REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM. CASE NO. O-655**
-versus-	**Members:** **UY,** *Chairperson, and* **RINGPIS-LIBAN, MODESTO-SAN PEDRO,** *JJ.*
CENEIL SUNSTAR TRADING COMPANY, NEIL S. BAUTISTA AND CECILIA Y. AQUINO, *Accused.*	**Promulgated:** OCT 09 2019 2:11 p.m.

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DECISION

RINGPIS-LIBAN, J.

The Case

Accused Neil S. Bautista (Bautista) and Cecilia S. Aquino (Aquino) are charged in their capacity as partners of Ceneil Sunstar Trading Company (Ceneil), for violation of Section 255 of the National Internal Revenue Code of 1997, as amended, for failure of Ceneil to pay its deficiency taxes for taxable year 2007.

Ceneil has its business address at 299 Gen. Luna St., Malabon, Metro Manila.[1]

The prosecution, on the other hand, is represented by the Bureau of Internal Revenue (BIR), the government agency primarily tasked to collect internal revenue taxes for the support of the government, with office at the BIR National Office Building, Diliman, Quezon City.

[1] Articles of Partnership, Docket, CTA CRIM. CASE NO. O-655, p. 22.

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The Amended Information reads as follows:

"That on or about the 27th day of December 2010, in Caloocan City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, being then partners of **CENEIL SUNSTAR TRADING COMPANY**, a duly registered general partnership, did then and there wilfully, unlawfully and feloniously fail and refuse to pay the following tax deficiencies/liabilities of the said general partnership, to wit:

TYPE OF TAX	Basic Tax Due	Interest/Surcharge Due	Total Amount of Tax Deficiency
Basic Income Tax Deficiency	Php 5,555,709.05	Php 2,975,637.76	Php 8,531,346.81
VAT Basic Deficiency	1,870,310.76	1,085,154.30	2,955,465.06
Expanded Withholding Tax (EWT) Basic Deficiency	9,586.19	5,617.50	15,203.69
TOTAL	Php 7,435,606.00	Php 4,066,409.56	Php 11,502,015.56

for the taxable year 2007, and Still fail and refuse to do so up to the present, despite the finality and incontestability of the Assessment Notices/Formal Letters of Demand all dated 25 November 2010 issued by the Commissioner of Internal Revenue, through the Regional Director, to the damage and prejudice of the government.

CONTRARY TO LAW."

On January 31, 2018, the First Division of this Court issued a Resolution[2] ordering the issuance of warrants of arrest for accused Bautista and Aquino.

On February 13, 2009, the Court issued the Warrants of Arrest[3] for both accused.

On March 5, 2018, accused Bautista and Aquino voluntarily appeared before the Court and submitted themselves to the jurisdiction of the Court by posting a cash bond in the amount of Php20,000.00 each, for their provisional liberty.

[2] Docket, pp. 92-95.
[3] Docket, pp. 96-97.

During the arraignment on May 23, 2018, both accused with the assistance of their counsel de parte, waived the reading of the Amended Information but entered a plea of "Not Guilty" to the crime charged. The Pre-Trial of the case immediately proceeded. Thereafter, the parties were ordered to submit their Joint Stipulation of Facts and Issues on or before June 4, 2018.

On May 31, 2018, the parties filed their Joint Stipulation of Facts and Issues.[4]

On June 14, 2018, the Court issued a Pre-Trial Order.[5]

Trial ensued and, to prove its case, the plaintiff presented its lone witness, Cheryl Arbues.

The plaintiff's witness, ***Cheryl G. Arbues***,[6] Revenue Officer of the BIR, then assigned at Revenue District Office No. 26, Malabon/Navotas Districts, testified that she was tasked to conduct the audit investigation of all internal revenue taxes for tax cases assigned to her and to perform other related functions as may be assigned to her from time to time; that accused are being charged in their official capacities as partners of Ceneil Sunstar Trading Co. for violation of Section 255, in relation to Section 253(d) and 256 of the Tax Code of 1997, for non-payment of deficiency income tax, Value-Added Tax (VAT), Expanded Withholding Tax (EWT) and Documentary Stamp Tax (DST) assessments for taxable year 2007 in the total amount of Php11,629,011,65, inclusive of increments, which had long become final and executory; that she is aware of the instant case against the accused because she is one of the revenue officers who conducted the investigation of the tax liabilities of Ceneil; that her counterpart were Revenue Officers Julieta G. Supan, Josefina T. Lopez, and Abdulrahman M. Hamed; that the said Revenue Officers were all transferred to other districts, hence, she was the one who continued the audit investigation of the accused; that the bases for the assessment on accused for taxable year 2007 are as follows: a) Tax Verification Notice (TVN) No. 2003-00045590 dated June 12, 2008 issued to Ceneil Sunstar Trading Company marked as Exhibit "3"; b) Income Tax Return (ITR) with Financial Statement for taxable year 2007, marked as Exhibits "P-1" and "P-2" respectively; c) First Request for Presentation of Records dated June 13, 2008, marked as Exhibits "P-4"; d) Second Request for Presentation of Records dated July 1, 2008 with Registry Receipt, marked as Exhibits "P-5" and "P-6" respectively; e) Final Notice with Registry Return Receipt, marked as Exhibits "P-7" and "P-8" respectively; f) Undated Memorandum of Revenue Officer Julieta G. Supan, marked as Exhibit "P-9"; g) 2nd Indorsement dated April 16, 2009, marked as Exhibit "P-10"; h) Letter to taxpayer dated June 8, 2010, marked as Exhibit "P-11"; i) Notice of Informal Conference dated July 13, 2010 with Registry Return

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[4] Docket, p. 251.
[5] Ibid., pp. 304-311.
[6] Testified on June 20, 2018.

Receipt, marked as Exhibits "P-12" and "P-13" respectively; j) Revenue Officer's Audit Report on Income Tax, VAT, EWT and DST for taxable year 2007, marked as Exhibits "P-14", "P-15", "P-16" and "P-17" respectively; k) Preliminary Assessment Notice (PAN) with Registry Return Receipt, marked as Exhibits "P-18" and "P-19" respectively; l) Final Assessment Notice (FAN) with Formal Letter of Demand (FLD) and Registry Return Receipt on Income, VAT, EWT and DST for taxable year 2007, marked as Exhibits "P-20", "P-21", "P-22", "P-23", "P-24" and "P-25" respectively; m) Preliminary Collection Letter, Final Notice Before Filing Criminal Complaint with Registry Receipt, and Report of Revenue Officer Ernesto Verano dated October 11, 2012, marked as Exhibits "P-26", "P-27", "P-28", and "P-29" respectively. She identified her Judicial Affidavit[7] executed on April 25, 2018, marked as Exhibit "P-30".

Atty. Donn Rico G. Kapunan did not conduct his cross-examination on the plaintiff's lone witness.

On July 4, 2018,[8] the plaintiff filed its Formal Offer of Evidence then rested its case with the admission of its documentary evidence on August 28, 2018.[9]

On September 18, 2018, this case was transferred to this Division, pursuant to CTA Administrative Circular No. 02-2018.[10]

To prove their innocence of the crime charged against them, accused Cecilia Y. Aquino and Neil S. Bautista presented themselves as witnesses.

Accused ***Cecilia Y. Aquino***[11], testified that she is one of the accused in this case; that she is aware of the nature and cause of the criminal charges against her: that she and her co- accused were already cleared in the criminal case filed before the Court of Tax Appeals (CTA) second Division; that the cases against them before the said Court was already dismissed; that the case before the Second Division was for willful payment to pay tax due for the year 2006; that the case pending before this Court was for taxable year 2007; that she is interposing the same defences that she invoked before the Second Division, that she and Mr. Bautista did not receive any assessment notice from the BIR; that she learned for the first time the case filed against Ceneil when she received a Resolution of the Caloocan City Prosecutor's Office that they were being charged for violation of the Tax Code; that she and Mr. Bautista went to the Caloocan City Prosecutor's Office to inquire about the case; that they were informed that a Resolution was already made and a finding of

[7] Docket, pp. 209-213, with annexes.
[8] Docket, pp. 324-326.
[9] Docket, pp. 337-338.
[10] Order, p. 343.
[11] Testified on March 13, 2019, TSN, pp. 351-368; Judicial Affidavit of Cecilia Y. Aquino, pp. 262-264.

probable cause against them; that they were not given a chance to submit their counter-affidavit; that the re-opening of the preliminary investigation became moot and academic since the case was already filed before this Court; and that she identified her Judicial Affidavit marked as Exhibit "A-3".

On cross-examination, she testified that she is a plain housewife; that she is no longer connected with Ceneil; that Ceneil is already closed; that she cannot remember if Ceneil applied for closure or retirement of business before the barangay or in the Business Processing License Office or in the BIR; that she is aware that she was charged for willful failure to pay tax due for the years 2006 and 2007; that the case for taxable year 2006 was already dismissed by the Court; that she posted bail in the present case for non-payment of tax for taxable year 2007.

In the clarificatory questions of Associate Justice Ma. Belen M. Liban, Ms. Aquino testified that she knows that the case that was dismissed before the Second Division of this Court is different from the instant case.

Accused ***Neil S. Bautista***,[12] testified that he is one of the accused in this case; that he knows the nature and cause of the criminal charge against him; that he and his co-accused, Ms. Aquino have undergone trial in a similar case filed by the BIR for willful failure to pay tax due for taxable year 2006 before the CTA Second Division; that they were acquitted of the crime charged because they were not properly informed of the tax assessment; that they were not properly notified of the tax assessments; that they were not given the opportunity to contest the assessment; that as proof thereof, Mr. Bautista presented the Decision of the CTA Second Division[13] and the Entry of Judgement;[14] that they learned for the first time that the was a BIR tax assessment against Ceneil when they received a Resolution of the Caloocan City Prosecutor's Office that they were being charged for violation of the Tax Code; that he and Ms. Aquino inquired at the Caloocan City Prosecutor's Office about their case and they were told that there was already a finding of probable cause against them; that they were not given the opportunity to submit counter-affidavit and the re-opening of the preliminary investigation became moot and academic since the case was already filed before the Court; that in the PAN and FAN, it was shown that the same were received by a certain "Merlinda Vargas"; that he does not know Merlinda Vargas; that he asked Barangay Chairman Michael Santiago about the identity of Merlinda Vargas; that he requested for a Barangay Certification[15] about the identity of Merlinda Vargas; and that he identified his Judicial Affidavit, marked as Exhibit "A-4".

[12] Testified on April 10, 2019.
[13] Exhibit "A-1".
[14] Exhibit "A-1-1".
[15] Exhibit "A-2".

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Considering the absence of the plaintiff's counsel, Atty. Napoleon P. Campos, Jr. despite due notice, and as moved by defense counsel, the cross-examination of the witness is considered waived. Thus the testimony of accused Bautista was deemed terminated.

The defense filed the Formal Offer of Evidence on April 22, 2019[16] and rested its case with the admission of its documentary evidence in the Resolution dated May 21, 2019.[17]

The plaintiff failed to file its Memorandum while the defense submitted a Memorandum on July 2, 2019.[18] The case was submitted for decision in the Resolution dated July 22, 2019.[19]

The Issues

This Court is confronted with these issues:[20]

1. Whether or not Neil S. Bautista and Cecilia Y. Aquino, by quantum of evidence required by law, can be held liable for violation of Section 255 of the NIRC; and
2. Whether or not accused can be held civilly liable for the deficiency tax assessment imposed by the BIR.

The Ruling of the Court

The relevant provisions of the National Internal Revenue Code (NIRC) of 1997 are 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 any 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 laws 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

[16] Docket, pp. 372-373.
[17] Docket, pp. 379-380.
[18] Docket, p. 381.
[19] Docket, p. 1045.
[20] Docket, Joint Stipulations of Facts and Issues, p. 251.

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(P10,000.00) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

x x x

Sec. 253. General Provisions. – x x x

(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 the employees responsible for the violation."

Sec. 256. Penal Liability of Corporation. – 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 (P50,000.00) but not more than One hundred thousand pesos (P100,000.00)."

The plaintiff must prove beyond reasonable doubt the following three (3) essential elements before a taxpayer can be held liable under Section 255 of the NIRC:

1. The accused is the person required under the Tax Code or by rules and regulations to file a return, to pay the tax and supply correct and accurate information;
2. The accused failed to file a return, to pay the tax and supply correct and accurate information at the time required by law; and
3. Such failure was willful.

It is thus necessary for the plaintiff to prove that accused Ceneil was a registered taxpayer in 2007, that accused Bautista and Aquino are the responsible officers of the partnership, that the BIR issued the subject assessment notices pursuant to Section 228 of the NIRC, and that accused partnership, through its responsible officer or authorized representatives received the same.

Whether Ceneil is a juridical person required to pay its taxes

In the Articles of Partnership[21] attached to the records of the case, accused Neil S. Bautista and Cecilia Y. Aquino were named as partners of Ceneil. In Article VIII thereof, accused Bautista was named as the General Manager.

Section 22 (B) of the NIRC, of 1997, as amended defines a corporation as follows:

> "The term **'corporation'** shall include partnerships, no matter how created or organized, joint-stock companies, joint accounts, *(cuentas en participacion),* associations, or insurance companies, but does not include general professional partnerships and a joint venture or consortium formed for the purpose of undertaking construction projects or engaging in petroleum, coal, geothermal and other energy operations pursuant to an operating or consortium agreement under a service contract with the Government. **'General professional partnerships'** are partnerships formed by persons for the sole purpose of exercising their common profession, no part of the income of which is derived from engaging in any trade of business."

Thus, Ceneil is a juridical person required to pay its taxes under Sec. 23(E) of NIRC, of 1997, as amended to wit:

> "SEC. 23. **General Principles of Income Taxation in the Philippines.** - Except when otherwise provided in this Code: x x x (E) A domestic corporation is taxable on all income derived from sources within and without the Philippines; x x x"

Under Sec. 256 of the NIRC, of 1997, as amended which we previously quoted, penal liability for violations of Sec. 255 is pinned upon the responsible officer of the corporation. Both accused Bautista and Aquino admitted in their Pre-Trial Brief,[22] Joint Stipulation of Facts and Issues[23] and Judicial Affidavits[24] that they are the partners of accused Ceneil.

Whether or not the assessment notices issued by the BIR is inconformity with the rules

Both accused were charged of willful failure to pay deficiency income tax, VAT, EWT and DST for taxable year 2007 arising from Assessment

[21] Docket, p. 21-25.
[22] Ibid. pp. 190-191.
[23] Ibid. p. 251.
[24] Exhibits "A-3" and "A-4".

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Notices and Formal Letter of Demand dated November 25, 2010. Inasmuch as the alleged deficiency taxes arose from an assessment, as stated in the Amended Information, it becomes necessary for the plaintiff to prove that they issued the subject assessment notices pursuant to the provisions of the NIRC of 1997, as amended.

A perusal of the record shows that there was no Letter of Authority (LOA) issued by the Regional Director. Instead, the BIR issued a TVN[25] with number 2003-00045590 dated June 12, 2008, signed by Luis A. Alberto, Jr., OIC-Revenue District Officer.

Revenue Memorandum Order No. 48-18, "Prescribes Additional Cases to be Covered by Tax Verification Notice," states as follows:

> "I. Background
>
> Currently, a **Tax Verification Notice (TVN) is issued only in the verification of estate tax cases** where the decedent has no other tax liabilities as prescribed in item Mo. III.5 of Revenue Memorandum Order (RMO) No. 69-2010 and **for processing of VAT refund claims filed in accordance with Section 112 of the National Internal Revenue Code (Tax Code), as amended,** as implemented by Revenue Memorandum Circular (RMC) No. 17-2018.
>
> II. Objective
>
> This Order is issued to authorize the **use of a TVN, instead of a Letter of Authority, in the verification of claims for tax refund of Job Order personnel and claims arising from erroneous/double payment of taxes, which can be considered as simple cases that will not require an in-depth audit/investigation.**
>
> III. Policies and Guidelines
>
> 1. Verification of the following cases shall be covered by a TVN, regardless of amount:
>   **1.1.1 Estate tax cases provided the taxpayer/decedent has no other tax liabilities**
>   **1.1.2 Claims for tax refund –**
>   **a. VAT refund pursuant to Section 112 of the Tax Code, as amended**
>   **b. Claims of Job Order personnel**

[25] Exhibit "P-3."

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> *c.* **Claims arising from erroneous/double payment of taxes, including double payment of taxes due to system error/glitch**" *(Emphasis supplied)*

The instant case arose from an assessment made by the BIR to collect deficiency income tax, VAT, EWT and DST, thus, the assessment process must start with the issuance of an LOA and not through a TVN.

Under Section 6(A) of the NIRC of 1997, as amended, the power to authorize examination of a taxpayer and issue assessments is primarily lodged with respondent CIR, thus:

> **SECTION 6.** *Power of Make Assessments and Requirements for Tax Enforcement.* –
>
> > (A) *Examination of Returns 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. x x x.

A revenue officer must be armed with an authority before he could conduct an examination of a taxpayer's accounts. This is specifically stated in Section 13 of the NIRC of 1997, as amended.

> **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.

Since only a TVN was issued by the BIR to authorize the examination of Ceneil's accounts, it follows that the assessment notices subject of this case are void.

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In the case of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*,[26] the Supreme Court held that there must be a grant of authority before any revenue officer can conduct an examination or assessment and that the said authorized revenue officer must not go beyond the authority granted. In the absence of such an authority, the assessment or examination is a complete nullity.

Assuming however that there was a valid LOA issued by the BIR, the procedure pursuant to Section 228 of the NIRC of 1997, as amended, in relation to Section 3 of Revenue Regulations No. 12-99, which provides for the due process requirements in an assessment must be followed. Section 228 provides:

> ***Protesting of Assessment*** – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall notify first the taxpayer of his findings: *Provided, however,* That a pre-assessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayer shall be informed in writing of the law and facts on which the assessment is made; otherwise, the assessment shall be void.
>
> 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.
>
> Such assessment may be protested administratively by a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the

[26] G.R. No. 178697, November 17, 2010.

one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

To prove that Ceneil was properly assessed for deficiency taxes and that notices were issued, sent and received by Ceneil, the BIR presented the following documents: Income Tax Return (Exhibit "P-1"), Financial Statement for Taxable Year 2007 (Exhibit "P-2"), TVN (Exhibit "P-3"), Requests for Presentation of Records (Exhibits "P-4" to "P-11"), Notice of Informal Conference (Exhibit "P-12"), Revenue Officer's Audit Reports for Income Tax, VAT, DST and EWT for taxable year 2007 (Exhibits "P-14" to "P-17"), PAN No. 2774 dated October 19, 2010 with Registry Return Notice (Exhibits "P-18" and "P-19"), FAN for Income Tax, VAT, DST, and EWT for taxable year 2007, Formal Letter of Demands with Registry Return Receipt (Exhibits "P-21" to "P-25"), Preliminary Collection Letter (Exhibit "P-26"), Final Notice Before Filing Criminal Complaint with Registry Receipt (Exhibits "P-27" and "P-28"), and Report of Seizure Agent Ernesto S. Verano (Exhibit "P-29").

However, both accused aver that they did not receive all the notices issued by the BIR. They only learned of the assessment for deficiency taxes when they received a letter from the prosecutor's office that a case against them was filed.

In the case of *Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue*,[27] the Supreme Court held that it is a requirement of due process that the taxpayer must actually receive the assessment.

> "Respondent argues that an assessment is deemed made for the purpose of giving effect to such assessment when the notice is released, mailed or sent to the taxpayer to effectuate the assessment, and there is no legal requirement that the taxpayer receive said notice xxx Although there is no specific requirement that the taxpayer should receive the notice within said period, due process requires at the very least that such notice actually be received. " In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*, we had occasion to say:
>
> > An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer.

[27] G.R. No. 155541, January 27, 2004.

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It appearing that the person liable for the payment of the tax did not receive the assessment, the assessment could not become final and executory."

Since both accused denied having received the assessment notices from the BIR, it is incumbent upon the latter to prove by competent evidence that the notices were indeed received by Ceneil. Thus, the burden of proof is shifted to the BIR to prove by contrary evidence that Ceneil received the assessment notices in the due course of mail.

In ***Barcelon Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue,***[28] the Supreme Court held:

> In its Decision, the CTA resolved the issues raised by the parties thus:
>
> 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 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 (*Republic vs. Court of Appeals, 149 SCRA 351*). Thus as held by the Supreme Court in *Gonzalo P. Nava vs. Commissioner of Internal Revenue, 13 SCRA 104, January 30, 1965:*
>
> "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. (VI, Moran, Comments on the Rules of Court, 1963 ed, 56-57 citing *Enriquez vs. Sunlife Assurance of Canada, 41 Phil 269*)."

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[28] G.R. No. 157064, August 7, 2006.

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xxx. 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.

In the present case, petitioner denies receiving the assessment notice, and the respondent was unable to present substantial evidence that such notice was, indeed, mailed or sent by the respondent before the BIR's right to assess had prescribed and that said notice was received by the petitioner. **The respondent presented the BIR record book where the name of the taxpayer, the kind of tax assessed, the registry receipt number and the date of mailing were noted.**

xxx xxx xxx.

Furthermore, independent evidence, such as the registry receipt of the assessment notice, or a certification from the Bureau of Posts, could have easily been obtained. Yet respondent failed to present such evidence.

In the case of *Nava v. Commissioner of Internal Revenue*, this Court stressed on the importance of proving the release, mailing or sending of the notice.

While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration (Coll. of Int. Rev. vs. Bautista, L-12250 and L-12259, May 27, 1959), 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." (Emphasis supplied)

Applying the afore-quoted cases in the case at bar, this Court finds that the evidence of the plaintiff failed to satisfactorily prove that Ceneil actually received the PAN, FAN and Formal Letters of Demand. The plaintiff's documentary evidence failed to prove that the assessment notices sent through

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registered mail were indeed received by Ceneil or any of its authorized representatives. The authority of Merlinda Vargas to receive on behalf of the accused corporation was never authenticated by plaintiff's witness. Moreover, the plaintiff's lone witness never testified the circumstances on how the assessment notices were issued. She merely identified in her Judicial Affidavit the pre-marked exhibits for the plaintiff. Thus, the failure of the BIR to prove receipt of the assessment notices by Ceneil leads to the conclusion that no assessment was validly issued.

Whether or not accused willfully failed to pay the assessed tax liabilities

Did both accused willfully fail to pay the assessed tax liabilities at the time it was legally required to be paid, to the damage and prejudice of the government?

An act or omission is "willfully" done, if done voluntarily and intentionally and with specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to obey or to disregard the law.[29]

To attribute to accused a "willful failure to pay" the tax, it must be shown that such failure or omission by accused was done knowingly, intentionally and with the specific intent not pay the tax. In other words, it must be shown that accused was aware of his obligation to pay the tax, but he nevertheless voluntarily, knowingly and intentionally failed to pay it.

A scrutiny of the pieces of evidence before this Court clearly shows that there is not enough competent evidence to support the verdict of guilt of all the accused. Plaintiff failed to prove all the elements of the crimes charged against accused Ceneil, Bautista and Aquino. The mere presentation of the documents covering the alleged tax liabilities of accused Ceneil is not substantial proof that there are violations of the NIRC for which accused Ceneil should be held criminally liable. Moreover, the plaintiff failed to establish that there was due process in the issuance of the subject assessment notices, which are the bases of the criminal complaint and Amended Information for willful failure to pay the tax. There was no willful failure to pay on the part of accused Ceneil and its partners, accused Bautista and Aquino because the assessment process was void. The examination of Ceneil's account started with a TVN instead of an LOA. Moreover, all the accused were not informed of the assessment notices issued by the BIR. Hence, the Court finds that the assessment notices cannot be considered valid assessment notices which could be the basis of a criminal charge for willful failure to pay the assessed deficiency taxes.

[29] Black's Law Dictionary, 6th Edition, p. 1599.

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There being no valid assessment, accused, therefore, cannot be made liable for non-payment of deficiency taxes as alleged in the Amended Information, because as held in ***Commissioner of Internal Revenue vs. Reyes***,[30] a void assessment bears no fruit.

In criminal cases, the burden is on the prosecution to prove, beyond reasonable doubt, the essential elements of the offense with which the accused is charged; and if the proof fails to establish any of the essential elements necessary to constitute a crime, the accused is entitled to acquittal. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding the possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. At best, the evidence proffered by the prosecution only goes so far to create a suspicion that accused probably perpetrated the crime charged. But suspicion alone is insufficient, the required quantum of evidence being proof beyond reasonable doubt. When the People's evidence fail to indubitably prove the accused's authorship of the crime of which he stands accused; then it is the Court's duty, and the right of the accused, to proclaim his innocence.[31]

Whether or not CENEIL can be held civilly liable

The civil liability of accused Ceneil is deemed instituted herewith pursuant to R.A. No. 1125, as amended by Section 7(b) 1 of R.A. No. 9282, which provides that "the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized."

As previously discussed, only a TVN was issued by the BIR to authorize the examination of Ceneil's accounts. Under the rules, the assessment process must start with the issuance of an LOA and not through a TVN, because a TVN is issued only in the verification of estate tax cases and in the processing of VAT refund claims filed in accordance with Section 12 of the NIRC of 1997, as amended, claims of Job Order personnel and claims arising from erroneous/double payment of taxes, including double payment of taxes due to system error/glitch.

Hence, in the absence of an authority of the RO who conducted the audit on Ceneil's accounts, the PAN, FAN and FLD are all void. Therefore, the fact from which the civil liability might arise does not exist.

[30] G.R. No. 159694, January 27, 2006.
[31] *Darwin vs. Court of Appeals, et al.,* G.R. No. 125044, July 13, 1998.

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Accordingly, the Court finds no reason to ascribe any civil liability to accused Ceneil.

WHEREFORE, premises considered, this case is **DISMISSED** for failure of the plaintiff to prove beyond reasonable doubt the guilt of both accused and to establish the validity of the assessments as basis for the civil liability. Therefore, accused **NEIL S. BAUTISA and CECILIA Y. AQUINO** are hereby **ACQUITTED** of the crime charged.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

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

ERLINDA P. UY
Associate Justice
Chairperson

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CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

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