REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- *versus* -

THE PROPERTY FORUM PHILS., INC., & MANUEL M. ALLEJE
Unit 407, Ark Condominium
No. 92 Sierra Madre Street
Mandaluyong City,
Accused.

CTA CRIM. CASE NO. O-876
For: Violation of Section 255, in relation to Sections 253(d) and 256, of the NIRC of 1997, as amended

Members:

RINGPIS-LIBAN, *PJ, Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court is the *Information*, filed on May 18, 2021, indicting The Property Forum Phils., Inc., ("accused Property Forum") and Manuel M. Alleje ("accused Alleje") for violation of *Section 255*, in relation to *Sections 253(d) and 256 of the National Internal Revenue Code of 1997 ("NIRC"), as amended*, to wit:[1]

> That on or about September 14, 2017 and thereafter, in Mandaluyong City, and within the jurisdiction of this Honorable Court, accused The Property Forum Phils., Inc., a domestic corporation registered with the Securities and Exchange Commission and the Revenue District Office No. 41, Bureau of Internal Revenue, Mandaluyong City, with Tax Identification No. 223-726-658, and its president, accused Manuel M. Alleje, did then and there, willfully, unlawfully and feloniously fail to pay

[1] Docket – Vol. I, pp. 5 to 7.

> the basic income tax deficiencies for taxable year 2011 in the amount of Five Million Nine Hundred Sixty-Six Thousand Seventeen Pesos and Thirty Four Centavos (Php5,966,017.34), exclusive of surcharge and interest, despite final assessment, including prior and post notices, and formal demands to pay, the latest being in the nature of Demand Before Suit issued on September 14, 2017, to the damage and prejudice of the government

The Facts

Accused Property Forum is a domestic corporation registered with the Securities and Exchange Commission (SEC) and with Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 41-Mandaluyong City, with TIN No. 223-726-658. It is engaged in real estate business. Its registered business address is at Unit 407 Ark Condominium, No. 92 Sierra Madre Street, Mandaluyong City where it may be served with summons, notices, and other legal processes.[2]

On November 6, 2012, Ms. Irene Carilo, an employee of accused Property Forum, received Letter Notice No. 041-RLF-11-00-00425 dated October 29, 2012.[3] This was eventually followed by Letter of Authority (LOA) with SN: eLA201100026921 and LOA-041-2013-00000083 dated March 5, 2013,[4] which the BIR issued against accused Property Forum.

In the LOA, Revenue Officer (RO) Belen Occena and Group Supervisor (GS) Irma Bernardo, both from RDO No. 041-Mandaluyong were given the authority to examine the books of accounts and other accounting records of accused Property Forum for Income Tax (IT) and Value-Added Tax (VAT) for the period from January 1, 2011 to December 31, 2011.[5]

The BIR then issued Preliminary Assessment Notice (PAN), dated October 28, 2015,[6] which was personally delivered to accused Property Forum on October 30, 2015 and was received by one Valentin Gomez, the security guard found at the taxpayer's business address.

In addition, the BIR likewise sent the PAN through registered mail as can be seen under Registry Receipt No. 6148[7] and the Registry Return Receipt from the PhilPost Corporation.[8]

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2 *Id.*, pp. 17-23.
3 *Id.*, p. 25.
4 *Id.*, p. 25.
5 *Supra* note 4.
6 Docket, Vol. I., pp. 38-42.
7 *Id.*, p. 43.
8 *Id.*, p. 44.

On November 23, 2015, the Formal Letter of Demand (FLD)[9] and Final Assessment Notice (FAN),[10] both dated November 16, 2015, were received by accused Property Forum.

In the FAN, the Commissioner of Internal Revenue (CIR) found discrepancies in accused Property Forum's IT amounting to ₱13,303,401.40, and discrepancies in its remittances of VAT amounting to ₱5,877,305.88. Pursuant to the said document, demand for payment of the latter's deficiency taxes was set on or before December 17, 2015.[11]

As no protest was made within the time prescribed under *Section 228 of the NIRC, as amended*, and *Revenue Regulations (RR) No. 12-99*, accused Property Forum's tax deficiencies under the aforesaid assessments were deemed final, executory, and demandable.

In view thereof, the CIR issued a Preliminary Collection Notice (PCN) dated March 9, 2016,[12] informing accused Property Forum that a notice was previously sent for the collection of its internal revenue tax liabilities which remained unpaid:

KIND OF TAX	BASIC	SURCHARGE	INTEREST	COMPROMISE PENALTY	TOTAL
IT	5,966,017.34	2,983,008.67	4,354,375.39		13,303,401.40
VAT	2,584,284.01	1,292,143.50	2,000,875.73		5,877,305.88
TOTAL	8,550,304.35	4,275,152.17	6,355,250.76		**19,180,707.28**

A Warrant of Distraint and/or Levy (WDL) was then issued on August 9, 2016[13] against the properties of accused Property Forum to satisfy in full the internal revenue liabilities of the latter, and to cover such expenses as may be incurred in making the distraint and/or levy.

After exhaustion of the administrative remedies available for the collection of the delinquent amount, the case was referred to the Legal Division of Revenue Region No. 7-Quezon City, which then served a Demand Before Suit (DBS) dated September 14, 2017[14] to accused Property Forum by way of registered mail.

In the DBS, accused Property Forum was informed that the non-payment of the assessed tax liabilities is punishable under *Section 255 of the NIRC, as amended*, and that failure to settle the delinquent tax liabilities

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9 *Id.*, pp. 46-47.
10 *Id.*, pp. 51-53.
11 *Id.*
12 *Id.*, p. 56.
13 *Id.*, p. 58.
14 *Id.*, p. 72.

within five days of receipt of the DBS shall result in the filing of a criminal action.

Despite the foregoing, accused Property Forum's deficiency taxes remained unpaid. Thus, through a Resolution dated November 27, 2019,[15] the Department of Justice (DOJ) recommended the filing of the corresponding information against accused The Property Forum Phils., Inc., and accused Manuel M. Alleje for willful failure to pay Income Tax and VAT for taxable year 2011.

Thereafter, an Information against accused Property Forum and accused Alleje for violation of *Section 255, in relation to Sections 253(d) and 256 of the NIRC, as amended*, was filed with this Court sitting in Division on May 18, 2021.[16]

Acting on the filed Information, the Court issued a Resolution, dated July 1, 2021,[17] stating that after consideration of the allegations in the Information, and after personally examining and evaluating the supporting documents, the Court found the existence of probable cause to issue a warrant of arrest against the accused.

On July 7, 2021, the Second Division of the Court of Tax Appeals (CTA) issued a Warrant[18] for the arrest of accused Alleje for the offense of violation of *Section 255, in relation to Sections 253(d) and 256 of the NIRC, as amended*, and set the bail bond for his provisional liberty at ₱60,000.00.

Accused Alleje thereafter surrendered himself voluntarily to the jurisdiction of this Court and posted his cash bail bond in the amount of ₱60,000.00[19] as shown under Official Receipt No. 8982158L, dated October 18, 2021[20] for his provisional liberty. The Warrant of Arrest was then lifted and declared without further force and effect.

The Court then set the arraignment of accused Alleje on November 17, 2021.

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15 *Id.*, pp. 8-13.
16 *Supra* note 1.
17 *Id.*, pp. 82-84.
18 *Id.*, p. 85.
19 *Id.*, p. 89.
20 *Id.*, p. 90.

During arraignment, after having been read the Information in CTA Crim. Case No. O-876 in a language known and understood by him, and being duly assisted by his counsel, accused Alleje entered his plea of **NOT GUILTY**.[21]

On April 21, 2022, the Court issued the Pre-Trial Order.[22] In the Pre-Trial Order, among the disputed facts were that the PAN and the FLD/FAN were served to a person who is not a president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel of the accused corporation, that the accused had only 30 days, or until December 23, 2015 to dispute the assessments, and that the assessments became final on December 23, 2015.

Accused Property Forum, along with its president, accused Alleje, then filed a Motion to Quash Information on May 18, 2022,[23] praying that the criminal liability of the accused be extinguished, the civil aspect of the case be declared settled, and for the Information dated May 18, 2021 be quashed on the ground of prescription. According to accused Property Forum and accused Alleje, since the FLD/FAN became final and demandable on December 23, 2015, the lapsing of the 5-year period would then be on December 23, 2020. Thus, according to the accused, at the time the case was filed in court on May 18, 2021, the action had already prescribed. However, the same was denied for lack of merit through a Resolution dated October 27, 2022.[24]

Trial then ensued with the prosecution's presentation of evidence[25] in which RO Jennifer P. Enriquez, the lone witness for the prosecution, testified on direct-examination by way of her Judicial Affidavit dated April 19, 2022.[26]

On October 4, 2023, the prosecution filed its Formal Offer of Evidence[27] with accused's Comment/Objection filed on October 20, 2023.[28] On December 13, 2023, the Court resolved to admit all of the prosecution's exhibits.[29]

Accused then filed a Motion for Leave to File Attached Demurrer to Evidence on February 5, 2024.[30] In its Demurrer to Evidence, accused argued that: (1) there is no sufficient evidence which will prove that the accused

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[21] *Id.*, p. 103
[22] *Id.*, pp. 224-230.
[23] *Id.*, pp. 243-253.
[24] *Id.*, pp. 439-442.
[25] Division Docket, Vol. II, pp. 607-608.
[26] Division Docket. Vol. I, pp. 154-163.
[27] Division Docket, Vol. II, pp. 610-616.
[28] *Id.*, pp. 636-643.
[29] *Id.*, pp. 652-653.
[30] *Id.*, pp. 694-697.

willfully failed to pay the tax as the prosecution failed to prove that accused was informed through proper service of notices; and (2) the filing of the criminal case has exceeded the prescribed time limit.[31]

Through a Resolution dated August 5, 2024, the Court resolved to grant the accused's Motion for Leave to File Attached Demurrer to Evidence, admitting the Demurrer to Evidence but denying the same for lack of merit.[32]

During the presentation of accused's evidence, counsel for the accused presented accused Alleje who testified in full,[33] in addition to his Judicial Affidavit which was executed on October 4, 2024.[34]

On October 28, 2024, accused electronically filed its Formal Offer of Evidence,[35] all of which were admitted by the Court through a Resolution, dated February 28, 2025, except for Exhibit "A-6", which was denied for not being found in the records of the case.[36]

As both parties have already filed their Formal Offer of Evidence, the parties were thus given a period of 30 days from receipt of the Resolution dated February 28, 2025 within which to file their respective memoranda. After receipt thereof or the lapsing of the period given, the case would be deemed submitted for decision.[37]

On May 16, 2025, the Court issued a Minute Resolution stating, among others, that both parties failed to file their respective memorandum pursuant to the Resolution dated February 28, 2025.[38] In view thereof, upon resolution of accused Alleje's Motion to Amend Travel Leave, the case would be submitted for decision.

Through a Resolution dated November 27, 2025,[39] the Court resolved the matters on Accused's Motion for Leave of Court to Travel Abroad and submitted the case for decision despite both parties still not having submitted their respective memoranda.

On January 16, 2026, counsel for the accused belatedly electronically filed accused's Trial Memorandum.

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[31] *Id.*, pp. 698-719.
[32] *Id.*, pp. 797-808.
[33] *Id.*, pp. 907-908.
[34] *Id.*, pp. 876-886.
[35] *Id.*, pp. 918-921.
[36] *Id.*, pp. 1015-1016.
[37] *Id.*
[38] Division Docket, Vol. III, p. 1036.
[39] *Id.*, pp. 1210-1215.

The Issues

The parties stipulated on the following issues:[40]

1. Whether the accused is liable for violation of *Section 255, in relation to Sections 253(d) and 256 of the NIRC, as amended*;

2. Whether the Court has jurisdiction over the instant case; and

3. Whether the offense charged in the Information has already prescribed.

The Ruling of the Court

This Court shall first resolve the matter of the late filing of the accused's Trial Memoranda.

The *Revised Guidelines on Continuous Trial in Criminal Cases*[41] mandates that the period for filing a memorandum shall be non-extendible and strictly observed to ensure the speedy disposition of cases. Furthermore, *Section 3, Rule 17 of the Rules of Court,* which applies suppletorily to criminal proceedings, provides that if a party fails to comply with a lawful order of the court, the pleading or even the case itself may be dismissed or stricken from the records.

Although there are cases when courts may relax the rules on procedure, jurisprudence has consistently held that "procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights."[42] The right to file a memorandum is a procedural privilege that must be exercised within the period granted by the court; otherwise, such right is deemed waived.

The records of this case reveal that on February 28, 2025, this Court issued a Resolution directing both parties to file their respective trial memorandum within 30 days from receipt thereof.[43]

Accused's counsel received a copy of the said Resolution on March 12, 2025.[44] Accordingly, accused had until April 11, 2025 within which to submit the required memorandum. However, accused, through counsel, only submitted its trial memorandum on January 16, 2026.

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[40] *Supra* note 22.
[41] A.M. No. 15-06-10-SC, April 25, 2017.
[42] *Joel F. Latogan v. People of the Philippines*, G.R. No. 238298, January 22, 2020.
[43] *Supra* note 36.
[44] Division Docket, Vol. II., p. 1014.

A simple computation reveals that accused Alleje's Trial Memorandum was filed exactly 280 days, or more than nine months beyond the expiration of the period during which a memorandum should have been filed.

This Court finds this delay not only excessive but also inexcusable. To admit a pleading filed nearly a year late would render the rules of procedure nugatory and would mock the mandate of the Supreme Court regarding the continuous trial of criminal cases.

The defense's failure to comply with the court-ordered deadline for such an extensive period constitutes a waiver of the right to file the same. Procedural deadlines are essential to the orderly administration of justice, they are not occasional reminders to be applied at a party's convenience.

The CTA has jurisdiction over the instant case

Before delving into the merits of the case, the Court must first resolve the threshold issue of jurisdiction.

Under *Section 3(b)(1) Rule 4 of the Revised Rules of the Court of Tax Appeals,*[45] this Court exercises exclusive original jurisdiction over all offenses arising from the *NIRC,* among others, where the principal amount sought, exclusive of charges and penalties, is ₱1,000,000.00 or more, to wit:

> Sec. 3. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:
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> (b) Exclusive jurisdiction over cases involving criminal offenses, to wit:
>
> (1) Original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs, where the principal amount of taxes and fees, exclusive o charges and penalties claimed is one million pesos or more;
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> . . . .

In the present case, the accused is charged with a violation of *Section 255,* in relation to *Sections 253(d) and 256 of the NIRC, as amended.* The Information filed by the prosecution alleges a deficiency tax liability amounting to ₱5,966,017.34, exclusive of surcharge and interest, which is clearly in excess of the ₱1,000,000.00 threshold required for this Court to exercise its original jurisdiction.

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45 A.M. No. 05-11-07-CTA, November 22, 2005.

As the offense charged arises from a violation of the NIRC and involves a principal tax amount reaching the jurisdictional limit set by law, this Court is properly vested with the authority to hear and decide the instant criminal action.

The offense charged in the Information has not prescribed upon the initiation of preliminary investigation.

Accused Alleje and Property Forum asserts that the criminal action should be dismissed, arguing that the five-year period under *Section 281 of the NIRC, as amended*, has already lapsed between the issuance of the assessment in 2015 and the filing of the Information before this Court in 2021.

However, the material facts of the instant case are undisputed.

On November 23, 2015, accused received the FLD/FAN and no administrative protest was filed. Thus, the assessment became final and demandable on December 24, 2015, 31 days after accused's receipt of the FLD/FAN.

On November 27, 2019, still within the 5-year period from the time the assessment allegedly became final, the Department of Justice issued a resolution finding probable cause against accused. Finally, the Information was filed before this Court on May 18, 2021.

The prescription of tax crimes is governed by *Section 281 of the NIRC, as amended*, which provides:

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

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In the case of Emilio E. *Lim v. Court of Appeals*[46] and later in the case of *People v. Consebido* (*"Consebido"*),[47] the Supreme Court clarified that for the offense of Willful Failure to Pay Taxes, the prescriptive period commences only when the assessment becomes final and demandable. It is at this point that the violation is deemed known or discovered by the State.

The case of *Consebido* further discussed *Section 2 of Act No. 3326,*[48] as applied in the case of *Panaguiton, Jr. v. Department of Justice* (*"Panaguiton, Jr"*),[49] which ruled that the running of the prescriptive period is tolled or interrupted by the institution of proceedings for preliminary investigation with the DOJ. In its ruling, the Supreme Court stated:

> The Court takes this opportunity to re-examine its ruling in *Lim, Sr.* and to clarify the prescriptive period under Section 281 of the 1997 NIRC, specifically with respect to violations that are unknown at the time of its commission.
>
> There are two components in determining when the prescriptive period shall begin to run under Section 281: first, the discovery of the commission of the violation; and second, the institution of judicial proceedings for its investigation and punishment. As observed in *Lim, Sr.*, this makes the prosecution of offenses under the 1997 NIRC practically imprescriptible as the prescriptive period will only begin to run upon the institution of judicial proceedings. But the next paragraph of Section 281 states that "prescription shall be interrupted when proceedings are instituted against the guilty persons[.]" If *Lim, Sr.* is to be followed, prescription would both be started and interrupted by the institution of proceedings against the accused.
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> This is not the first time that the Court encountered this conundrum.
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> Petitioner duly pointed out that Section 2 of Act No. 3326 is similarly worded to the second and third paragraphs of Section 281 of the 1997 NIRC. Section 2 provides:
>
>> SECTION 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.
>>
>> The prescription shall be interrupted when proceedings are instituted against the guilty person and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

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[46] G.R. Nos. 48134-37, October 18, 1990.

[47] G.R. No. 258563, April 2, 2025.

[48] An Act To Establish Periods of Prescription For Violations Penalized By Special Acts and Municipal Ordinances and to Provide When Prescription Shall Begin to Run. Be It Enacted By the Senate and House of Representatives of the Philippines in Legislature Assembled and By The Authority of The Same, December 4, 1926.

[49] G.R. No. 167571, November 25, 2008.

When Act No. 3326 was passed on December 4, 1926, it was the justice of the peace that conducted the preliminary investigation of criminal offenses. Accordingly, the filing of the complaint with the justice of the peace also signified the institution of criminal proceedings against the accused. The prevailing rule then was that the filing of the complaint with the justice of the peace tolled the prescription of the offense. The Court thus clarified in *Panaguiton, Jr. v. Department of Justice* that the term "proceedings" in Section 2 of Act No. 3326 should now be understood to include those before the executive branch of government. Hence, preliminary investigation tolls prescription, the reason being that "to rule otherwise would deprive the injured party the right to obtain vindication on account of delays that are not under his control."

In *People v. Duque*, the Court held *that the phrase "'institution of judicial proceedings for its investigation and punishment' may be either disregarded as surplusage or should be deemed preceded by the word 'until.'"* A literal reading of Section 2 of Act No. 3326 would be unfavorable to the accused and is unnecessary. The Court opined that "the prescription period would both begin and be interrupted by the same occurrences the net effect would be that the prescription period would not have effectively begun, having been rendered academic by the simultaneous interruption of that same period." The Court affirmed this interpretation in *Presidential Commission on Good Government v. The Ombudsman* and added that this interpretation is consistent with the second paragraph of Section 2 of Act No. 3326.

Notably, *Lim, Sr.* applied Section 354 of the 1939 NIRC. Associate Justice Japar B. Dimaampao (Associate Justice Dimaampao) astutely noted that the 1939 NIRC was passed when justices of the peace conducted preliminary investigations. *This is no longer the case now, as observed in Panaguiton. Thus, in consideration of the foregoing, the Court clarifies that under Section 281 of the 1997 NIRC, prescription for criminal offenses where the commission of the violation is not known shall begin to run from its discovery.* The adoption of the interpretation in Duque is apt in order to harmonize the second and third paragraphs of Section 281 of the 1997 NIRC. *The institution of proceedings, specifically the commencement of preliminary investigation, shall interrupt the prescriptive period for the offense.* This clarification is necessary as a literal interpretation of the law should be rejected if it would lead to absurd results. Prescription would not run under a literal reading of Section 281 of the 1997 NIRC, as it would both begin and be interrupted by the institution of proceedings. The Court must give effect to the clear intent of the Legislature to set a prescriptive period for violations of the 1997 NIRC. Chief Justice Alexander G. Gesmundo (Chief Justice Gesmundo) judiciously expressed that the prevailing interpretation renders nugatory or lifeless the prescriptive period set by the Legislature itself.

. . . .

The Court stresses that the date of discovery of the commission of the violation is not necessarily synonymous to the date of the filing of the complaint. Discovery is "the act, process, or an instance of gaining knowledge of or ascertaining the existence of something previously unknown or unrecognized." Simply put, *the date of discovery is when it becomes known that a violation of the 1997 NIRC was committed. The filing of the complaint is not the reckoning point for the discovery* unless it so

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> happens that the complaint was filed on the very same day that the violation was discovered.
> (Citations omitted. Italics, Ours.)

Based on the foregoing, We find that the right to prosecute the criminal action based on the Information has not yet prescribed.

The 5-year period began to run on December 24, 2015, the date accused's tax liability allegedly became final and demandable. The State thus had until December 24, 2020, or 5 years from "discovery" within which to initiate prosecution of the offense.

After a careful study of the case at hand, the records show that the DOJ issued its Resolution on November 27, 2019, recommending the filing of the instant Information with this Court, still prior to the lapsing of the 5-year period provided by law. Thus, the criminal complaint was filed with the DOJ prior to said date. In applying the doctrine in *Panaguiton, Jr.*, the filing of the complaint with the DOJ for preliminary investigation caused the interruption of the 5-year prescriptive period. Since said filing happened prior to November 27, 2019, and thus prior to December 24, 2020, the prescriptive period was suspended before the it would have lapsed. Consequently, the 5-year prescriptive period had already been suspended by the time the prosecution filed the instant Information with this Court on May 18, 2021, and the State's right to prosecute the criminal action has not yet prescribed.

The prosecution failed to prove the guilt of the accused beyond reasonable doubt.

Based on the *Information*, accused are being prosecuted for willful failure to pay deficiency income tax under *Section 255*, in relation with *Sections 253(d) and 256 of the NIRC, as amended*. The relevant provisions state:

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

> SEC. 253. *General Provisions.* – . . .
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> (d) In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, *president,* general manager, branch manager, *treasurer*, officer-in-charge, and the employees *responsible for the violation.*
>
> . . . .
>
> SEC. 256. *Penal Liability of Corporations.* - Any corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the *responsible corporate officers*, partners, or employees shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000).
> (Italics, Ours.)

To secure a conviction under *Section 255 of the NIRC, as amended*, the prosecution must establish beyond reasonable doubt the following essential elements: (1) the taxpayer is required to pay any tax, make or file a return, keep any record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations; (2) the taxpayer failed to do so; and (3) the act is willful.[50]

Firstly, accused Property Forum, along with its president, accused Alleje, is allegedly required to pay deficiency income tax as stated in the FLD/FAN.

Under *Section 228 of the NIRC, as amended,* the Commissioner of Internal Revenue or its authorized representative is mandated to issue a prior notice of findings to the taxpayer before a formal tax assessment can be validly made.

The validity of a tax assessment is hinged on the taxpayer being afforded due notice of the BIR's findings. Such notice is indispensable as it serves to apprise the taxpayer of the specific deficiency and the corresponding demand for payment.

To this end, *Revenue Regulations ("RR") No. 18-13, amending RR No. 12-99*, prescribes the mandatory procedures for notifying a taxpayer of an assessment. Thus: Y

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50 *People v. Mendez*, G.R. Nos. 208310-11 & 208662, 28 March 2023.

3.1.6 *Modes of Service.* — The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:

> (i) *The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found.* A known address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.
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> *In case personal service is not practicable, the notice shall be served by substituted service or by mail.*
>
> (ii) *Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:*
>
> *The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.*
>
> If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.
>
> If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.
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> If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.
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> Should the party be found at his registered or known address or any other place but refuse to receive the notice, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.
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> "Disinterested witnesses" refers to persons of legal age other than employees of the Bureau of Internal Revenue.
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> (iii) Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.

> The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information. The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.
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> Service to the tax agent/practitioner, who is appointed by the taxpayer under circumstances prescribed in the pertinent regulations on accreditation of tax agents, shall be deemed service to the taxpayer. (Italics, Ours.)

In accordance with the governing rules, assessment notices must be served upon the taxpayer primarily through personal delivery at their registered or known address, or wherever they may be located. Resort to substituted service or service by mail is considered an exception and may only be utilized when personal service is proven to be impractical.

Under *Section 3.1.6 of RR No. 18-13* substituted service is permissible in the following instances: (1) when the taxpayer is not present in the registered address; (2) when the taxpayer is not present in its known address, which is its place of business; (3) when the taxpayer is not present in its known address, which is its place of residence, or when no person is found in the registered or known address.

Furthermore, where the taxpayer is a juridical entity, substituted service is validly effected by leaving the notice at the registered address with a clerk or person in charge thereof.

A diligent study of the instant case reveals that the assessment notices sent to accused were received by one Valentin Gomez, a security guard of the building where The Property Forum Phils., Inc. is situated.

On cross-examination, RO Jennifer P. Enriquez, the sole witness presented by the prosecution, revealed the following:

ATTY. LEYNES:

...

Q: And then you also identified in your Judicial Affidavit a Preliminary Assessment Notice, would you be able to see the same document?

A: Based on the Preliminary Assessment Notice, it was received by Valentin Gomez, security guard.

Q: Ms. Witness, also you identified in your Judicial Affidavit a Formal Letter of Demand, am I correct that this Formal Letter of Demand is equivalent to the Final Assessment Notice?

A: Yes Sir.

Q: Can you tell us who received this Formal Letter of Demand?

A: It was received by Valentin Gomez, security, based on records.

Q: And am I correct, Ms. Witness, if we look into that record of the Bureau, all these notices it's either sent through registered mail or personally served to someone who is not the president of the corporation or it was not personally received by the accused himself, am I right?

A: Based on records, the previous officers who served those notices, served them to the security guard and not to the authorized representative of the corporation or the company.

Q: And based on the procedure with the Bureau, after serving the Final Letter of Demand, the person subject of the tax assessment only has thirty (30) days to protest such assessment, am I correct?

A: Based on record, that was written on the Formal Letter of Demand.

Q: Based on the documents that you identified in your Judicial Affidavit, assuming that there was a valid service, the Formal Letter of Demand was served on November 23, 2015, am I correct?

A: Yes, Sir, it was served on November 23, 2015.

Q: And if there was no protest filed before the Bureau, this Final Letter of Demand shall become final and executory on December 23, 2015?

A: Yes Sir.

Q: Am I correct also, Ms. Witness, that there was no protest filed by the accused?

A: Based on records, no protest was field.

Q: And also based on the other documents that was served by the Bureau to the accused, there was not even a single communication made by the accused to the Bureau, am I correct?

A: Yes, Sir, based on records.

Q: Ms. Witness, would you agree with me that the reason why there could be no communication between the Bureau and the accused is that there is a possibility that these notices was not received by the accused?

ATTY. BOHOL:
Objection, your Honors, it was more on conclusion.

JUSTICE LIBAN:
Sustained. So, based on records, there is nothing there that any of the communications were received by Manuel M. Alleje?

A: Yes, your Honors.

JUSTICE LIBAN:
All the communications, the PAN, the FAN, the FLD and also the Preliminary Collection Letter, Final Notice Before Seizure, when it comes to the PAN and the FLD, only the guard received the same. With regards to the Final Collection Letter, there is nothing on the records that shows that it was received by anybody from thecorporation?

A: Yes, your Honors.

ATTY. LEYNES:
If I may continue, your Honors.

JUSTICE LIBAN:
Yes.

ATTY. LEYNES:
Ms. Witness, you also mentioned in your Judicial Affidavit that there was a Demand Before Suit that was served to the accused, am I correct?

JUSTICE LIBAN:
The Demand Before Suit was sent by the Legal Division through registered mail.

ATTY. LEYNES:
Just to continue, your Honors, that it was only served through registered mail and it was not served personally to the accused.

A: Based on this record, it was mailed on October 2, 2017.

Q: It was through registered mail, do you have a copy of the registry return receipt?

A: Based on records, there is no attached return card.

Q: Am I correct to assume that since we do not have here the registry return receipt, we do not have any proof that it was actually served but only a proof that it was mailed?

ATTY. BOHOL:
Objection, your Honors, calls for conclusion.

JUSTICE LIBAN:
Sustained. Anything else?

ATTY. LEYNES:
Nothing more, your Honors.[51]

Taking the testimony of RO Jennifer P. Enriquez on cross-examination in conjunction with the testimony of accused Manuel M. Alleje, also on cross-examination, reveal that the subject notices were improperly served to the accused, to wit:

ATTY. LOPEZ:
...

Q: I would have just a few questions. Sir, based on your Judicial Affidavit, you mentioned that the 1st Request for Presentation of Books was received by a certain Ms. Ruth Molon, is that right?

A: Yes, Sir.

Q: What does Ms. Molon do in your business? Or what is her designation in your business?

A: During that period of time, she was one of our staff who took care of our calls.

Q: Is she always present in your office?

A: No, not all the time, because our business in engaged with some fieldwork.

Q: But she's still employed by you until today?

A: Until today, yes.

Q: You also mentioned in your Judicial Affidavit a certain Ms. Chona Villa. Do you know Ms. Chona Villa, sir?

A: As far as I can recall, we don't have any employee whose name was Chona Villa.

Q: May I ask you, sir, how many employees do you have?

A: I think during that time, we only had three or four employees.

Q: So, there's a big chance that you know all the names of your employees?

A: Yes, I do.

Q: And you're saying that you don't know this Ms. Chona Villa?

A: She was never employed by the company.

Q: How about this, Valentin Gomez, sir? Do you know a certain Valentin Gomez?

[51] TSN of the hearing held on September 21, 2023, pp. 8 to 12.

A: From what I read, I think he was supposed to be one of the guards of the building. Although we never really, in my personal capacity, I've never really engaged with any of our guards.

Q: Do you employ any security guard or security agency, sir?

A: No, not to my knowledge, sir.

Q: Could you describe to me your office, sir, this Arc Condominium Building? Could you describe to me, for example, is this a condominium?

A: Yes, it's a four-story condominium. It's very old. A lot of the units were foreclosed by a bank, so the elevator has never been working. And I think the guards there have been there for so long already.

Q: Sir, whenever a mail matter is being served to your office, does the security guard of Arc Condominium Building allow them to proceed to your office?

A: Basically, in the building, you see, there is something that has to be received, *yung kailangan pirmahan ng tao. Kailangan papaayatin sila, hindi pwede silang tumanggap ng* letters.

Q: So, they allow the post man or anyone who is serving a letter to go to your office?

A: That's correct.

Q: Do you remember any instances that they allowed a BIR employee to go to your office?

A: Not to my knowledge, sir.

Q: Do you always stay in your office, sir?

A: Regularly, During that period of time, I would normally be with the banks also.

Q: So, if you're not in the office, who would be authorized to receive any notice or mail matter from the BIR or any mail mater?

A: Okay, during that time, I don't think anybody else was authorized to be receiving notices, sir.

Q: So, you're telling me that you have not authorized Ms. Molon to receive any notice?

A: Yes. Yes, she's not authorized for that.[52]

Clearly, the notices, particularly the PAN and FLD/FAN, were neither served to a person who is the president of the corporation or his authorized representative, nor to a person who was in charge thereof. Instead, the PAN

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[52] TSN of the hearing held on October 10, 2024, pp. 5 to 8.

and FLD/FAN were served to one Valentin Gomez, allegedly a security guard of the building who is not an employee of the accused corporation.

Thus, as to the first element of the offense charged, the service of the PAN and FLD/FAN cannot be said to be consistent with *Section 228 of the NIRC, as amended,* thereby rendering the assessments void for failing to afford the taxpayer due notice of the BIR's findings. Without said notice, the taxpayer could not have been made aware of his outstanding internal revenue liabilities.

Secondly, the fact that the FLD/FAN was not paid is not disputed in the instant case.

As can be recalled, the DOJ recommended the filing of the instant Information in view of accused's tax liabilities remaining unpaid despite the BIR's issuance of the PAN, FLD/FAN, and thereafter the PCN, WDL, and DBS.

Thus, as to the second element of the offense charged, it is certain that the accused failed to pay the tax due based on the FLD/FAN.

Finally, the last element of Willful Failure to Pay Taxes under *Section 255 of the NIRC* is that it must be done willfully.

The case of *People v. Mendez*[53] elucidates that the term "willful" is defined as a voluntary and intentional act, not necessarily requiring malicious intent. In the context of tax law, the term "willfully" signifies a deliberate violation of a known legal obligation to file its tax returns or to pay its tax liabilities. Consequently, the prosecution carries the burden of proving that the taxpayer was aware of its legal duty to satisfy its outstanding tax liabilities, but consciously and voluntarily chose to neglect such duty.

Moreover, the Supreme Court in *Commissioner of Internal Revenue v. Court of Appeals*[54] further characterized "willfulness" as an act that is premeditated, malicious, or executed with a specific wrongful motive.

At this juncture, it is imperative to emphasize that the willful neglect to pay taxes is never presumed. Such intent must be established as a clear fact and cannot be predicated upon a mere oversight or an inadvertent act by the taxpayer.

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[53] G.R. No. 208310-11, March 28, 2023.
[54] G.R. No. 119322, June 4, 1996.

In criminal prosecution, the *onus probandi* rests solely with the prosecution. It must secure a conviction based on the strength of its own evidence, rather than relying on any perceived weakness or absence of evidence from the defense. To overcome the constitutional presumption of innocence, the prosecution must present proof beyond reasonable doubt. This quantum of proof requires a degree of moral certainty that satisfies the courts conscience and leaves no room for hesitation in rendering judgment.[55] Where the prosecution fails to discharge its burden of proof, the acquittal of the accused follows as a matter of right.[56]

To recall, the assessment notices issued by the BIR were improperly served to the accused. Without such notices, accused Property Forum could not have been aware that it had a legal duty to settle its outstanding tax liabilities. Without said knowledge of the findings of the assessment, or that there were any findings at all, it is highly unlikely that accused deliberately, maliciously, and consciously ignored the same with the deliberate intent of avoiding the payment of its internal revenue taxes.

In conclusion, out of the three elements constituting the crime under *Section 255 of the NIRC*, it appears that only the second element is present in the instant case. It is thus clear that the prosecution failed to establish the guilt of the accused with the moral certainty required to overcome the constitutional presumption of innocence. In criminal cases, nothing less than proof beyond reasonable doubt is necessary to sustain a conviction.

The improper service of the PAN and FLD/FAN is a violation of accused's right to due process, consequently rendering the assessments void and without any force and effect.

This Court finds the criminal action and the underlying tax assessments to be fatally flawed due to the improper service of the required notices.

The power of the State to collect taxes, while extensive, is not unbridled. It is strictly limited by the constitutional guarantee of due process. In taxation, due process is codified under *Section 228 of the NIRC, as amended*, and implemented by RR No. 18-13.

Section 228 explicitly mandates that when the Commissioner or his authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings. This notification is not a mere

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55 *People vs. Villanueva*, G.R. No. 131773, 13 February 2002.
56 *Macayan, Jr. vs. People*, G.R. No. 175842, 18 March 2015.

formality. Rather, it is a substantive requirement, as held in the case of *Commissioner of Internal Revenue v. Fort 1 Global City Center, Inc.*,[57] citing *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*,[58] which states:

> Well-settled is the rule that an assessment that fails to strictly comply with the due process requirements outlined in Section 228 of the Tax Code and its implementing rules is void and produces no effect. This is because while it is true that taxation is the lifeblood of the government, the power of the State to collect tax must be balanced with the taxpayer's right to substantial and procedural due process. This Court has consistently recognized that, between the power of the State to tax and an individual's right to due process, the scale favors the right of the taxpayer to due process. We have repeatedly urged strict observance by the BIR of the prescribed procedure for issuance of the assessment notices to uphold the taxpayers' constitutional rights.

Thus, for a taxpayer to be notified under the law, the service of the assessment must be performed in strict accordance with *RR No. 18-13*. The regulations prioritize personal service as the primary mode of delivery, and resort to substituted service or service by mail is only permissible upon a clear showing that personal service was impractical.

In this case, the prosecution failed to establish that the assessment notices were served in the manner prescribed by *Section 3.1.6 of RR No. 18-13*. There was no competent evidence to prove that Valentin Gomez, the person who purportedly received the notices, was a clerk or person having charge of accused's registered office, or that conditions for substituted service were met.

In *Commissioner of Internal Revenue v. Reyes*,[59] the Supreme Court ruled that an assessment that fails to strictly comply with the law and regulations is void and bears no fruit. Consequently, a void assessment cannot be the basis for a criminal prosecution for Willful Failure to Pay under *Section 255 of the NIRC*, as there is no legal and valid obligation to pay a void assessment.

Hence, where there is no valid service of the PAN and FLD/FAN, as in the instant case, the taxpayer is deprived of the opportunity to be informed of the basis of the assessment and to file a timely protest. Jurisprudence is consistent: an assessment served improperly is a void assessment.

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57 G.R. No. 263811, November 26, 2024.
58 G.R. No. 185371, December 8, 2010.
59 G.R. No. 159694, January 27, 2006.

To conclude, the improper service of the PAN and the FLD/FAN constitute a flagrant violation of the accused's right to due process. As the underlying assessments are void *ab initio*, they are without any force and effect and is unable to attain any semblance of finality. The accused cannot be held criminally liable for failing to satisfy a non-existent legal debt.

Finally, while the acquittal of a taxpayer-accused does not necessarily obliterate the civil liability for deficiency taxes relative to a criminal case, these being imposed prior to and independently from the alleged tax law violation,[60] herein accused is not civilly liable for the taxes assessed, considering that the assessment is void.

ACCORDINGLY, in resolving the matter on the late filing of accused's memorandum, the Trial Memorandum filed by the counsel for the accused on January 16, 2026 is hereby **STRICKEN OFF THE RECORD** for failure to comply with the period provided by law within which to submit its Memorandum.

However, premises accused **The Property Forum Phils., Inc.,** and its president, accused **Manuel M. Alleje** are **ACQUITTED** of the crime charged in view of the violation of accused's right to due process, and the failure of the prosecution to prove the guilt of accused beyond reasonable doubt.

The instant PAN, dated October 28, 2015, and the FLD/FAN, dated November 16, 2015, are deemed **VOID**, without having reached any finality, and without any force and effect. Consequently, accused is found to not be liable for the assessed deficiency taxes.

The prosecution is hereby **ENJOINED AND PROHIBITED** from collecting the amount sought by the void assessment.[61]

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[60] *Supra* note 50; *People v. E & D Parts Supply, Inc.*, G.R. No. 259284, January 24, 2024.

[61] This Court has the authority to enjoin and prohibit the Bureau of Internal Revenue from collecting taxes when such collection would jeopardize the interests of a taxpayer or the government, *e.g.*, when the taxes sought are based on a void assessment made in violation o a taxpayer's rights. *See Rule 10, Section 2 of the Revised Rules of the Court of Tax Appeals, as amended; see also Commissioner of Internal Revenue v. QL Developments, Inc.*, G.R. No. 258947, March 29, 2022.

WE CONCUR:

On Official Business
MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

With due respect, please see Separate Opinion
CORAZON G. FERRER-FLORES
Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, 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.

JEAN MARIE A. BACORRO-VILLENA
Acting Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

THE PROPERTY FORUM PHILS., INC. and MANUEL M. ALLEJE,
Unit 407, Ark Condominium
No. 92 Sierra Madre Street,
Mandaluyong City,
Accused.

CTA CRIM. CASE NO. O-876
For: Violation of Section 255, in relation to Sections 253 (d) and 256 of the National Internal Revenue Code of 1997, as amended.

Members:

RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:

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x---x

SEPARATE OPINION

FERRER-FLORES, J.:

I concur with the *ponencia* of my esteemed colleague, Associate Justice Maria Rowena Modesto-San Pedro, that accused **The Property Forum Phils., Inc. (TPFPI)**, and its president, accused **Manuel M. Alleje**, should be acquitted.

I write separately, however, to clarify my position on the non-applicability of *People of the Philippines vs. Ulysses Palconit Consebido*[1] (Consebido) to the present case.

With due respect, I maintain that *Consebido* finds no application here, as the Supreme Court itself expressly held that the new rule espoused therein shall apply prospectively.

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[1] G.R. No. 258563, April 2, 2025.

In *Consebido*, the Supreme Court was confronted with the question of whether the filing of the criminal complaint before the Department of Justice (DOJ) will toll the running of the prescriptive period. Resolving this, the Supreme Court declared:

> With this dilemma, the Court takes this opportunity to pronounce that the filing of the complaint before the prosecution office and the conduct of the summary investigation should toll the running of the prescriptive period. While it is ideal that all cases are resolved promptly, the reality is that this is not done at all times, whether for valid reasons or not. The offended party, which is primarily the State, should not be prejudiced by any delay in the conduct of the preliminary investigation even for cases covered by summary procedure. The Court reiterates its reasoning in *People v. Olarte* that *"it is unjust to deprive the injured party of the right to obtain vindication on account of delays that are not under his control. All that the victim of the offense may do on his part to initiate the prosecution is to file the requisite complaint."*
>
> In addition, Chief Justice Gesmundo extensively discussed the history of the pertinent laws and rules on the filing of complaint or information for criminal cases and the conduct of preliminary investigation in his Reflections. Based on an examination of these laws and rules, he aptly surmised:
>
>> [T]he use of the phrase "complaint or information" in Article 91 of the Revised Penal Code, Section 11 of the 1991 Revised Rules on Summary Procedure, and Rule II, Subsection B, Section 1 of [the] 2022 Rules on Expedited Procedures in the First Level Courts, for purposes of the tolling of the prescriptive period of offenses, must henceforth, be construed to refer to the filing of the complaint or information before the prosecution office.
>
> **But in line with the time-honored principle that the interpretation that is most favorable to the accused should be adopted with respect to laws on prescription of crimes, this new rule shall apply prospectively.**
>
> Accordingly, the Court resolves that, henceforth, the filing of the criminal complaint before the DOJ, even if it involves offenses that may be covered by the 2022 Rules on Expedited Procedures in the First Level Courts, shall toll the running of the prescriptive period. The ruling in Desierto and the subsequent case of Corpus, Jr. v. People of the Philippines, insofar as the tolling of the prescriptive period for crimes covered by the 2022 Rules on Expedited Procedures in the First Level Courts is concerned, is deemed abandoned. *(Citations omitted; Emphasis supplied)*

Notably, the ruling in *Consebido* (i.e., the filing of the criminal complaint before the DOJ shall toll the running of the prescriptive period) effectively abandoned the doctrine in *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*[2] (Lim) (i.e., that the

[2] G.R. Nos. L-48134-37, October 18, 1990.

running of the prescriptive period is interrupted by the filing of the Information before the Court and not by the filing of the complaint before the DOJ). Inasmuch as a new doctrine has been declared by the Supreme Court pertaining to prescription of tax offenses, indeed the prospective application of *Consebido* is warranted.

Considering that *Consebido* was promulgated only on April 2, 2025, it is therefore inapplicable to the present case which involves a tax offense allegedly committed on September 14, 2017. In my respectful view, the Court should still be guided by the Supreme Court's pronouncement in *Lim*, as well as Section 2, Rule 9 of the Revised Rules of Court of Tax Appeals, which provides that **the running of the prescriptive period is interrupted by the filing of the information before the Court** and not by the filing of the complaint before the DOJ.

Notwithstanding the foregoing, I agree with the *ponencia* that the prosecution failed to prove beyond reasonable doubt that accused violated Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended.

As discussed in the *ponencia,* to secure a conviction under Section 255 of the NIRC of 1997, as amended, the prosecution must establish beyond reasonable doubt the following essential elements: (1) the taxpayer is required to pay any tax, make or file a return, keep any record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations; (2) the taxpayer failed to do so; and, (3) the act is willful.

The above elements were not established in this case.

Indeed, the *first* element was not proven in this case. Inasmuch as the assessment notices were improperly served upon accused TPFPI and without such notice, accused could not have been made aware of the requirement to pay.

As to *second* element, contrary to the *ponencia*, it is my view that the same was also not established. Accused could not be deemed to have failed to pay the deficiency taxes considering that it was not even properly notified of the assessments against it.

Finally, with the *second* element not proven, there is likewise no act or omission which the Court may characterize as willful. As such, the *third* element is also not satisfied herein.

As to the civil liability, I concur with the finding that, while the acquittal of a taxpayer-accused does not necessarily obliterate the civil liability for deficiency taxes relative to the criminal case, accused is not civilly liable for the taxes assessed, considering that the assessment is void.

To add to the above, it bears emphasis that the Supreme Court in *People vs. Joel C. Mendez*[3] held that the government must prove by competent evidence, other than the assessment, the amount to which the civil liability for unpaid taxes may be based. In this case, however, the plaintiff failed to present competent evidence to establish the accused's civil liability, apart from the documentary and testimonial evidence stemming from the void assessment.

ALL TOLD, I vote to **ACQUIT** accused **The Property Forum Phils., Inc.**, and its president, accused **Manuel M. Alleje**.

CORAZON G. FERRER-FLORES
Associate Justice

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