REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	CTA CRIM. CASE NOS. O-581 & O-582
	Members:
- versus -	BAUTISTA, *Chairperson* FABON-VICTORINO, *and* RINGPIS-LIBAN, *JJ.*
BEE AN T. ANGELICO and REGINA T. ANGELICO, Accused.	Promulgated: FEB 26 2018 4:20 p.m.

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RESOLUTION

Fabon-Victorino, J.:

For the Court's determination is the Motion to Dismiss by way of Demurrer to Evidence filed by accused-movants Bee An T. Angelico and Regina T. Angelico, praying for the dismissal of the cases filed against them on the ground that the prosecution failed to prove their guilt beyond reasonable doubt due to insufficiency of evidence.

The two accused **BEE AN T. ANGELICO** and **REGINA T. ANGELICO** stand charged under the Information dated May 2, 2011[1] docketed as CTA Criminal Case No. O-581, for willful failure to pay deficiency Income Tax (IT) for taxable year (TY) 2008 in the amount of Php2,111,188.98 committed as follows:

CTA Criminal Case No. O-581:

> That on or prior to April 2014, and thereafter, and within the jurisdiction of this Honorable Court, Royal Regency Sales Corporation, a domestic corporation

[1] CTA Crim. Case No. O-581 docket, p. 6; CTA Crim. Case No. O-581 docket, p. 6.

registered with the BIR under Tax Identification Number 202-967-368, and accused BEE AN T. ANGELICO and REGINA T. ANGELICO, as the President and Treasurer, respectively, of said corporation, with registered address at 231 Del Monte Avenue, Manresa I, Quezon City and No. 42 Villa Arca I Subd., Villa Arca Avenue, Baesa, Quezon City, required by law to file income tax returns and to pay the corresponding income tax, did then and there willfully, unlawfully, and feloniously fail to pay deficiency income tax in the amount of Two Million One Hundred Eleven Thousand One Hundred Eighty Eight and 98/100 Pesos (P2,111,188.98), exclusive of surcharges and interest, for taxable year 2008, despite final assessment notice, including prior and post notices and demands to pay the last of which being in the nature of demand before suit issued on 20 April 2014 to the damage and prejudice of the Government of the Republic of the Philippines.

CONTRARY TO LAW."

They are also charged for willful failure to pay deficiency value added tax (VAT) for the same TY in the amount of Php1,457,799 under the Information also dated May 2, 2011, committed as follows:

<u>CTA Criminal Case No. O-582:</u>

That on or prior to April 2014, and thereafter, and within the jurisdiction of this Honorable Court, Royal Regency Sales Corporation, a domestic corporation registered with the BIR under Tax Identification Number 202-967-368, and accused BEE AN T. ANGELICO and REGINA T. ANGELICO, as the President and Treasurer, respectively, of said corporation, with registered address at 231 Del Monte Avenue, Manresa I, Quezon City and No. 42 Villa Arca I Subd., Villa Arca Avenue, Baesa, Quezon City, required by law to file value-added tax returns and to pay the corresponding value-added tax, did then and there willfully, unlawfully, and feloniously fail to pay deficiency value-added tax in the amount of One Million Four Hundred Fifty Seven Thousand Seven Hundred Ninety Nine and 05/100 Pesos (P1,457,799.05), exclusive of surcharges and interest, for taxable year 2008, despite final assessment notice, including prior and post notices and demands to pay the last of which being in the nature of demand before suit issued on 20 April 2014 to the damage and prejudice of the Government of the Republic of the Philippines.

CONTRARY TO LAW.

To support the indictment, Revenue Officer (RO) **Esterlina S. Aloy** testified [2] that she continued the examination of the accounting and other business records of Royal Regency and of accused Bee An T. Angelico and Regina T. Angelico, to verify the accuracy of their payment of all internal revenue taxes for TY 2008. After her review, she caused the issuance of and personally served the Notice of Informal Conference (NIC) to Royal Regency and the two accused. For their failure to submit any documents, she prepared her Report and per her recommendation, a Preliminary Assessment Notice (PAN) with Details of Discrepancies dated August 25, 2011 was issued. This was followed by the issuance of a Final Assessment Notice (FAN) for IT, VAT, Expanded Withholding Tax (EWT) and Improperly Accumulated Earnings Tax (IAET) together with the Final Letter of Demand (FLD) with Details of Discrepancies, all of which she personally served to Royal Regency. But since they failed to timely file a valid protest, the tax case was endorsed to the Collection Division of Revenue Region No. 7, Quezon City for collection.

Although she personally served the notices to Royal Regency, she was unable to get the name of the person who received them whose signature was not legible. Nevertheless, she served the NIC at the office of Royal Regency located at No. 42 Villa Arca 1 Subdivision, Villa Arca Avenue, Quezon City, on May 25, 2011 to a woman, who according to another person found in the said office, could receive the NIC. However, she could not recall if she asked that person's authority to receive the document. The notices she served were received by different persons inside the office of Royal Regency.

The other witness, RO **Mosstheollou R. Santos** corroborated the testimony of RO Aloy on the examination of

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[2] See Judicial Affidavit of Esterlina S. Aloy, Exhibits "P-13" and "P-13.1", CTA Crim. Case No. O-581 docket, pp. 187-189.

Royal Regency's accounting and other record and the issuance of the NIC, PAN, FAN and FLD against Royal Regency. In addition, he declared[3] that he initiated the collection of the delinquent account for TY 2008 of Royal Regency, represented by the two accused. He also caused the issuance and service of the Preliminary Collection Letter (PCL) dated June 18, 2012, the Final Collection Notice dated June 26, 2012, the Warrant of Distraint and/or Levy and Warrants of Garnishment to the same company. However, when he was about to personally serve the Final Collection Notice at the registered business address of Royal Regency at Del Monte Avenue, Bgy. Manresa, Quezon City, no one was found in the said office. Thus, the Warrants of Garnishment were only served to the banks involved and not to Royal Regency. Thereafter, the BIR record of Royal Regency was endorsed to the Legal Division of Revenue Region No. 7, Quezon City which issued a Demand Before Suit dated February 19, 2014, which was served to Royal Regency through registered mail, as evidenced by the Registry Receipt No. 4196.

RO **Ellen TS. Espiritu** testified[4] that she reviewed the audit/examination of the accounting and other business records of Royal Regency to determine the correctness of the assessment and the completeness of Royal Regency's case docket. Thereafter, she recommended the issuance of the PAN with Details of Discrepancies which became the basis of the subsequent issuance of the FAN and FLD with Details of Discrepancies.

She also declared that the PAN with Details of Discrepancies was transmitted to the Administrative Division for service to Royal Regency while the FAN and FLD with Details of Discrepancies were transmitted to the Revenue District Office for service to Royal Regency. The PAN, FAN and FLD were all issued against Royal Regency. Soon, the the tax case of Royal Regency was endorsed to the Collection Division of Revenue Region No. 7, Quezon City to implement collection.

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[3] See Judicial Affidavit of Mosstheollou R. Santos, Exhibits "P-14" and "P-14.1", CTA Crim. Case No. O-582 docket.

[4] See Judicial Affidavit of Ellen TS. Espiritu, Exhibits "P-15" and "P-15.1", CTA Crim. Case No. O-581 docket, pp. 208-210.

In a Resolution dated October 11, 2017, the prosecution rested with the Court's admission of the prosecution's exhibits except two (2) exhibits marked as Exhibits P-11 and P-11.1[5].

The accused BEE AN T. ANGELICO and REGINA T. ANGELICO claim that they were not duly notified of the assessments on deficiency IT and VAT for TY 2008 issued against them by the BIR. Allegedly, there is no showing from the evidence presented - testimonial or documentary - that the NIC, the PAN, and the FAN were served upon Royal Regency Sales Corporation or to them as President and Treasurer of the said company or even to their duly authorized representative. Prosecution witness Revenue Officer Esterlina S. Aloy could not even cite with certainty the persons who received the notices and the manner of their receipt, say the two accused. This is not to mention inconsistencies and contradictions in her declarations on the matter in open court.

They further claim that without such notice and subsequent knowledge of the existence of the alleged tax deficiencies, they could not be deemed to have willfully failed to pay the said tax deficiencies as indicated in the two Informations filed against them. For the mandatory requirements of notices will prove willfulness on their part to commit the crime charged.

The two (2) accused also state that the lack of notice on the subject tax assessments violated their rights to due process and their legal right to avail of the administrative relief provided in Section 228 of the NIRC of 1997, as amended, and Revenue Regulations (R.R.) No. 12-99.

The absence of proof of mandatory service and their corresponding receipt of the NIC, PAN and FAN also indicates that they were not accorded the required due process in the issuance of the alleged assessments on deficiency IT and VAT resulting in their failure to avail of the

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[5] Docket, pp. 295-296.

administrative relief provided in Section 228 of the NIRC, as amended.

For its part, the prosecution counters that it was able to present competent and sufficient evidence, both testimonial and documentary, to prove beyond reasonable doubt that the 2 accused are guilty of the crime of willful failure to pay IT and VAT in violation of Section 255 of the NIRC of 1997, as amended. Specifically, it was able to establish the presence of the elements of the crime charged, namely, that the 2 accused are persons required by law to pay IT and VAT, that for 2008, the 2 accused failed to pay said taxes which had become final and demandable as evidenced by Exhibits "P-1" to "P-15.1", as they failed to file a valid protest or to pay the said taxes within thirty (30) days from receipt of the FAN and FLD, that the failure of the 2 accused to pay the deficiency VAT and Income Tax was willful.

Further, the two accused did not deny or controverted their receipt of the notices as they were yet to present their own evidence. In view thereof, the PAN and the FAN properly addressed and personally received at the taxpayer's registered address must be considered as properly served.

Finally, the arguments of the prosecution indicate that they have no evidence at all to rebut, disprove or overturn the competent and credible evidence presented by the prosecution. Hence, a need for a trial on the merits in order for both parties to present their evidence to substantiate their respective positions.

RULING OF THE COURT

Under Section 23, Rule 119 of the Rules of Court, as amended, the trial court may dismiss the action on the ground of insufficiency of evidence upon a demurrer to evidence filed by the accused with or without leave of court.[6]

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[6] People v. Sandiganbayan, G.R. No. 140633, February 04, 2002

Demurrer to the evidence is "an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.[7]

Plainly, a demurrer to evidence may be granted on one ground alone - that the evidence presented by the prosecution in court is insufficient to establish the guilt of the accused of the offense charged.

As pointed out earlier, both accused are charged for tax evasion under Section 255 of the NIRC of 1997, as amended, for their failure, as responsible officers of Royal Regency Sales Corporation, to pay basic IT and VAT deficiencies for TY 2008 in the amounts of Php2,111,188.98 and Php1,457,799.05, respectively, exclusive of surcharges and interest. Section 255 reads:

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

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[7] People of the Philippines v. Jose C. Go, Aida C. Dela Rosa, and Felecitas D. Necomedes, G.R. No. 191015, August 06, 2014.

Under Section 52 (A) of the same Code, the obligation to file a true and accurate tax return shall be upon the responsible officers of the company such as its president and treasurer. Further, Sections 253 (d) and 256 of the same Code provide that in case of any violation by associations, partnerships or corporations, the penalty is imposed upon its responsible officers or employees, *viz.*:

> SEC. 52. Corporation Returns. (A) Requirements. - Every corporation subject to the tax imposed, except foreign corporations not engaged in trade or business in the Philippines, shall render, in duplicate, a true and accurate quarterly income tax return and final or adjustment return in accordance with the provisions of Chapter XII of this Title. The return shall be filed by the president, vice-president or other principal officer, and shall be sworn to by such officer and by the treasurer or assistant treasurer.
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> SEC. 253. General Provisions. -
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> xxx xxx xxx
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> (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.
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> 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).

Thus, to secure the conviction under the pertinent provision, the following requisites must concur:

1. That a corporate taxpayer is required under the 1997 NIRC, as amended, to pay any tax;

2. That the corporate taxpayer failed to pay the required tax at the time or times required by law or rules and regulations;

3. Such failure was willful; and

4. The accused are the responsible officers of the corporate taxpayer.

The prosecution bears the *onus probandi* of showing beyond moral certainty that each and every essential element of the crime charged exists to sustain a conviction. Otherwise, the scale of justice must necessarily tilt in favor of accused who must be acquitted.[8]

In the instant consolidated cases, the first and fourth elements of the crimes charged are evidently present. Per record, Royal Regency is a domestic corporation engaged in retail of specialized food, beverages and tobacco with registered business addresses at 231 Del Monte Avenue, Manresa I, Quezon City and No. 42 Villa Arca I Subdivision, Villa Arca Avenue, Baesa, Quezon City. It is registered with the BIR, Revenue District Office No. 38-North, Quezon City, with Tax Identification No. 202-967-368.[9] The 2 accused, Bee An T. Angelico and Regina T. Angelico, both admitted that they are the President and Treasurer, respectively of said corporation[10], thus, they are deemed its responsible officers.

It appears however, that the prosecution was unable to prove that element of willful failure on the part of the two accused to pay the alleged deficiency IT and VAT at the time required by law.

Indeed, the prosecution miserably failed to adduce sufficient evidence that the NIC, PAN and FAN issued were

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[8] Rollie Calimutan v. People of the Philippines, *et al.,* G.R. No. 152133, February 9, 2006.
[9] Par. 3 of Joint Complaint-Affidavit, CTA Crim. Case No. O-581 docket, p. 16.
[10] Par. 5 of Factual Issues, Accused' Pre-Trial Brief, CTA Crim. Case No. O-581 docket, p. 145.

actually served and received by the two accused or at the very least by their authorized representative prior to the filing of the instant criminal cases. In fact, its own witness RO Esterlina S. Aloy was unable to substantiate her declaration that she personally served the said assessment notices to accused at their registered address. Aside from her testimony, no other proof was presented to bolster her testimony. Worse, she even contradicted herself at some point of her testimony on the matter. Obviously, without notice, there can be no knowledge of such tax deficiencies. Absence of knowledge about it negate the existence of willful failure to pay the tax deficiencies on their part. And as stated by the two accused, witness Aloy could neither declare with absolute certainty who received the notices nor identify the signature/s of the person/s who received the same. The signature of the two accused or those of their authorized representatives who may have received the notices in their behalf, are evidently not reflected in the said notices.

It has been consistently ruled 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 addressee.[11] Thus, with the accused' denial of receipt of the NIC, PAN and FAN/FLD, burden is shifted upon the prosecution to prove that said notices were duly delivered and actually received by the 2 accused and Royal Regency Sales Corporation. Failure of the prosecution to establish receipt by the 2 accused of the subject assessment notices renders the assessment notice invalid. It is thus, as if there was no assessment notice issued.[12]

To be sure, the evidence presented by the prosecution in regard to the service and receipt of the notices are infirmed, if not simply weak. As ruled by the Supreme Court in a myriad of cases, the BIR must not only prove the receipt of the assessment notice but also its receipt.

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[11] Republic v. Court of Appeals, G.R. No. L-38540, 30 April 1987, 149 SCRA 351, 355.
[12] LG Collins Electronics Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 6186, June 9, 2004.

By reason of the infirm service of notices coupled with utter absence of corresponding receipt, there can be no knowledge of the alleged assessment as to justify conclusion that the two accused have willfully, voluntarily and intentionally failed and refused to pay the tax deficiencies.

Noteworthy to stress that, ordinarily, preponderance of evidence is sufficient to prove notice. But in criminal cases, the quantum of proof required is proof beyond reasonable doubt.[13] In this particular case, the prosecution failed to meet the quantum of evidence required to sustain conviction.

WHEREFORE, the Motion to Dismiss by way of Demurrer to Evidence filed by accused-movants Bee An T. Angelico and Regina T. Angelico on November 20, 2017, is **GRANTED**. Consequently, the cases filed against them are hereby **DISMISSED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[13] Victor Ting, *et al.*, v. Court of Appeals, et al., G.R. No. 140665, November 13, 2000.