indicated, nor is there any signature above the blank on Signature of Addresse (sic) Agent.

As for the Registry Return Receipt supposedly evidencing service of the FLD upon the accused, above the blank on Signature of Addressee's Agent/Authorized Representative is a similar undecipherable initial over handwritten words which appear to be "sTE Tiencira Anthony".

What is more, the prosecution's lone witness actually admitted that there was no authorization issued by the accused to any representative:

> Q:
> Can you confirm to me that he did not affix his signature in all of that assessment namely: Letter of Authority, Final Notice of Presentation of Records, Subpoena Duces Tecum, Notice of Informal Conference, Preliminary Assessment Notice, Registry Return Receipt, Final Assessment Notice, and Formal Letter of Demand dated December 12, the Registry Return Receipt, the Preliminary Collection Letter dated October 4, 2013, the Final Notice before Seizure, that's all, Ms. Witness?
>
> A:
> Sir, all the notices were received by a representative.
>
> Q:
> Representative of Mr. Peña and not him?
>
> A:
> Yes Sir.

Q:
And you don't have any authorization coming from Mr. Dela Peña that the person who received the document is his representative, is that correct?

A:
There was no authorization to the representative, Sir.[14]

Indeed, upon further questioning by the Court, the said witness also admitted that she merely presumed that the signatories were representatives of the accused. Her testimony on this score is as follows:

JUSTICE LIBAN:
Also, as an examiner, you also have a duty to see to it that the person who received the important documents is the tax payer himself or his duly authorized representative, is that not right?

A:
Yes, your Honors.

Q:
And yet you relied on the mail and also on other representatives which you are not sure if they are really the representative? They were just there. They were there at the house of the accused and because of they were there at the house of the accused, you presumed that they were the representatives of the accused, isn't that so? You are assuming that the one who received all the document the BIR issued they were representatives of the accused because they were there. They were the ones who received the same, is that not right?

A:
Yes, your Honors.

JUSTICE LIBAN:
Okay. No more questions.

JUSTICE SAN PEDRO:
I have question because of your questions, Chair. Just to follow on the questions of the Chair.

Q:
The signature above the taxpayer's name in the LOA, your Annex A in your Joint Complaint Affidavit, do you know whose signature that is? There is no name. That is just a signature. Received by?

A:
Sorry, your Honors, I can no longer remember but I believe in our records may name po ito.

JUSTICE LIBAN:
You did not submit the records as evidence.

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[14] TSN, October 3, 2023, pp. 7-8.

JUSTICE SAN PEDRO:
How about the Request for Presentation of the evidence, who is this Rosela Brillantes? Do you know who Rosela Brillantes is?

A:
I believe, your Honors, she was competent person available during that time.

Q:
What is the relationship of Brillantes to the accused?

A:
I can no longer remember, your Honors.

Q:
How about maria Luisa Tandiona, do you know her?

A:
No, your Honors.

Q:
You don't also know the relationship of the signatory to the accused?

A:
It is indicated there, she was the sister of the accused, your Honors."[15]

What, then, is the effect of the failure to prove service of both the PAN and FLD upon the accused? The recent case of *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*[16] provides the answer:

> Guided by the rulings in *Menguito* and *Metro Star*, the Court holds that insofar as the proper service of the formal letter of demand and assessment notice is part of the due process requirement in the issuance of a deficiency tax assessment under Sec. 3 of RR No. 12-99, the absence of such service renders nugatory any assessment made by the tax authorities.
>
> In line with *Metro Star*, the Court similarly rules that the word "shall" in subsection 3.1.4 of RR No. 12-99 likewise describes the mandatory nature of the service of the formal letter of demand and assessment notice. In view of the ruling therein that the persuasiveness of the right to due process reaches both substantial and procedural rights, and that the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of the taxpayer's right to due process, the Court declares that the CIR's failure to prove that the FLD-DDAN was properly served on SEGI by registered mail renders void the deficiency assessment issued by the CIR.

Undeniably, then, the prosecution's failure to prove that the PAN and the FLD were properly served upon the accused renders void the deficiency assessment issued by the respondent.

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[15] *Id.* at 14-16.
[16] G.R. No. 223767, April 24, 2023.

It follows, then, that the first element of the crime as charged—that the taxpayer is required to pay any tax, make a return, keep any record, or supply correct and accurate information or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations—has not been proven.

Necessarily, we also find that the second and third elements are not present either since there being no requirement to pay the taxes sought to be collected, the accused was justified in not paying the same, and much less is his failure to do so willful.

Acquittal of the accused is thus in order.

Coming now to the civil aspect of the case, in *People v. Mendez*[17], the Supreme Court already clarified as follows:

> 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.

Accordingly, even if the assessment here was found to be void due to the prosecution's failure to prove that the PAN and the FLD were properly served upon the accused, that, in itself, is not reason for the Court not to proceed to render judgment on the civil liability. As illuminated in *Mendez, above*, the accused's civil liability for taxes must (and can) be proven by competent evidence (other than an assessment).

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[17] G.R. Nos. 208310-11 & 208662, March 28, 2023.

No such competent evidence was presented by the prosecution in the instant case, however.

To begin with, the offer of testimony of the lone witness presented by the prosecution did not include the purpose of proving the civil liability of the accused. The offer was merely as follows:

> ATTY. CAMPOS:
> Your Honors, I am offering the testimony of the witness to prove that she is the duly authorized revenue officer to conduct Audit Examination against the accused Angelito Ocampo Dela Peña pursuant to the Letter of Authority dated August 17, 2011 for taxable year 2008; to prove that the accused failed to submit his Books of Accounts and accounting records to the BIR despite numerously must by way of request for presentation of records, Final Notice and subpoena duces tecum; to prove also that the accused was issued an Assessment Notices from the BIR by way of Preliminary Assessment Notice and Final Assessment Notice with Formal Letter of Demand for taxable year 2008 but the accused failed to file any valid protest; to prove that the Preliminary Assessment Notice and Final Assessment Notice with Formal Letter of Demand issued against the accused for taxable year 2008 became final, executory and demandable; to identify documents; and, to prove all other matters relevance thereto.[18]

Neither were any of the prosecution's documentary evidence ("P-1" to "P-10") offered to prove his civil liability.

More importantly, none of these pieces of evidence, nor the testimony of the prosecution's witness qualify, individually or taken together, as competent evidence to prove his civil liability.

FOR THESE REASONS, accused ANGELITO O. DELA PEÑA is acquitted of the crime charged on the ground of reasonable doubt. There being no competent evidence to prove any civil liability on his part, he is also exonerated from the same.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[18] *Supra* note 14.

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With Separate Concurring Opinion)
CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

<u>SECOND DIVISION</u>

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM. CASE NO. O-844** Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *<u>JJ.</u>*
ANGELITO O. DELA PEÑA, *Accused.*	Promulgated: JUN 20 2024

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SEPARATE CONCURRING OPINION

FERRER-FLORES, <u>J.</u>:

While I concur with the *ponencia* in acquitting accused Angelito O. Dela Peña for the crime charged in the *Information* filed on November 10, 2020 on the ground of reasonable doubt and exonerating accused from civil liability, I am of the view that the instant case has already prescribed.

Section 281 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides for the five (5) years prescriptive period of all violation under the said Code, *viz*:

> SEC. 281. *Prescription for Violations of any Provision of this Code.* — **All violations of any provision of this Code shall prescribe after five (5) years.**
>
> **Prescription shall begin to run from the day of the commission of the violation of the law**, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.
>
> The prescription shall be interrupted when proceedings are instituted against the guilty persons and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

> The term of prescription shall not run when the offender is absent from the Philippines. (Emphases supplied)

Here, the crime charged is willful refusal to pay value-added tax (VAT) for taxable year 2008, in violation of Section 255 of the NIRC of 1997, as amended.

The Supreme Court, in the case of *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines,*[1] held that for cases involving taxpayer's refusal to pay the deficiency income tax due, the violation is committed only after the service of notice and demand for payment, *to wit*:

> Relative to Criminal Case Nos. 1788 and 1789 which involved petitioners' refusal to pay the deficiency income taxes due, again both parties are in accord that by their nature, **the violations as charged could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayers**. Petitioners maintain that the five-year period of limitation under Section 354 should be reckoned from April 7, 1965, the date of the original assessment while the Government insists that it should be counted from July 3, 1968 when the final notice and demand was served on petitioners' daughter-in-law.
>
> We hold for the Government. Section 51 (b) of the Tax Code provides:
>
>> (b) Assessment and payment of deficiency tax. — After the return is filed, the Commissioner of Internal Revenue shall examine it and assess the correct amount of the tax. The tax or deficiency in tax so discovered shall be paid upon notice and demand from the Commissioner of Internal Revenue.
>
> Inasmuch as the final notice and demand for payment of the deficiency taxes was served on petitioners on July 3, 1968, it was only then that the cause of action on the part of the BIR accrued. This is so because prior to the receipt of the letter assessment, no violation has yet been committed by the taxpayers. **The offense was committed only after receipt was coupled with the willful refusal to pay the taxes due within the allotted period**. The two criminal informations, having been filed on June 23, 1970, are well-within the five-year prescriptive period and are not time-barred. (Emphases supplied)

Here, plaintiff claims that the Formal Letter of Demand (FLD) with the corresponding Assessment Notices were duly received by a certain "sTE Trucina Anthony" on <u>December 19, 2013</u>. The taxpayer has thirty (30) days from receipt,[2] or until January 18, 2014, within which to file a Protest. If the taxpayer fails to file a valid protest against the FLD and assessment notices within thirty (30) days from receipt thereof, the assessment shall become final,

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1 G.R. Nos. L-48134-37, October 18, 1990.

2 Section 3.1.5, Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-13.

executory and demandable. In view of the plaintiff's allegation that accused failed to file protest, the FLD became final, executory and demandable on January 18, 2014. Such is the date accused willfully refused to pay the assessed deficiency VAT, without filing a protest.

Counting five (5) years from the date when the crime is committed, plaintiff had until January 18, 2019 to file the Information before the Court. Thus, when plaintiff filed the Information on November 10, 2020, the right of the government to institute a case against accused had already prescribed.

ALL TOLD, I concur with the *ponencia*.

CORAZON G. FERRER-FLORES
Associate Justice