REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES Plaintiff,	CTA CRIM. CASE NOS. O-585 & O-586
	Members:
- versus -	DEL ROSARIO, *PJ, Chairperson* FABON-VICTORINO, *and* MANAHAN, *JJ.*
CHRISTOPHER JOHN JUNIO CORONEL, EQUIPDENT TRADING, Accused.	Promulgated: OCT 08 2019, 1:20p.m.

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RESOLUTION

Believing that the prosecution failed to present evidence to prove his guilt beyond reasonable doubt, accused moved to dismiss the instant case *via* a demurrer to evidence filed on August 24, 2018.[1]

Accused is indicted for two (2) counts of violations of Section 255 of the National Internal Revenue Code (NIRC) 1997, as amended, allegedly committed as follow:

CTA Crim. Case No. O-585

> That on or about March 2012 and thereafter, in Quezon City, and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino citizen and engaged in the business of retail of dental equipment with obligation under the law to pay Income Tax did then and there, willfully, unlawfully, and feloniously fail to pay

[1] Docket, pp. 474-498.

> deficiency Income Tax in the amount of P3,557,688.80, exclusive of surcharges and interest, despite final assessment, including prior and post notices and demands to pay, the latest being in the nature of demand before suit issued by the BIR on March 22, 2012, to the damage and prejudice of the Government.
>
> CONTRARY TO LAW.
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> <u>CTA Crim. Case No. O-586</u>
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> That on or about March 2012 and thereafter, in Quezon City, and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino citizen and engaged in the business of retail of dental equipment with obligation under the law to pay Value-Added Tax, did then and there, willfully, unlawfully, and feloniously fail to pay deficiency Value Added Tax in the amount of P2,694,501.61, exclusive of surcharges and interest, despite final assessment, including prior and post notices and demands to pay, the latest being in the nature of demand before suit issued by the BIR on March 22, 2012, to the damage and prejudice of the Government.
>
> CONTRARY TO LAW.

Accused claims that the prosecution failed to prove the three (3) essential elements of the crime of willful failure to pay any tax under Section 255 of the NIRC, namely:

1. A tax is imposed under the NIRC of 1997, as amended;
2. That he is liable to pay that tax; and
3. That he willfully fails to pay the tax imposed under the NIRC of 1997.

Accused submits that the prosecution failed to establish that there was deficiency Income Tax (IT) and Value-Added Tax (VAT) imposable against him resulting from his undeclared purchases.

Allegedly, the two (2) consolidated criminal cases instituted against him stemmed from the Letter Notice (LN) No. 038-RLF-07-00-00037 dated July 1, 2009, showing a 100% discrepancy on sales per Summary List of Purchases (SLP) submitted by his customers as against his declarations per tax returns filed.

However, accused contends that a finding of under-declaration of purchases does not, by itself, result in the imposition of IT and VAT, citing the Court *En Banc's* ruling in *Commissioner of Internal Revenue v. Agrinurture, Inc*[2]. He states that no deficiency assessment can be made on account of undeclared purchases, and that deficiency IT and VAT could be assessed when there was an income realized and such income was not reported by the taxpayer.

Further, the integrity and validity of the subject assessments are suspect because of the basis of the alleged tax deficiency and the manner of computation to arrive at the said deficiency taxes. Accused claims that the Bureau of Internal Revenue (BIR) was not able to secure Certifications from his suppliers (third parties) to ascertain the veracity of the figures appearing in the LN dated July 1, 2009.

Moreover, the prosecution failed to establish that there was a valid, final, executory, and demandable assessment from which a valid collection effort could arise.

According to accused, during the Preliminary Conference, and as borne by the record of the consolidated cases, he consistently denied receipt of the Letter of Authority (LOA), Preliminary Assessment Notice (PAN), Revised Preliminary Assessment Notice (RPAN) and Final Assessment Notice (FAN) allegedly sent to him through registered mail. In view of such denial, it was incumbent

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[2] CTA EB No. 1054, January 13, 2015.

upon the prosecution to prove that the assessment notices were mailed and received by him, or at the very least, by his authorized representative.

Accused avers that during the cross-examination[3] of the prosecution's witness, it was pointed out that only the Postmaster or the Postman can testify on the identity of the person who received the subject FAN given that the Registry Return Receipt (Exh. P-9-c) only bears a signature without the name of the alleged receiver. Despite highlighting this point, the prosecution did not present the Postmaster or the postman who was among the prosecution's proposed witnesses listed in the Pre-Trial Order.

Accused likewise points out the significance of the issuance of the FAN by citing the case of *Commissioner of Internal Revenue v. Enron Subic Power Corporation*,[4] where the Supreme Court ruled, *viz.*:

> The law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice. Thus, such cannot be presumed. Otherwise, the express provisions of Section 228 of the NIRC and RR No. 12-99 would be rendered nugatory. The alleged 'factual bases' in the advice, preliminary letter and 'audit working papers' did not suffice. There was no going around the mandate of the law that the legal and factual bases of the assessment be stated in writing in the formal letter of demand accompanying the assessment notice.

Even assuming that the PAN, RPAN and FAN were properly sent and duly served and received by him, accused submits that the deficiency tax assessments issued against him are still void as the FAN failed to demand payment of the taxes due within a specified period.

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[3] Pages 30-31, TSN dated July 12, 2017.
[4] 596 Phil. 229 (2009) [Per J. Corona, First Division].

The relevant portion of the FAN reads as follows:

> In view thereof, you are hereby required to pay the aforesaid tax liability through the duly authorized bank in which you are enrolled within the time shown in the enclosed assessment notice. If payment has been made, it is requested that this Office be furnished with the copy of Payment Form 0611A and the Official Receipt issued by the accredited bank.

Also, perusal of the Assessment Notice F-038-LNTF-07-VT-034 for VAT and Assessment Notice F-038-LNTF-07-IT-034 for IT shows that due date for payment of the alleged deficiency taxes was unaccomplished or left blank, thus:

> PLEASE PRESENT THIS NOTICE TO THE NEAREST REVENUE DISTRICT OFFICE OR OTHER DULY AUTHORIZED ISSUING OFFICER FOR THE ISSUANCE OF LN PAYMENT FORM (BIR FORM NO. 0611A) AND PAY THE TOTAL AMOUNT PAYABLE ON OR BEFORE ____________ TO ANY ACCREDITED BANK WHERE YOU ENROLLED OR TO __________

To strengthen his point, accused avers that the subject FAN and the Assessment Notices attached thereto, are deemed void and of no legal consequence for lack of a definite and categorical demand for payment of the assessed amount on or within a date certain, citing the case of *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation,* [5] where the Supreme Court unequivocally declared that "*an assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period*".

Irregularities are also apparent in the service of the Preliminary Collection Letter (PCL) and the Final Notice Before Issuance of Warrant of Distraint and Levy (FNBIW), says accused. The prosecution claimed that the PCL was personally served to his messenger, a certain Genobisa

[5] G.R. No. 128315, June 29, 1999.

Randolf. However, the prosecution failed to verify the position of the said person and her authority to receive the said PCL. There is also nothing in the FNBIW indicating the person who received it.

Finally, accused submits that there is nothing in the evidence presented showing that he knowingly and willfully failed to pay any deficiency IT and VAT assessment. According to accused, the element of willful failure to pay tax imposed must be fully established as a positive act or state of mind. Accused argues that assuming there was a valid deficiency tax assessment, he did not "willfully" fail to pay the tax since he was not validly served with the notices, letters, LOA, PAN, RPAN and FAN for his appropriate action. Without valid service of the cited notices, the subject tax assessments are void, hence, will not become final, executory and demandable.

Despite due notice, the prosecution failed to register their comment/opposition to accused's *motion*.[6]

The Court's Ruling

A demurrer to evidence is defined as "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. On the other hand, the court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is a competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.[7]

In criminal cases, a demurrer to evidence partakes of the nature of a motion to dismiss the case for failure of the prosecution to prove the guilt of accused beyond reasonable doubt.[8] Under Section 23, Rule 119 of the Revised Rules of

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[6] Records Verification Report dated September 6, 2018, docket, p. 501.
[7] *Gutib vs. CA*, 13 SCRA 365 (1999)
[8] *Salazar vs. People*, G.R. No. 151931, September 23, 2003.

Criminal Procedure, as amended, the trial court may dismiss the action on the ground of insufficiency of evidence upon a demurrer to evidence filed by accused with or without leave of court.[9]

The rule allows the accused to move for the dismissal of the case against him after the prosecution has presented its evidence on the ground of insufficiency of evidence. It authorizes a judgment on the merits of the case without the accused having to submit evidence on his part as he would ordinarily have to do if it is shown by the prosecution's evidence that the latter is not entitled to the relief sought.[10]

The two (2) *Information* allege that accused violated Section 255 of the NIRC of 1997, as amended, by failing to pay his IT and VAT, respectively, for taxable year 2007.

Section 255 of the NIRC of 1997, as amended, provides:

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

[9] *People vs. Sandiganbayan*, G.R. No. 140633, February 4, 2002.
[10] *Nepomuceno vs. Comelec*, 126 SCRA 472, cited by Herrera, Remedial Law , Volume III, 1997 Edition, p. 276 and Herrera, Remedial Law, Volume II, 2000 Edition, p. 107.

> 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. (*Emphases supplied*)

To sustain a conviction for failure to pay any tax under Section 255 of the NIRC of 1997, as amended, the following elements must concur:

1. The accused was **required under the NIRC of 1997 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; and

2. The accused **failed to pay the required tax**, make a return or keep the required record, or supply the correct and accurate information; and

3. The accused **willfully failed 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.

A scrutiny of the foregoing enumeration reveals that the second and third elements are dependent on the first element. Thus, it is only when the first element is established that the remaining elements must be determined to exist. Specifically, the showing of the failure to pay the pertinent tax and the willfulness of such failure rest on whether the accused is required to pay the said tax in the first place. In other words, there can be no willful failure to pay a tax if there is no requirement to pay the same at all.

The requirement to pay any tax under the NIRC of 1997 arises from either of two (2) specific instances: (1) upon being required by the said law to pay a particular tax, simultaneous with the filing of the pertinent tax return;[11] or, (2) upon being informed of a tax assessment issued by the BIR, requiring the taxpayer to pay the assessed tax within a specific period as set forth in the said tax assessment.

The first instance involves a self-assessment approach in which the taxpayer is responsible for determining his or her tax liability, filing the appropriate tax return, paying the tax due, if any, and complying with other reporting requirements. In *Commissioner of Internal Revenue vs. Fitness by Design, Inc.*,[12] the Supreme Court describes the said approach in the following manner:

> The assessment process starts with the filing of tax return and payment of tax by the taxpayer. The initial assessment evidenced by the tax return is a self-assessment of the taxpayer. **The tax is primarily computed and voluntarily paid by the taxpayer without need of any demand from government. If tax obligations are properly paid, the Bureau of Internal Revenue may dispense with its own assessment**. (*Boldfacing supplied*)

The second instance, on the other hand, involves the issuance by the Commissioner of Internal Revenue (CIR), or his duly authorized representative, of a tax assessment,

[11] Examples of these are the following: Section 51 in relation to Section 56 (A) (1) [for Income Tax — Individuals], Section 77 [for Income Tax — Corporations], Section 91 [for Estate Tax], Section 103 [for Donor's Tax], Section 114 [for VAT], Section 128 [for Other Percentage Taxes], Section 130 [for Excise Taxes], and Section 200 [for Documentary Stamp Tax], all of the NIRC of 1997, as amended.
[12] G.R. No. 215957, November 9, 2016.

when the tax obligation is not properly paid. This finds basis in Section 6(A) of the NIRC of 1997, as amended, which states:

> SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
>
> (A) *Examination of Returns and Determination of Tax Due.* — xxx
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> **The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.** (*Boldfacing supplied*)

Thus, from the moment the CIR or his duly authorized representative serves a notice on the concerned taxpayer and demands the payment of tax, or any deficiency tax, the legal obligation to pay the assessed tax arises. Such notice, however, must be in writing, informing the taxpayer of the law and the facts upon which the assessment is made; otherwise, such assessment shall be void.[13] The reason for requiring that taxpayers be informed in writing of the facts and law on which the assessment is made is the constitutional guarantee that no person shall be deprived of his property without due process of law.[14]

In the instant cases, the first element of the crime charged falls under **the second instance**, *i.e.*, **upon being informed of tax assessments issued by the BIR**. Accused allegedly failed to pay the deficiency IT and VAT under Assessment Notice Nos. F-038-LNTF-07-IT-034 and F-038-LNTF-07-VT-034, respectively, issued against him despite notice and repeated demands, without any protest or appeal. The prosecution characterized such failure to pay the alleged deficiency taxes as deliberate or willful.

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[13] Refer to Section 228 of the NIRC of 1997, which partly provides as follows: "The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

[14] *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation,* G.R. Nos. 215534 & 215557, April 18, 2016.

Note however that accused consistently denied having received any of the aforesaid Assessment Notices allegedly sent to him through registered mail. In view thereof, the burden was shifted upon the prosecution to prove that the Assessment Notices were indeed mailed and actually received by the addressee, the herein accused.

The indispensability of affording taxpayers sufficient written notice of his or her tax liability is clear and definite under Section 228 of the NIRC of 1997, as amended. The provision states that a taxpayer **shall be** informed in writing of the law and the facts on which the assessment is made, otherwise, the assessment shall be void. The pertinent portion of the provision reads:

> 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: *Provided, however*, that a pre-assessment notice shall not be required in the following cases:
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> xxx xxx xxx
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> **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**.
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> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings. xxx (*Boldfacing supplied*)

To put muscle into the provision, the BIR issued Revenue Regulations (RR) No. 12-99 reiterating the requirement that a taxpayer must be informed in writing of the law and the facts on which his tax liability was based, to wit:

> SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
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> 3.1 *Mode of procedures in the issuance of a deficiency tax assessment*:
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> 3.1.1 *Notice for informal conference.* — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

> 3.1.2 *Preliminary Assessment Notice (PAN).* — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, <u>the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment</u>, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
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> xxx xxx xxx
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> 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). <u>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</u>

> behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof. (*Underscoring supplied*)

Sections 3.1.2 and 3.1.4 of RR No. 12-99 provide that service of the PAN/FAN to the taxpayer may be done through registered mail. And it is settled that if the assessment notice is served by registered mail, and the original was not returned to the BIR, the presumption that the taxpayer received the said assessment notice in the regular course of mail arises, pursuant to Section 3 (v), Rule 131 of the Rules of Court, which reads as follows:

> Sec. 3. *Disputable Presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
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> xxx xxx xxx
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> (v) That a letter duly directed and mailed was received in the regular course of the mail.

In the case of *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*,[15] the Supreme Court, citing the case of *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*,[16] explained the concept of the foregoing presumption, *viz.*:

> Jurisprudence is replete with cases holding 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. The *onus probandi* was shifted to respondent to prove by contrary evidence that the Petitioner received the

[15] G. R. No. 185371, December 8, 2010.
[16] G.R. No. 150764, August 7, 2006, 498 SCRA 126, 135-136.

assessment in the due course of mail. The Supreme Court has consistently held that **while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee**. Thus, as held by the *Supreme Court in Gonzalo P. Nava vs. Commissioner of Internal Revenue*:

> "The facts to be proved to raise this presumption are (a) that the letter was properly addressed with postage prepaid, and (b) that it was mailed. Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail. But if one of the said facts fails to appear, the presumption does not lie."

. . . . What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized representative. And if said documents cannot be located, Respondent at the very least, should have submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts. This 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. Thus:

> "While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration, this ruling makes it the more imperative that the release, mailing or sending of the notice be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or control, without adequate supporting evidence cannot suffice; otherwise, the taxpayer would be at the mercy of the revenue offices, without adequate protection or defense." (*Citations omitted, emphasis supplied*).

Thus, while a mailed letter is deemed received by the addressee in the ordinary course of mail, this remains 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.

To prove that the FAN was received by accused, the prosecution presented a Registry Return Receipt marked as *Exhibit* P-9-C which Assistant Revenue District Officer (ARDO) Jocelyn P. Hernandez identified allegedly to prove that the FAN with attached Assessment Notices were sent through registered mail and actually received by accused.

However, only a signature appeared on the said Registry Return Receipt without any indication as to who affixed the same. Since the identity and authority of the person who allegedly received the FAN were not established or proved, it may not be reasonably concluded that accused received the FAN, therefore, duly notified of the subject assessments.

Significantly, the Registry Return Receipt itself requires the addressee or the recipient of the mail matter to affix her/his signature above her/his legibly written name, thus: *"a registered article must not be delivered to anyone but the addressee, or upon the addressee's written order, in which case the authorized agent must write the addressee's name on the proper space and then affix legibly his own signature below it."* The presentation of the Registry Return Receipt with an unauthenticated signature is not equivalent to proof that a letter sent through registered mail was actually received by the addressee. The following ruling in *Ting vs. Court of Appeals*,[17] is enlightening:

> Given petitioners' denial of receipt of the demand letter, it behooved the prosecution to present proof that the demand letter was indeed sent through registered mail and that the same was received by petitioners. This, the prosecution miserably failed to do. Instead, it merely presented the demand letter and registry return receipt as if mere presentation of the same was equivalent to proof that some sort of mail matter was received by petitioners. **Receipts for registered letters and return receipts do not prove themselves; they must be properly authenticated in order to serve as proof of receipt of the letters.**
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> Likewise, for notice by mail, it must appear that the same was served on the addressee or a duly authorized agent of the addressee. In fact, the registry return receipt itself provides that [a] registered article must not be delivered to anyone but the addressee, or upon the addressee's written order, in which case the authorized agent must write the addressee's name on the proper space and then affix legibly his own signature below it.
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> **In the case at bar, no effort was made to show that the demand letter was received by petitioners or their agent. All that we have on record is an**

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[17] G.R. No. 140665, November 13, 2000.

> **illegible signature on the registry receipt as evidence that someone received the letter. As to whether this signature is that of one of the petitioners or of their authorized agent remains a mystery**. From the registry receipt alone, it is possible that petitioners or their authorized agent did receive the demand letter. (*Boldfacing supplied*)

Notably, Section 13, Rule 13 of the Rules of Court provides that it is the registry return receipt issued by the mailing office **and** the affidavit of the person who mailed the letter that proves service made through registered mail. The case of *Republic of the Philippines vs. Resins, Incorporated*[18] cannot be any clearer:

> When service of notice is an issue, the rule is that the person alleging that the notice was served must prove the fact of service. The burden of proving notice rests upon the party asserting its existence. In civil cases, service made through registered mail is proved by the registry receipt issued by the mailing office and an affidavit of the person mailing of facts showing compliance with Section 13, Rule 13 of the 1997 Rules on Civil Procedure.
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> OSG's denial of receipt of the 17 March 1993 Judgment required Resins, Inc. to show proof that the Judgment was sent through registered mail and that it was received by the Republic. While the certification from the RTC Clerk of Court and photocopies of the return slips prove that the Republic was served the judgment, it does not follow that the Republic, via the OSG, actually received the judgment. **Receipts for registered letters and return receipts do not prove themselves, they must be properly**

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[18] G.R. No. 175891, January 12, 2011.

> **authenticated in order to serve as proof of receipt of the letters. Resins, Inc. also did not show a certification from the postmaster that notice was duly issued and delivered to the OSG such that service by registered mail may be deemed completed. It cannot be stressed enough that it is the registry receipt issued by the mailing office and the affidavit of the person mailing, which proves service made through registered mail. Absent one or the other, or worse both, there is no proof of service.**
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> xxx xxx xxx
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> While we concede that there may be a presumption of regularity, in the ordinary course of events, that the RTC Clerk of Court sent the 17 March 1993 Judgment to the OSG, such presumption should fail when the OSG itself denies receipt. **When the service of the judgment is questioned, such as in the present case, there is a need to present both the registry receipt issued by the mailing office and the affidavit of the person mailing**. Since the OSG presented proof of non-receipt, it became incumbent upon Resins, Inc. to prove receipt, which Resins, Inc. failed to do.

Evident from the foregoing that **Registry Return Receipt alone** without the Affidavit of the person mailing it **is insufficient to prove service of mail matter**.

Thus, the prosecution's presentation of the Registry Return Receipts with unauthenticated signature is insufficient to prove that accused indeed received the subject FAN.

In *Commissioner of Internal Revenue vs. BASF Coating + Inks Phils., Inc.*,[19] the Supreme Court pointed out that a FAN never attains finality when the taxpayer never receives it, either actually or constructively. The said case underscored the significance of due process in the collection of taxes, ensuring that taxpayers will be accorded due process by the BIR, before they can be held liable for deficiency tax assessments. Thus, it was held that a taxpayer's right to due process is violated when no valid notice of assessment was sent to it, thus:

> **It might not also be amiss to point out that petitioner's issuance of the First Notice Before Issuance of Warrant of Distraint and Levy violated respondent's right to due process because no valid notice of assessment was sent to it. An invalid assessment bears no valid fruit**. The law imposes a substantive, not merely a formal, requirement. **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**. In the instant case, respondent has not properly been informed of the basis of its tax liabilities. 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. (*Boldfacing supplied*)

As the prosecution was not able to establish by the required quantum of evidence that accused received the FAN, the legal obligation to pay the deficiency taxes did not therefore arise. Without proof of its receipt, the FAN is intrinsically null and void; void assessment bears no fruit, it does not give rise to an obligation to pay the deficiency tax.

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[19] G.R. No. 198677, November 26, 2014.

Even assuming that the FAN was received by accused, the Court still finds the subject FAN **void for failure to indicate the specific period when payment should be made.**

In *Commissioner of Internal Revenue vs. Fitness By Design, Inc.*,[20]the Supreme Court emphasized that a valid assessment must demand payment of the taxes described therein within a specific period, as follows:

> The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. Neither the National Internal Revenue Code nor the revenue regulations provide for a 'specific definition or form of an assessment.' However, the National Internal Revenue Code defines its explicit functions and effects. **An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed**. Its main purpose is to determine the amount that a taxpayer is liable to pay.
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> A pre-assessment notice 'do[es] not bear the gravity of a formal assessment notice.' A pre-assessment notice merely gives a tip regarding the Bureau of Internal Revenue's findings against a taxpayer for an informal conference or a clarificatory meeting.
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> A final assessment is a notice 'to the effect that the amount therein stated is due as tax and a demand for payment thereof.' This demand for payment signals the time 'when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]' Thus, it must be 'sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period.'

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[20] G.R. No. 215957, November 09, 2016.

The disputed Final Assessment Notice is not a valid assessment.

First, it lacks the definite amount of tax liability for which Respondent is accountable. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal Revenue Code, is a 'written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there: definitely set and fixed.' Although the disputed notice provides for the computations of Respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment. Thus:

> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. Please note, however, that the interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004. (Emphasis Supplied)

Second, there are no due dates in the Final Assessment Notice. This negates Petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were

> supposedly reflected in the attached assessment:
>
> > In view thereof, you are requested to pay your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled within the time shown in the enclosed assessment notice. (Emphasis in the original)
>
> However, based on the findings of the Court of Tax Appeals First Division, the enclosed assessment pertained to remained unaccomplished.
>
> Contrary to Petitioner's view, April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. The total amount depended upon when Respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay.
>
> Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation. (Emphasis supplied.)

Clear from the foregoing that the requirement to indicate a fixed and definite period within which a taxpayer must pay the tax deficiencies is vital to the validity of the assessment.

In the instant consolidated cases, the FAN only mentioned that accused is required to pay the assessed tax

within the time shown in the enclosed assessment notice. However, the enclosed Assessment Notices failed to indicate the due date of payment as the space provided for the same was left unaccomplished or blank.

Thus, following the pronouncement of the Supreme Court in the above-cited case, the subject assessment is invalid.

Considering that the first element of the offense charged, *i.e.*, the person is required to pay a tax, is not present, accused deserves to be exonerated for failure of the prosecution to prove his guilt beyond reasonable doubt.

The Court finds it unnecessary and futile to discuss the existence of the second and third elements of the offense charged as the same are dependent on the first element, the existence of which was not established by the prosecution by required quantum of proof.

WHEREFORE, the *Motion to Dismiss Based on Demurrer to Evidence* filed by accused Christopher John Junio Coronel on August 24, 2018, is hereby **GRANTED**. Accordingly, the instant consolidated cases are **DISMISSED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice