REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM. CASE NOS. O-559 & O-560**
	Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
LITTLE BEBE BABY PRODUCTS and ACC CENTER/ MANLING UY LIM, *Accused.*	Promulgated: MAR 14 2024 11:08 a.m.

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RESOLUTION

For resolution are the ***Motion for Leave of Court to File Demurrer and Admit Attached Demurrer to Evidence*** and ***Demurrer to Evidence***,[1] filed by accused Manling Uy Lim on 02 August 2023. The prosecution did not file its Comment per the Court's Records Verification Report dated 03 October 2023.

In the aforementioned submissions, the accused prays for the Court to dismiss the herein cases for insufficiency of evidence.

Antecedents

On 30 May 2016, the prosecution filed before the Court of Tax Appeals ("CTA") two (2) Informations indicting Manling Uy Lim ("Lim"), as the proprietress of Little Bebe Baby Products and ACC Center ("Little Bebe"), for violation of ***Section 255 of the National Internal Revenue Code of 1997 ("NIRC"), as amended***, to wit:

[1] Docket (CTA Case No. O-559).

CTA Crim. Case No. O-559:

"That on or about August 2013 and thereafter, in Quezon City, and within the jurisdiction of this Honorable Court, accused Manling Uy Lim, proprietress if Little Bebe Baby Products and Accessories Center, required by law to file VAT returns and to pay corresponding tax, did then and there wilfully, unlawfully and feloniously fail to pay deficiency value added tax (VAT) for taxable year 2007 in the amount of One Million Ninety One Thousand Fifty Nine Pesos and Fifteen Centavos (Php1,091,059.15), exclusive of surcharges, penalties and interest, despite receipt of final assessment notice, including prior and post notices and final demands to pay the last being in the form of demand before suit on August 2013 to the damage and prejudice of the government

CONTRARY TO LAW."

CTA Crim. Case No. O-559:

"That on or about August 2013 and thereafter, in Quezon City, and within the jurisdiction of this Honorable Court, accused Manling Uy Lim, proprietress if Little Bebe Baby Products and Accessories Center, required by law to file income tax return and to pay corresponding tax, did then and there wilfully, unlawfully and feloniously fail to pay deficiency income tax for taxable year 2007 in the amount of One Million Four Hundred Twenty Seven Thousand Three Hundred Eleven Pesos and Sixteen Centavos (Php1,427,311.16), exclusive of surcharges, penalties and interest, despite receipt of final assessment notice, including prior and post notices and final demands to pay the last being in the form of demand before suit on August 2013 to the damage and prejudice of the government

CONTRARY TO LAW."

Based on the foregoing, the prosecution alleges that, as the proprietress of Little Bebe, Lim willfully failed to pay deficiency income tax and value-added tax ("VAT") for the taxable year ("TY") 2007 despite the receipt of final assessment notice ("FAN"), including prior and post notices and final demands to pay, the last being in the form of demand before suit ("DBS") on August 2013.

The amount of the alleged damage to the government, exclusive of surcharges and interest, for each case are as follows:

Case No.	Tax Type	Amount
O-559	Income Tax	₱1,091,059.15
O-560	VAT	₱1,427,311.16

CTA Crim Case No O-559 was assigned to the CTA Third Division, while CTA Crim Case No. O-560 was raffled to the CTA Second Division.

On 13 June 2016, finding existence of probable cause in CTA Crim Case No. O-560, the CTA Second Division resolved to issue a warrant of arrest against the accused Lim.[2] On the other hand, the CTA Third Division issued a Resolution dated 20 June 2016, ordering the prosecution to rectify or correct the discrepancies noted between the Information filed for CTA Crim Case No. O-559 and the attached evidence thereto, to present the original or certified true copy of the Counter-Affidavit of the accused, and to present additional evidence, if any.[3]

On 15 August 2016, an Alias Warrant of Arrest was issued against the accused Lim in CTA Crim. Case No. O-560, in view of the failure to serve the Warrant of Arrest issued on 14 June 2016.[4] On 18 May 2021, the Alias Warrant was returned to the Court as subject accused Lim could not be located.[5]

Meanwhile, upon motion of the prosecution,[6] the CTA's Second Division ordered the consolidation of CTA Crim. Case No. O-560 with CTA Crim. Case No. O-559 in the Resolution dated 20 September 2016,[7] which the CTA's Third Division adopted in the Resolution dated 12 October 2016.[8]

On 15 September 2016, the prosecution submitted a Manifestation with the attached documents[9] in compliance with the Court's order in the Resolution dated 20 June 2016.

Thereafter, the prosecution submitted the Amended Information for CTA Crim. Case No. O-559 on 12 October 2016,[10] in compliance with the Court's order in the Resolution dated 28 September 2016,[11] specifying the following allegations:[12]

> "That on or about **August 2013**, in Quezon City, and within the jurisdiction of this Honorable Court, accused Manling Uy Lim, proprietress if Little Bebe Baby Products and **ACC** Center, required by law to file VAT returns and to pay corresponding tax, did then and there wilfully, unlawfully and feloniously fail to pay the aggregate deficiency VAT in the amount of One Million Ninety One Thousand Fifty Nine Pesos and Fifteen Centavos (Php1,091,059.15), exclusive of surcharges, penalties and interest, corresponding to the four (4) quarters of taxable year 2007, despite receipt

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2 Resolution dated 13 June 2016, Docket (CTA Crim Case No. O-560), pp.70 to 72.
3 Docket (CTA Crim Case No. O-559), pp. 70 to 72.
4 Docket (CTA Crim Case No. O-559), pp. 77 to 78.
5 1st Indorsement dated 1 March 2021 issued by the National Bureau of Investigation, Docket (CTA Crim. Case No. O-560), p. 86.
6 Motion for Consolidation filed on 15 September 2016. Docket (CTA Crim Case No. O-560), pp. 79 to 80.
7 Docket (CTA Crim Case No. O-560), p. 85.
8 Docket (CTA Crim Case No. O-559), pp. 145 to 146.
9 Docket (CTA Crim Case No. O-559), pp. 78 to 126.
10 Compliance filed on 12 October 2016, Docket (CTA Crim Case No. O-559), pp. 136 to 137.
11 Docket (CTA Crim Case No. O-559), pp. 133 to 135.
12 Docket (CTA Crim Case No. O-559), pp. 138 to 140.

of the Final Assessment Notice (FAN), including prior and post notices and final demands to pay, the last of which being in the form of demand before suit issued in August 2013, to the damage and prejudice of the government

CONTRARY TO LAW."[13]

In the Resolution, dated 24 October 2016,[14] finding existence of probable cause in CTA Crim. Case No. O-559, the Court resolved to issue a Warrant of Arrest against the accused Lim.[15] Subsequently, an Alias Warrant of Arrest was issued, pursuant to the Resolution, dated 16 August 2017,[16] in view of the failure to serve the Warrant of Arrest issued on 25 October 2016.

On 8 June 2021, the Court resolved to issue another Alias Warrant of Arrest in view of the failure to serve the previous Alias Warrant, with instructions that it shall be returned to the Court only upon the arrest of the accused Lim. Meanwhile, the herein cases were archived, subject to revival upon the arrest of the accused Lim.[17]

Thereafter, in the Resolution dated 24 June 2022,[18] in view of the apprehension of the accused Lim by the Fairview Police Station (PS 5) on 23 June 2022,[19] the instant cases were reinstated. Further, in view of the Court's approval of the bail bond amounting to ₱20,000.00 for each case posted by the accused Lim on 24 June 2022,[20] the Alias Warrants of Arrest issued on 17 June 2021 in CTA Crim. Case No. O-559 and on 22 August 2016 in CTA Crim. Case No. O-560 against said accused were lifted and set aside, with the Court ordering the release of the accused.[21]

The arraignment and pre-trial conference was initially set on 20 July 2022,[22] but was reset[23] and held on 26 October 2022,[24] where the accused Lim pleaded **NOT GUILTY** to both criminal charges.[25] Prior thereto, the Accused's Pre-Trial Brief was filed on 21 October 2022,[26] while the Pre-Trial

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[13] Emphases ours: Pertains to the amendments incorporated.
[14] Docket (CTA Crim Case No. O-559), pp. 148 to 152.
[15] Resolution dated 13 June 2016, Docket (CTA Crim Case No. O-560), pp.70 to 72.
[16] Docket (CTA Crim Case No. O-559), pp. 160 to 163.
[17] Resolution dated 8 June 2021, Docket (CTA Crim Case No. O-559), pp. 165 to 168.
[18] Docket (CTA Crim Case No. O-559), pp. 170 to 171.
[19] Report of Arrest Warrant dated 23 June 2022, Docket (CTA Crim Case No. O-559), p. 189.
[20] Official Receipt Nos. 8982178 and 8982177 and CTA Certification dated 24 June 2022, Docket (CTA Crim Case No. O-559), pp. 172 to 174
[21] Release Order dated 24 June 2022, Docket (CTA Crim Case No. O-559), p. 175.
[22] Resolution dated 24 June 2022, Docket (CTA Crim Case No. O-559), pp. 170 to 171.
[23] Motion to Cancel Hearing filed by accused Lim on 22 September 2022, Docket (CTA Crim Case No. O-559), p. 199, and Resolution dated 28 September 2022, Docket (CTA Crim Case No. O-559), p. 204.
[24] Minutes of Arraignment and Pre-Trial Conference held on, and Order dated, 26 October 2022, Docket (CTA Crim Case No. O-559), pp. 264 and 270 to 271, respectively.
[25] Certificates of Arraignment dated 26 October 2022, Docket (CTA Crim. Case No. O-559), p. 268 and Docket (CTA Crim. Case No. O-560).
[26] Docket (CTA Crim Case No. O-559), pp. 214 to 217.

Brief for complainant Bureau of Internal Revenue ("BIR") was filed on 24 October 2022.[27]

The Preliminary Conference was thereafter held on 27 October 2022.[28]

On 25 November 2022, the parties jointly manifested that they failed to come up with a Joint Stipulation of Facts and Issues.[29] As such, the Court, in the Resolution dated 7 December 2022,[30] resolved to issue a pre-trial order on the basis of matters agreed upon in the Pre-Trial Conference. The Pre-Trial Order was then issued on 7 February 2023.[31]

The prosecution presented its testimonial and documentary evidence through its lone witness, Atty. Philip A Mayo.[32]

On 18 May 2023, the prosecution filed its Formal Offer of Evidence,[33] with the accused's Comment on/Opposition to Formal Offer of Evidence filed on 8 June 2023.[34] In the Resolution dated 18 July 2023, the Court admitted all of the prosecution's offered exhibits.[35]

On 2 August 2023, the instant Motion was filed without the prosecution posting its comment despite notice. Hence, this Resolution.

Evidence presented by the prosecution

The prosecution presented its lone witness, Atty. Philip A. Mayo, the Legal Officer who evaluated the 2007 tax internal docket of the accused prior to the filing of the case for violation of ***Section 255 of the NIRC, as amended***.

He testified on how he undertook the examination of the accused's account/records based on the documents which can be found in the BIR Records that he evaluated prior to the filing of the criminal complaint. In particular, he identified the following documents:

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[27] Docket (CTA Crim Case No. O-559), pp. 220 to 224.
[28] Docket (CTA Crim Case No. O-559), pp. 286 to 289.
[29] Docket (CTA Crim Case No. O-559), pp. 294 to 295.
[30] Docket (CTA Crim Case No. O-559), pp. 297 to 298.
[31] Docket (CTA Crim Case No. O-559), pp. 301 to 306.
[32] Judicial Affidavit of Atty. Philip A. Mayo dated 4 April 2023, Docket (CTA Crim Case No. O-559), pp. 322 to 328; Minutes of hearing held on, and Order dated, 12 April 2023, Docket (CTA Crim Case No. O-559).
[33] Docket (CTA Crim Case No. O-559).
[34] Docket (CTA Crim Case No. O-559).
[35] Docket (CTA Crim Case No. O-559).

Exhibit No.	Description
P-1	Tax Verification Notice (TVN) No. 2003-00130579 dated 22 April 2009
P-2	First Notice for Presentation of Records dated 22 April 2009
P-3	Second Request for Presentation of Records dated 5 May 2009
P-4	Final Notice dated 22 May 2009
P-5	Recommendation for Issuance of Subpoena Duces Tecum
P-6	Subpoena Duces Tecum dated 11 August 2009
P-7	Notice of Informal Conference
P-8	Preliminary Assessment Notice (PAN) dated 15 September 2010 with address at 2/F Nova Mall Plaza, Novaliches, Quezon City
P-9	Transmittal showing Proof of Mailing of PAN with Registry Receipt No. 1067 to Manling Uy Lim/Little Bebe Baby Products & ACC Center at 2/F Nova Mall Plaza, Novaliches, Quezon City
P-10	Transmittal showing Proof of Mailing of PAN with Registry Receipt No. 1068 to Manling Uy Lim/Little Bebe Baby Products & ACC Center at No. 11 Alley 25 Pluto St., Bahay Toro, 1, Quezon City
P-11	Final Assessment Notice (FAN) No. 028-B035-07 for Income Tax dated 10 October 2010 with address at 2/F Nova Mall Plaza, Novaliches, Quezon City
P-11-a	Final Assessment Notice (FAN) No. 028-B035-07 for Value-Added Tax dated 10 October 2010 with address at 2/F Nova Mall Plaza, Novaliches, Quezon City
P-11-b	Formal Letter of Demand
P-11-c	Details of Discrepancies
P-12	Final Assessment Notice (FAN) No. 028-B035-07 for Income Tax dated 10 October 2010 with address at at No. 11 Alley 25 Pluto St., Bahay Toro, 1, Quezon City
P-12-a	Final Assessment Notice (FAN) No. 028-B035-07 for Value-Added Tax dated 10 October 2010 with address at No. 11 Alley 25 Pluto St., Bahay Toro, 1, Quezon City
P-12-b	Formal Letter of Demand
P-12-c	Details of Discrepancies
P-13	Transmittal showing Proof of Mailing of FAN with Registry Receipt No. 1637 to Manling Uy Lim/Little Bebe Baby Products & ACC Center at 2/F Nova Mall Plaza, Novaliches, Quezon City dated 15 October 2010
P-14	Transmittal showing Proof of Mailing of FAN with Registry Receipt No. 1638 to Manling Uy Lim/Little Bebe Baby Products & ACC Center at No. 11 Alley 25 Pluto St., Bahay Toro, 1, Quezon City dated 15 October 2010
P-15	Preliminary Collection Letter (PCL) dated 1 March 2011
P-15-a	Registry Return Card showing Proof of Mailing and Receipt of PCL
P-16	Final Notice Before Seizure (FNBS) dated 14 March 2011
P-16-a	Registry Return Card showing Proof of Mailing and Receipt of FNBS
P-17	Warrant of Distraint and/or Levy (WDL) dated 5 May 2011
P-18	Demand Before Suit dated 30 August 2013

Allegations of the Accused

The accused allege that the evidence presented by the prosecution is not sufficient to prove beyond reasonable doubt that the accused is guilty of the offense charged against her on the following grounds:

1. There was no Letter of Authority ("LOA") issued against the accused empowering the revenue officer to examine her books of account and to make assessment, if any deficiency tax is due.
2. The absence of an LOA makes the examination of the accused's books of account and assessment of deficiency taxes on her a nullity, citing *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*.
3. A Tax Verification Notice ("TVN") is different from or not the same as a Letter of Authority, citing *Commissioner of Internal Revenue vs. Jinzai Experts, Inc.*
4. The accused did not receive the said TVN, the PAN and the FAN/FLD.

The Ruling of the Court

Pursuant to ***Section 23, Rule 119 of the Rules of Court***, a demurrer to evidence may be filed in criminal cases, as follows:

> "Section 23. *Demurrer to evidence*. - **After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence** (1) on its own initiative after giving the prosecution the opportunity to be heard or **(2) upon demurrer to evidence filed by the accused with or without leave of court**."
> (Emphasis, Ours.)

The rule allows an accused to move for the dismissal of the case against them, after the prosecution has presented its evidence, on the ground of insufficiency of evidence.

In ***Ricketts vs. Sandiganbayan-Fourth Division***,[36] the Supreme Court defined a demurrer to evidence as "an objection or exception by one of the parties in an action at law, to the effect that the evidence which his adversary produced is insufficient in point of law (whether true or not) to make out his case or sustain the issue." The demurrer challenges the sufficiency of the plaintiff's evidence to sustain a verdict. In passing upon the sufficiency of the evidence raised in a demurrer, the court is merely required to ascertain whether there is competent or sufficient proof to sustain the indictment or to support a verdict of guilt.

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[36] G.R. No. 236897 (Notice), 18 November 2021, citing Go-Yu vs. Yu, G.R. No. 230443, 3 April 2019.

Simply stated, a demurrer to evidence authorizes a judgment on the merits of the case without the accused having to submit evidence on their part, as they would ordinarily have to do, if the prosecution's evidence shows that it is not entitled to the relief sought.[37]

Here, the accused is indicted for violation of ***Section 255 of the NIRC, as amended***, 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 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 (₱10,000) 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 therefore, be punished by a fine of not less than Ten thousand pesos (₱10,000) but not more than Twenty thousand pesos (₱20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years."
> (Emphasis, Ours.)

In order to successfully prosecute a violation based on the foregoing, the following elements must be established by the prosecution to secure the conviction of the accused:

(1) That a **taxpayer is required under the NIRC to pay any tax**, make a return, keep any record, or supply correct and accurate information;

(2) That the **taxpayer failed to pay the required tax**, make a return or keep the required record, or supply the 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

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[37] *Zambales vs. Zambales*, G.R. No. 216878, 3 April 2019, citing *Oropesa vs. Oropesa*, G.R. No. 184528, 25 April 2012.

(3) That the accused taxpayer, as the person responsible for the violation, **<u>willfully</u> 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.[38]

A scrutiny of the foregoing elements reveals that the presence of the *second* and *third* elements depends on the existence of the *first* element, since a violation under ***Section 255 of the NIRC, as amended***, cannot arise if there is no requirement on the taxpayer to pay the tax in the first place.

<u>The prosecution failed to adduce sufficient evidence to convict Little Bebe and Lim – the accused is not required to pay any tax</u>

The two (2) Informations charge the accused for violation of ***Section 255 of the NIRC, as amended***, in particular, for failure to pay the alleged deficiency (1) income tax, and (2) VAT.

Thus, for purposes of establishing the *first* element with respect to the alleged deficiency income tax, ***Section 56 of the NIRC, as amended***, enumerates two (2) instances where an individual or a corporation is required to pay tax, *viz*.:

> "SEC. 56. *Payment and Assessment of Income Tax for Individuals and Corporations*. –
>
> (A) *Payment of Tax*. –
>
> (1) *In General*. - The total amount of tax imposed by this Title shall be paid by the person subject thereto at the time the return is filed. x x x
>
> xxx xxx xxx
>
> (B) *Assessment and Payment of Deficiency Tax*. - After the return is filed, the Commissioner shall examine it and assess the correct amount of the tax. **The tax or deficiency income tax so discovered shall be paid <u>upon notice and demand</u> from the Commissioner**."
> (Emphasis and underscoring, Ours.)

As explained in ***People of the Philippines vs. Cross Country Oil & Petroleum, Corp., et. al.***,[39] where the criminal charge therein were based on the alleged failure of the accused to pay the assessed deficiency income tax,

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[38] *Suarez vs. People*, G.R. No. 253429, 6 October 2021.

[39] CTA Crim. Case No. O-620, 19 May 2021.

Section 56 of the NIRC, as amended, accordingly provides that the legal obligation to pay tax under the NIRC of 1997, as amended, arises from two (2) specific instances: *first*, at the time required by the law to pay a particular tax; or *second*, upon being informed of a tax assessment issued by the BIR, requiring the taxpayer to pay the assessed tax or deficiency tax within a specific period, as set forth in the assessment. Thus:

> "The first instance, involves a self-assessment of tax obligations as outlined by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Fitness by Design, Inc.*,[40] to wit:
>
> > "The assessment process starts with the filing of the tax return and payment of tax by the taxpayer. **The initial assessment evidenced by the tax return is a <u>self-assessment</u> 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." (*Emphasis and underscoring supplied.*)
>
> A self-assessment approach, in essence, starts and ends with the initial assessment by the taxpayer of the tax due, corresponding with the filing of the requisite return and payment of the said tax. Thereafter, assuming the tax obligations were properly computed and paid, the process is rendered complete without the participation or intervention of the BIR.
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> The **second instance**, on the other hand, **involves the issuance by the BIR of a tax assessment**, when the tax obligation was not properly computed or paid. **The deficiency tax assessment, shall then be paid by the taxpayer upon notice and demand. These notice and demand are predicated upon a valid assessment** issued in full compliance with the requirements on procedural due process."
> (Emphasis, Ours.)

On the other hand, with respect to the alleged deficiency VAT, ***Section 114(A) of the NIRC, as amended***, provides for the period to file return and pay VAT, to wit:

> "SEC. 114. *Return and Payment of Value-Added Tax.* –
>
> (A) *In General.* – Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however*, That VAT-registered persons shall pay the value-added tax on a monthly basis."

However, the foregoing provision provides only one (1) instance when a taxpayer is required to pay VAT: on a monthly basis, while filing a quarterly return—similar to the *first* instance for income tax purposes as discussed earlier.

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[40] G.R. No. 215957, 9 November 2016.

Notably, the *second* instance of requiring a taxpayer to pay income tax, as set forth earlier, likewise finds ground in ***Section 6(A) of the NIRC, as amended***, which requires the taxpayer to pay any assessed deficiency tax upon notice and demand of the CIR or his authorized representative, to wit:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* -
>
> (A) *Examination of Return and Determination of Tax Due.* **After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax.** Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> **The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.**
>
> Any return, statement of declaration filed in any office authorized to receive the same shall not be withdrawn: Provided, That within three (3) years from the date of such filing, the same may be modified, changed, or amended: Provided, further, That no notice for audit or investigation of such return, statement or declaration has in the meantime been actually served upon the taxpayer. x x x"
> (Emphasis and underscoring, Ours.)

In fact, the foregoing provision finds application in general to all taxes imposed under the ***NIRC, as amended***. It provides for the *first* instance of payment of taxes in passing, that is "a return has been filed as required under the provisions of this Code"; while the *second* instance provides that "the tax or any deficiency tax so assessed, after examination of the return filed, shall be paid upon notice and demand from the Commissioner or from his duly authorized representative."

In sum, the ***NIRC, as amended***, provides for two (2) general instances wherein a taxpayer is required to pay tax:

1.) when it is required to file a return and pay the tax in accordance with the provisions of the Tax Code; or

2.) when the CIR or his duly authorized representative requires the payment of any deficiency tax assessed after an examination has been conducted on the returns filed by the taxpayer.

Here, the requirement of the accused to pay taxes arose from alleged assessments for deficiency income tax and VAT issued by the BIR, which falls under the *second* instance.

Absence of an LOA voids the examination of the accused's books of account and, consequently, the resulting deficiency tax assessment.

In ***People vs. Italcar Pilipinas, Inc., et. al.***,[41] the High Court pronounced that any prosecution for tax-related offenses must be predicated on a valid assessment. For an assessment to be valid, such must be done in accordance with the procedure provided by law. Otherwise, the assessment is void.

A basic tenet for the validity of an assessment by the BIR is that the examination of any taxpayer and the assessment of the correct amount of tax must be made by the CIR or his duly authorized representative/s through an LOA, as provided for in ***Sections 6(A), 10(c), and 13 of the NIRC, as amended***, to wit:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
>
> (A) Examination of Return and Determination of Tax Due. — After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax**: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
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> xxx xxx xxx
>
> SEC. 10. *Revenue Regional Director.* — Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, **the Revenue Regional Director shall, within the region and district offices under his jurisdiction**, among others:
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> xxx xxx xxx
>
> (c) **Issue Letters of Authority for the examination of taxpayers** within the region[.]
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> xxx xxx xxx

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[41] G.R. No. 222280 (Notice), 18 January 2023.

> SEC. 13. *Authority of a Revenue Officer.* — Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions** in any district may, **pursuant to a Letter of Authority** issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself."
> (Emphasis, Ours.)

Further, the indispensability of an LOA for the validity of an assessment has been emphasized in ***Medicard Philippines, Inc. vs. Commissioner of Internal Revenue***,[42] and the absence of such LOA violates the taxpayer's right to due process thereby rendering the entire assessment void, thus:

> "**An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions**. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Section 6 of the NIRC clearly provides as follows:
>
> > **SEC. 6.** Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. —
> >
> > (A) **Examination of Return and Determination of Tax Due.** — After a return has been filed as required under the provisions of this Code, **<u>the Commissioner or his duly authorized representative</u> may authorize the examination of any taxpayer** and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
> >
> > xxx xxx xxx (Emphasis and underlining ours)
>
> Based on the afore-quoted provision, it is clear that **unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken**. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.

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[42] G.R. No. 222743, 5 April 2017.

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In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[43] the Court said that:

> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity**. (Emphasis and underlining ours).

xxx xxx xxx"

(Emphasis, Ours.)

Here, the examination of the accused's books of account and the resulting assessments issued against it for deficiency income tax and VAT appears to have emanated from TVN No. 2003-00130579 dated 22 April 2009, which authorized Revenue Officer ("RO") Ma. Angeles G. Rosales for said purpose.[44] Notably, no LOA can be found in the records of the case.

In ***Commissioner of Internal Revenue vs. Jinzai Experts, Inc.***,[45] this Court's *En Banc* had the occasion to clarify that the grant of authority to a revenue officer to perform assessment functions under ***Sections 6(A) and 13 of the NIRC, as amended***, is only through an LOA, and no other equivalent notice as to such authority may substitute other than the required LOA, to wit:

> "x x x **the authority delegated** by petitioner, as stated under Section 6 of the 1997 NIRC, as amended, **must be pursuant to the issuance of an LOA and there was no other equivalent notice as to such authority that was provided under that law that may substitute other than the required LOA**.
>
> Thus, **even other forms of authority will not cure the lack of an LOA** as held in the case of *Commissioner of Internal Revenue vs. Composite Materials, Inc.*,[46] to wit:
>
> > "As regards the issue on Revenue Officer Mary Anne P. Cruz's (RO Cruz) authority to examine CMI's records, the provisions of the National Internal Revenue Code of 1997, as amended, are clear that a Revenue Officer may only examine the taxpayer's books pursuant to a Letter of Authority (LOA) issued by the Regional Director. This was reiterated by the Court in Medicard Philippines, Inc. v. Commissioner of Internal Revenue, ruling that in the absence of a LOA, the assessment or examination is a nullity.

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[43] G.R. No. 178697, 17 November 2010.
[44] Exhibit "P-1".
[45] CTA E.B. Case No. 2259 (CTA Case No. 9473), 9 February 2022.
[46] G.R. No. 238352, 12 September 2018.

xxx xxx xxx

> Moreover, the Court agrees with the CTA *en banc* that Referral Memorandum issued by a Revenue District Officer directing RO Cruz to continue with the examination of CMI's records is not equivalent to an LOA nor does it cure RO Cruz's lack of authority. To be sure, Revenue Memorandum Order No. 43-90, which specified the guidelines in the issuance of LOAs states that any reassignment or transfer of cases to another RO or revalidation of an expired LOA shall require the issuance of a new LOA" (*Emphasis supplied*)

The Supreme Court, in the recent case of *Commissioner of Internal Revenue vs. Opulent Landowners, Inc.*,[47] emphasizes that **the LOA is the document that will satisfy the delegation of authority** by petitioner **to his representatives of his power to make assessment** under the 1997 NIRC, as amended, to wit:

> ". . . Under prevailing jurisprudence, a LOA is statutorily required under the National Internal Revenue Code in order to clothe revenue officers with authority to examine taxpayers. It is axiomatic that only the revenue officers actually named under the LOA are authorized to examine the taxpayer. . . ." (*Emphasis supplied*)

Thus, <u>a TVN</u> which was nowhere mentioned in the 1997 NIRC, as amended, <u>is not an LOA</u> that vested an authority to RO to conduct tax examination into the financial records of a taxpayer."
(Emphasis and underscoring, Ours.)

Clearly then, the TVN No. 2003-00130579 cannot be a valid source of authority on the part of the RO who performed the examination and assessment of the accused. Due to the glaring absence of an LOA in this case, the examination conducted on the books of account of the accused was without authority and, thus, violated the accused's right to due process. The resulting deficiency tax assessments issued against the accused are consequently void.

Well-settled is the rule that a void assessment bears no valid fruit.[48] There being no valid assessment herein, the BIR has no authority to require the accused to pay any alleged deficiency income tax or VAT. Verily, since the accused is not required to pay any tax, she cannot be made liable for any alleged failure to pay thereof.

[47] G.R. No. 249883-84, 27 January 2020.
[48] *Commissioner of Internal Revenue vs. Reyes*, G.R. Nos. 159694 & 163581, 27 January 2006.

The accused cannot be made liable to pay any deficiency tax that it did not have notice of.

On a second note, the failure to pay any tax must emanate from an awareness of the taxpayer of its obligation to pay such tax. This is especially critical in cases of deficiency tax assessments where the obligation to pay the tax arises only upon "notice and demand" from the CIR or his duly authorized representative, pursuant to the *second* instance of payment of taxes, as discussed earlier.

Corollary, ***Section 228 of the NIRC, as amended***, provides that when the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings. The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

The procedure by which the taxpayer is notified in writing of the law and the facts on which the assessment is made is set forth in ***Section 3 of Revenue Regulations ("RR") No. 12-99***,[49] to wit:

> "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx
>
> 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, the said Office **shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN)** for the proposed assessment, 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). x x x
>
> xxx xxx xxx
>
> 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*

[49] The prevailing implementing regulation at the time that the accused is examined and assessed, that is in 2009 to 2010.

notice shall be void (see illustration in ANNEX B hereof). **The same shall be sent to the taxpayer <u>only by registered mail or by personal delivery</u>.** If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.

xxx xxx xxx

3.1.7 *Constructive Service.* — **If the notice to the taxpayer herein required is <u>served by registered mail</u>, <u>and no response is received</u> from the taxpayer within the prescribed period from date of the posting thereof in the mail, the same <u>shall be considered actually or constructively received by the taxpayer</u>.** If the same is personally served on the taxpayer or his duly authorized representative who, however, refused to acknowledge receipt thereof, the same shall be constructively served on the taxpayer. Constructive service thereof shall be considered effected by leaving the same in the premises of the taxpayer and this fact of constructive service is attested to, witnessed and signed by at least two (2) revenue officers other than the revenue officer who constructively served the same. The revenue officer who constructively served the same shall make a written report of this matter which shall form part of the docket of this case (see illustration in ANNEX D hereof."
(Emphasis and underscoring, Ours.)

Here, the accused alleges that the PAN and Formal Letter of Demand ("FLD")/FAN did not come to her notice as she did not receive them. On the other hand, the prosecution posits that the PAN and FLD/FAN were constructively served through registered mail, as demonstrated by the following documents:

1. Transmittal showing Proof of Mailing of PAN with Registry Receipt No. 1067 to Manling Uy Lim/Little Bebe Baby Products & ACC Center at 2/F Nova Mall Plaza, Novaliches, Quezon City;[50]

2. Transmittal showing Proof of Mailing of PAN with Registry Receipt No. 1068 to Manling Uy Lim/Little Bebe Baby Products & ACC Center at No. 11 Alley 25 Pluto St., Bahay Toro, 1, Quezon City;[51]

3. Transmittal showing Proof of Mailing of FAN with Registry Receipt No. 1637 to Manling Uy Lim/Little Bebe Baby Products & ACC Center at 2/F Nova Mall Plaza, Novaliches, Quezon City dated 15 October 2010;[52] and

[50] Exhibit "P-9".
[51] Exhibit "P-10".
[52] Exhibit "P-13".

4. Transmittal showing Proof of Mailing of FAN with Registry Receipt No. 1638 to Manling Uy Lim/Little Bebe Baby Products & ACC Center at No. 11 Alley 25 Pluto St., Bahay Toro, 1, Quezon City dated 15 October 2010.[53]

However, the Court finds that the foregoing documents are insufficient to prove that the PAN and FLD/FAN were served by registered mail as they are merely transmittal documents and are not the actual Registry Receipts issued by the Philippine Postal Office. For failure to prove the constructive service of the PAN and FLD/FAN in accordance with ***RR No. 12-99***, the alleged constructive receipt thereof by the accused likewise fails.

The only logical consequence of a failure to serve the PAN and FLD/FAN is that the requirement to pay any assessed deficiency taxes under the *second* instance never came to the "notice" of the accused. Accordingly, without due notice of any obligation to pay in the first place, the accused cannot be made liable for any failure to pay thereof.

There being no valid assessment to speak of in this case, the accused cannot be required to pay any tax as provided under the *first* element. For failure to establish the existence of the *first* element, the accused cannot be convicted of violation of ***Section 255 of the NIRC, as amended***.

In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proven. The prosecution is burdened not only to prove the guilt of the accused based on proof beyond reasonable doubt but to ensure that the accused person's constitutional rights to due process are at all times upheld. As for the Courts, they are expected to zealously guard against the curtailment of the accused person's constitutional rights.

WHEREFORE, premises considered, the **Motion for Leave of Court to File Demurrer and Admit Attached Demurrer to Evidence** and **Demurrer to Evidence**, filed by the accused on 02 August 2023, are hereby **GRANTED**.

Accordingly, CTA Criminal Case Nos. O-559 & O-560 are **DISMISSED** on the ground of insufficiency of evidence.

The cash bond of Manling Uy Lim is **CANCELLED** and ordered **RELEASED** to her upon presentation of proper documents, in accordance with the usual accounting rules and regulations.

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[53] Exhibit "P-14".

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice