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REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

Third Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

WONG YAN TAK,
GERALYN BOBIER,
and PIC N' PAC MART, INC.,
Accused.

CTA CRIM. CASE NO. O-090
(I.S. No. 07K-19049)
For: Violation of Sec. 255, in relation to Sections 253(d) and 256 of the 1997 National Internal Revenue Code

Members:
***BAUTISTA**, Chairperson*
***PALANCA-ENRIQUEZ**, and*
***COTANGCO-MANALASTAS**, JJ.*

Promulgated:
OCT 17 2012
ABFernando 1:56 p.m.

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DECISION

Accused **Wong Yan Tak** and **Geralyn Bobier** are being charged, as President and Store Manager of **Pic N' Pac Mart, Inc.** ("Pic N' Pac"), respectively, for Violation of Section 255, in relation to Sections 253(d) and 266 of the 1997 National Internal Revenue Code, as amended ("1997 NIRC"). This Decision shall only cover the liability of accused Wong Yan Tak .

The Facts

People of the Philippines, the prosecution, 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.

Accused Wong Yan Tak is a Filipino citizen, of legal age, married, with residential and postal address at No. 2080 Leveriza Street, San Andres, Manila.[1] He is the President of Pic N' Pac Mart, Inc., a domestic corporation registered with the Securities and Exchange Commission.

On July 11, 2008, an Information was filed against accused Wong Yan Tak, Geralyn Bobier and Pic N' Pac Mart, Inc.

On July 23, 2008, the Court, finding the existence of probable cause, issued Warrants of Arrest against the accused.[2]

On August 6, 2008, the Warrant of Arrest was served to Wong Yan Tak while Geralyn Bobier could not be found. Wong Yan Tak filed for bail, and upon payment was released on the same day.[3]

On August 21, 2008, accused Wong Yan Tak filed a "Motion for Re-Investigation," stating that he was totally unaware of the filing of the present case and that no Subpoena was received by him.[4] Accused alleges that the Subpoena issued by the City Prosecutor's Office was served to the same business address which is now being occupied by a different establishment, owned by a different proprietor.[5]

On August 27, 2008, the Public Prosecutor filed a "Motion to Amend Information with attached Amended Information," stating that there were typographical errors in the Information.[6]

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[1] *Records*, p. 609.
[2] *Id.*, pp. 13-18.
[3] *Id.*, p. 25.
[4] *Id.*, pp. 34-35.
[5] *Id.*, p. 35.
[6] *Id.*, pp. 39-40.

The Amended Information[7] reads:

> "The undersigned accusses WONG YAN TAK, GERALYN BOBIER and PIC N' PAC MART, INC. of VIOLATION OF SECTION 255, IN RELATION TO SECTIONS 253(d) and 256, 1997 TAX CODE, committed as follows:
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> That on or about September 9, 2005, and continuously up to the present, in the City of Manila, Philippines, the said accused, being then the President and Store Manager, respectively of the PIC N' PAC MART, INC. with business address at No. 1602 Adriatico St., Malate, Manila, and therefore the responsible officers of the said Corporation, to whom notices and demands were made by the Bureau of Internal Revenue, represented by Ramon B. Lorenzo, to pay the Corporation's 2002 tax obligations, to wit: PhP3,552,716.81 in VAT deficiency and P50,000.00 compromise penalties, or in the total amount of PhP3,602,716.81, under BIR Assessment Notice No. 33-2002, did then and there willfully, unlawfully and knowingly fail, refuse and neglect to pay the Bureau of Internal Revenue the said amount of PhP3,602,716.81 despite due notice and demand and without formally protesting and appealing the same with the proper authority, to the damage and prejudice of the Government of the Republic of the Philippines in the same sum of PhP3,602,716.81, Philippine currency.
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> CONTRARY TO LAW."

On September 10, 2008, the Court issued a Resolution ordering that an Alias Warrant of Arrest be issued against Geralyn Bobier, as the original Warrant of Arrest could not be served on her at the given address.[8]

On September 24, 2008, the Court issued a Resolution admitting the Amended Information, while granting the "Motion for Re-Investigation."[9]

On December 18, 2008, accused Wong Yan Tak filed a "Compliance and Manifestation," stating that he failed to receive a Subpoena from the City Prosecutor's Office for Manila, prompting him to file with the said office a "Motion

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[7] *Id.*, p. 41.
[8] *Id.*, p. 60.
[9] *Id.*, pp. 62-64.

to Re-Open" the case to enable him to file a Counter-Affidavit on November 7, 2008, but the same was being contested by the public prosecutor who believes that the "Motion to Re-Open" should be filed with the Department of Justice ("DOJ").[10] The public prosecutor filed a "Motion and Manifestation" on January 26, 2009 asking the Court to vacate its Resolution dated September 24, 2008 and for a new one to be issued directing the Office of the City Prosecutor of Manila to conduct the reinvestigation.[11] This was granted via a Resolution dated February 6, 2009.[12]

On May 14, 2009, the Court, seeing that the period for reinvestigation has lapsed, ordered the Assistant City Prosecutor Marilou T. Villanueva for a written status update.[13] In response, the prosecution filed an "Ex Parte Motion for Additional Time to Conduct Re-Investigation,"[14] which was subsequently granted.[15] On July 10, 2009, prosecution filed an "Ex Parte Motion to Set Case For Trial," stating that upon termination of the reinvestigation, there is sufficient evidence against the accused to sustain the allegations in the Information,[16] which was granted by the Court.[17]

On July 21, 2009, accused filed a "Motion to Defer Proceedings," stating his intent to file a Petition for Review with the DOJ, praying that the Court stays the proceeding until the resolution of the DOJ, in consonance with Section 11 Rule 116

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[10] *Id.*, pp. 65-79.
[11] *Id.*, pp. 82-84.
[12] *Id.*, p. 86.
[13] *Id.*, p. 97.
[14] *Id.*, pp. 98-102.
[15] *Id.*, p. 104.
[16] *Id.*, pp. 112-113.
[17] *Id.*, p. 117.

of the 1997 Revised Rules of Court.[18] On July 28, 2009, accused filed a Petition for Review with the DOJ.[19]

On January 14, 2010, the Court issued an Order stating that pursuant to CTA Administrative Circular No. 01-2010, this case was transferred to the Third Division of the Court.[20]

On April 26, 2010, the accused was finally arraigned, wherein he entered a plea of **NOT GUILTY**.[21] After the preliminary conference and pre-trial, a Pre-Trial Order was issued on June 7, 2010 as regards to accused Wong Yan Tak only.[22]

On January 13, 2011, prosecution filed its "Formal Offer of Evidence."[23] Accused then filed a "Motion for Leave of Court to File Demurrer to Evidence"[24] on January 20, 2011. On January 31, 2011, accused then filed a "Comment (to Private Complainant's Formal Offer of Evidence)."[25] These filing were resolved by the Court on February 21, 2011, admitting the pieces of evidence, and allowing the "Motion for Leave of Court to File Demurrer to Evidence."[26]

On March 14, 2011, accused filed a "Demurrer to Evidence," stating that his right to due process was violated and that the assessment was improperly made.[27] Prosecution filed on March 31, 2011 a "Comment/Opposition to Demurrer to

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[18] *Id.*, pp. 119-121.
[19] *Id.*, pp. 112-217.
[20] *Id.*, p. 258.
[21] *Id.*, p. 269.
[22] *Id.*, pp. 301-307.
[23] *Id.*, pp. 427-435, with Annexes.
[24] *Id.*, pp. 475-478.
[25] *Id.*, pp. 479-481.
[26] *Id.*, pp. 484-485.
[27] *Id.*, pp. 488-503.

Evidence," opposing all the causes for the instant dismissal of the criminal case.[28] However, the said Demurrer was denied in a Resolution dated July 15, 2011.[29]

Accused filed a "Motion for Reconsideration" of the denial of the Demurrer to Evidence on August 8, 2011.[30]

On August 4, 2011, accused then filed a "Motion to Dismiss," stating that the DOJ has ordered the City Prosecutor of Manila to withdraw the said case.[31] The "Comment/Opposition to Motion to Dismiss" was filed by the prosecution on August 23, 2011, stating that the DOJ cannot withdraw the Information at this stage, as the accused has been arraigned and the Court has denied a Demurrer to Evidence.[32]

On January 6, 2012, the Court issued a Resolution denying the "Motion for Reconsideration" on the Demurrer to Evidence, as well as the "Motion to Dismiss."[33]

Thus, on March 1, 2012, the accused filed his "Formal Offer of Exhibits (FOE),"[34] which the prosecution did not object to.[35] In a Resolution dated April 3, 2012, the Court denied the admission of Exhibit "1" and Exhibit "5," ordering both parties to file their memoranda within thirty (30) days from notice.[36]

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[28] *Id.*, pp. 504-508.
[29] *Id.*, pp. 513-518.
[30] *Id.*, pp. 519-527.
[31] *Id.*, pp. 528-534.
[32] *Id.*, pp. 546-548.
[33] *Id.*, pp. 556-563.
[34] *Id.*, pp. 568-588.
[35] *Id.*, pp. 589-591.
[36] *Id.*, pp. 593-594.

On April 20, 2012, accused filed a "Motion for Reconsideration"[37] on the admissibility of Exhibit "1," stating that the said document was inadvertently omitted, and that the prosecution did not propound any questions on the said document or inquire its authenticity.[38] The Accused also stated that the Certified True Copy of the said Asset Sale and Purchase Agreement dated January 10, 2000 was only acquired after his presentation and prior to the submission of the FOE.[39] As expected, this was opposed by the prosecution in a "Comment/Opposition (To Accused's Motion for Reconsideration dated April 20, 2012)."[40]

While the prosecution asked for an extension to file her "Memorandum,"[41] the accused filed his "Memorandum for the Accused"[42] on May 14, 2012. Only on May 25, 2012 did the prosecution file the "Plaintiff's Memorandum."[43]

On May 30, 2012, accused filed a "Motion to Mark" the Asset Sale and Purchase Agreement (Exhibit "1").[44] On July 26, 2012, the Court promulgated a Resolution which admitted the said document.[45]

Thus, on August 16, 2012, the case was deemed submitted for decision.[46]

Hence, this Decision.

Issues

Based on the respective Memoranda submitted by the parties, the issues to be resolved by the Court are as follows:

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[37] *Id.*, pp. 595-599.
[38] *Id.*, p. 596.
[39] *Id.*
[40] *Id.*, pp. 602-604.
[41] *Id.*, pp. 605-607.
[42] *Id.*, pp. 608-640.
[43] *Id.*, pp. 641-646.
[44] *Id.*, pp. 647-649.
[45] *Id.*, pp. 655-659.
[46] *Id.*, p. 662.

1. Whether or not the accused Wong Yan Tak may be held liable for violation of Section 255, in relation to Sections 253(D) and 256 of the National Internal Revenue Code; and

2. Whether or not accused Wong Yan Tak, as the responsible officer of the corporation, willfully failed to pay the 2002 deficiency tax liabilities of Pic N' Pac Mart, Inc.

Arguments of the Parties

The prosecution argues that Pic N' Pac Mart, Inc. is a corporate taxpayer, and that the accused is charged in his capacity as the President, for his failure to pay the 2002 deficiency VAT liabilities, amounting to Php3,552,716.81 and the compromise penalty of Php50,000.00.[47] From the records of the BIR, notices/demand for payment for the said liability were sent to the corporate address, as it was Pic N' Pact Mart's tax liability.[48] A demand letter was also sent to the President, particularly accused Wong Yan Tak at his last known address at 36 Lipa Street, Philam Homes, Quezon City.[49] Prosecution states that despite the notices/demand for payment, there was no payment made.[50] Prosecution contends that it has proven beyond reasonable doubt that the accused is the person required under the law to pay the deficiency VAT liabilities, due to his position in the corporation, and that his failure to pay was willful.[51]

On the other hand, accused claims that his right to due process of law was patently violated, as he was not properly served with the subpoenas, notices, demands, or any other form of communication that would have given him

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[47] *Id.*, pp. 642-643.
[48] *Id.*, p. 644.
[49] *Id.*
[50] *Id.*
[51] *Id.*, pp. 644-645.

opportunity to comply with the requirements of the BIR.[52] Accused states that there was no proof that the Pre-Assessment Notice (PAN) dated June 7, 2005 was sent via registered mail and was actually received, as no registry receipt or return card was presented, thus the assessments and notices sent were all void.[53]

Also, accused claims that the Final Notice of Assessment (FAN) was not properly served, and worse of all, could not be proven to have been sent at all to Wong Yan Tak.[54] Accused alleges that the BIR was unable to prove that it served properly all the other vital documents related to this case.[55]

Another point that the accused rests his defense on is the fact that Pic N' Pac Mart, Inc. was already sold to another entity, Goldhill Holdings Philippines, Inc. as early as January 10, 2000.[56] Thus, during the taxable year 2002, accused Wong Yan Tak was no longer the President, thus he cannot be held liable for assessment.[57] In fact, the original demand letter was addressed to Patrick Law, the President of Pic N' Pac Mart, Inc. initially. It was only upon learning of the latter's death did the BIR run after the accused.

Finally, accused notes that throughout the entire proceeding, the witness for the BIR failed to identify the accused Wong Yan Tak as the same person charged in the Information, which is a vital element in criminal prosecution.[58] While there

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[52] *Id.*, pp. 613-614.
[53] *Id.*, pp. 615-625.
[54] *Id.*, pp. 625-627.
[55] *Id.*, pp. 627-636.
[56] *Id.*, p. 636.
[57] *Id.*
[58] *Id.*, p. 637.

was an admission in the Pre-Trial Order dated January 7, 2010, it was not stipulated by the parties.[59]

Evidence Presented

The following pieces of evidence for the prosecution have been admitted:

Exhibit "A"	Quarterly VAT Return for 1st Quarter of the Year 2002
Exhibit "B"	Quarterly VAT Return for 2nd Quarter of the Year 2002
Exhibit "C"	Quarterly VAT Return for 4th Quarter of the Year 2002
Exhibit "D," "D-1," & "D-2"	Letter of Authority No. LOA 2000 00050731 dated March 26, 2004
Exhibit "E" & "E-1"	Second Request for Presentation of Records dated April 26, 2004
Exhibit "F" & "F-1"	Final Notice dated June 18, 2004
Exhibit "G" & "G-1"	Memorandum dated July 9, 2004
Exhibit "H"	1st Indorsement dated June 29, 2004
Exhibit "I," "I-1," "I-2," & "I-3"	Summons and/or *subpoena duces tecum* dated August 27, 2004
Exhibit "J" & "J-1"	2nd Indorsement dated February 11, 2005
Exhibit "K"	Revenue Officer's Audit Report on VAT – BIR Form No. 0507
Exhibit "L"	Memorandum Report dated February 17, 2005
Exhibit "M"	1st Indorsement dated March 2, 2005
Exhibit "N"	Assignment Slip
Exhibit "O" & "O-1"	Pre-assessment Notice dated June 7, 2005
Exhibit "P"	Letter of Armando G. Llovido, CPA dated June 30, 2005
Exhibit "Q" & "Q-1"	Assessment Notice No. 33-2002 dated September 9, 2005 for deficiency VAT in the amount of Php3,552,716.81
Exhibit "R" & "R-1"	Demand Letter (Demand No. 33-2002) dated September 9, 2005
Exhibit "S" & "S-1"	Demand Letter dated September 9, 2005 addressed to Pic N' Pac Mart, Inc. of 1602 Adriatico Street, Malate Manila for deficiency compromise penalty
Exhibit "T" & "T-1"	Preliminary Collection Letter dated January 16, 2006 addressed to Pic N' Pac Mart with Return Card with signature of addressee's agent
Exhibit "U" & "U-1"	Warrant of Distraint and/or Levy
Exhibit "V"	Report on Delinquent Accounts dated August 31, 2006
Exhibit "W" & "W-1"	2nd Indorsement dated October 6, 2006
Exhibit "X" & "X-1"	Demand Letter dated October 15, 2006 addressed to Mr. Patrick Law, Responsible Officer of Pic N' Pac Mart, Inc.
Exhibit "Y," "Y-1," "Y-2," "Y-3," "Y-4," "Y-5," & "Y-6"	Demand Letter dated April 12, 2007 addressed to Wong Yan Tak, President of Pic N' Pac Mart, Inc.
Exhibit "Z" & "Z-1"	Referral Letter of the Regional Director to the City Prosecutor of Manila dated October 23, 2007
Exhibit "AA" & "AA-1"	Affidavit of Ramon B. Lorenzo dated October 23, 2007
Exhibit "BB"	Resolution of ACP Marilou T. Villanueva dated February 19, 2008
Exhibit "CC" & "CC-1".	General Information Sheet of Pic N' Pac Mart, Inc. filed with the Securities and Exchange Commission

[59] *Id.*

The following pieces of evidence for the accused have been admitted:

Exhibit "1"	Asset Sale and Purchase Agreement dated January 10, 2000
Exhibit "2"	BIR Payment Form No. 0605
Exhibit "3"	Land Bank Deposit Slip dated March 17, 2009 amounting to Php232,134.00
Exhibit "4"	Quarterly VAT Return for 1st Quarter of the Year 2002
Exhibit "5"	Quarterly VAT Return for 2nd Quarter of the Year 2002
Exhibit "6"	Quarterly VAT Return for 4th Quarter of the Year 2002

Ruling of the Court

The relevant penal provisions of the 1997 NIRC are Section 255, Section 253(d), and Section 256.

Section 255 provides, as follows:

> "SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* - **Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax,** make a return, keep any record, or supply correct and accurate information, **who willfully fails to pay such tax,** make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, **at the time or times required by law or rules and regulations shall,** in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years." *(Emphasis supplied)*

On the other hand, Sections 253(d) and 256 read:

> "SEC. 253. *General Provisions.* -
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> x x x x x x x x x
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> (d) In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation."

> "SEC. 256. *Penal Liabiliry 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)."

Pursuant to said provisions, the following elements[60] have to be proven by the prosecution beyond reasonable doubt:

1. the corporate taxpayer is required to pay tax and it failed to pay such tax at the time required by law;

2. the accused is the president, general manager, branch manager, treasurer, officer-in-charge or employee responsible for the violation of the corporate taxpayer; and

3. the accused willfully fails to pay the corporate taxes.

Corporate Taxpayer is required to pay tax and failed to do so at the time required by law

With regard to the first element, Pic N' Pac Mart, Inc. is a registered taxpayer with Tax Identification Number 003-945-879-000.[61] A Pre-Assessment Notice was issued against the taxpayer on June 07, 2005,[62] while a Final Assessment Notice and Demand was issued on September 9, 2005.[63] Several letters were sent to the taxpayer requiring the immediate payment of the assessment,[64] which was now final, executory and demandable, as it remained unpaid beyond the thirty days (30) allowed by Section 228 of the 1997 NIRC, which states that:

"SEC. 228. *Protesting of Assessment.* - **When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings**:

x x x x x x x x x

[60] CTA Crim. Case No. O-114, May 16, 2012.
[61] Exhibit "A"
[62] Exhibit "O"
[63] Exhibit "R"
[64] Exhibit "T," "U," "V," "W," "X," and "Y."

> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
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> x x x x x x x x x
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> 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 one hundred eighty (180)-day period; **otherwise, the decision shall become final, executory and demandable."** (*Emphasis supplied*)

From the Memorandum filed by the accused on May 14, 2012, he relies heavily on the fact that he was not served properly with the Preliminary Assessment Notice and the Final Assessment Notice, as well as other vital documents, thus violating his due process rights. Accused relies on Section 228 of the 1997 NIRC which requires that a taxpayer be first notified of the findings of an assessment, based on law and facts before it can be considered a valid assessment.

While the Court agrees with the accused that the proper procedure prescribed under the law and the relevant regulations must be followed for a valid assessment, the Court cannot agree with the accused that his due process rights were violated in the present case.

The first element that corporate taxpayer is required to pay tax and failed to do so at the time required by law, is clearly shown in this case.

It must be stressed that the actual taxpayer in this case is Pic N' Pac Mart, Inc., which is a corporate entity separate from the incorporators. Since the assessment was for the corporate entity, there is no requirement under the law that the persons behind the said company should also be served with the documents pertaining to the assessment. All the law requires is that the actual taxpayer be served.

The case of *Commissioner of Internal Revenue v. Metro Star Superama*,[65] as cited by the accused, involves a different situation as in the present case, since the BIR failed to show that it indeed sent the PAN to Metro Star Superama. The BIR was unable to present a registry receipt or certification from the postmaster that it mailed the PAN to the corporation.

Again in the case of *People of the Philippines v. Joseph Typingco*,[66] the Court of Tax Appeals decided in favor of the accused because once again, the BIR was unable to show that the PAN was served properly to the corporation which the accused was part of.

In the Memorandum of the accused, the validity of the assessment against Pic N' Pac Mart, Inc. was never brought up, nor was it questioned, as the accused relied on the proper service of the PAN, FAN, etc. The accused did not even touch on the findings of the assessment. As such, the Court finds that the said assessment against the corporate entity was final and valid and that Pic N' Pac Mart, Inc. has a tax liability in favor of the Government. From the records, it is clear that a Final Demand has been issued, and that said tax liability has yet to be paid.

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[65] G.R. No. 185371, December 8, 2010, 638 SCRA 453.
[66] CTA Crim. Case No. O-114, May 16, 2012.

Accused is the President, and is responsible for the violation of the corporate taxpayer

As to the second element that the accused be proven to be either the president, general manager, branch manager, treasurer, officer-in-charge or employee responsible for the violation of the corporate taxpayer, the Court finds that the evidence adduced by the prosecution is clear and convincing.

In the Information against the accused, Wong Yan Tak was identified as the President of Pic N' Pac Mart, Inc. The prosecution presented the General Information Sheet ("GIS") filed with the Securities and Exchange Commission ("SEC"),[67] which clearly designates Wong Yan Tak as the President.

Under the Corporation Code of the Philippines,[68] corporations are required to submit to the SEC, within thirty (30) days after the election, the names, nationalities and residences of the elected directors, trustees and officers of the Corporation. In order to keep stockholders and the public transacting business with domestic corporations properly informed of their organizational operational status, the SEC issued the following rules:

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> "2. A **General Information Sheet** shall be flied with this Commission within thirty (30) days following the date of the annual stockholders' meeting. No extension of said period shall be allowed, except for very justifiable reasons stated in writing by the President, Secretary, Treasurer or other officers, upon which the Commission may grant an extension for not more than ten (10) days.

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[67] Exhibit "CC" and "CC-1."
[68] Batas Pambansa Blg. 68 (1980).

> **The General Information Sheet shall state, among others, the names of the elected directors and officers, together with their corresponding position title ...** " *(Emphasis supplied)*[69]

Thus, the BIR was correct in relying on the GIS when it searched for the responsible officer of the corporate taxpayer. While the said GIS was filed in the year 2000, the Court wants to point out that the copy was pulled from the database of the SEC on July 7, 2010.[70]

Obviously, the officers of Pic N' Pac Mart, Inc. did not submit the required GIS yearly, as required under the rules. Thus while it may be possible that there are changes within the corporate structure, we are bound by the last available corporate filing by Pic N' Pac Mart, Inc.

Equally revealing is the fact that the accused did not present any official corporate document showing that he was no longer connected with the corporation, nor did he controvert the GIS when it was presented as evidence.

Accused willfully failed to pay the corporate taxes

The accused, in trying to distance himself away from the corporation, presented an Asset Sale and Purchase Agreement,[71] showing that the establishment under Pic N' Pac Mart, Inc. was sold to Goldhill Holdings Philippines, Inc. Unfortunately, the said sale of the establishment does not affect the relationship of the accused with the corporation. Simply said, while the convenience store was sold, Wong Yan Tak remained as the President of Pic N' Pac

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[69] *Monfort Hermano.r Agricultural Development Corporation v.r. Monfort III, et aL*, G.R. Nos. 152542 and 155472, July 8, 2004, 434 SCRA 27.
[70] *Records*, pp. 471-474.
[71] Exhibit "1."

Mart, Inc. Thus, the liability of the corporate entity is still his responsibility, under Section 253(d) of the 1997 NIRC. It would have been a different situation all together had it been a sale/assignment of shares of Pic N' Pac Mart, Inc., rather than an Asset Sale and Purchase. In the former, had accused sold his shares to a third party, such would effectively cut his ties with the corporation.

While it is true that a corporation has a personality separate and distinct from the persons/stockholders composing it,[72] the accused herein is being held liable in his capacity as President of the corporation.

In order for the act of non-payment of the taxes be deemed a criminal act, the act must be "willful," a voluntary, intentional violation of a known legal duty.[73]

In this case, the Court finds the overall actions of the accused fits the said definition. Willfulness connotes the existence of "knowledge" and "voluntariness"; *viz.*, the taxpayer is aware or knows its tax liability but voluntarily and intentionally refuses to pay.[74]

Accused wants the Court to believe that from the day that he finalized the sale of the convenience store to Goldhill Holdings Philippines, Inc., he no longer had any ties with the business, and that the sale also terminated his relationship with Pic N' Pac Mart, Inc. Accused also claims that he was unaware of any of the transactions and investigations until a Warrant of Arrest was issued against him.

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[72] *Records*, p. 25.
[73] Mertens Law of Federal Income Taxation, Volume 15, 1988 Ed., Chapter 55A, p. 76.
[74] CTA Crim. Case No. O-114, May 16, 2012.

To support his claim, the accused has repeatedly denied knowledge of the assessment or even the filing of the criminal complaint until he was detained by the officers of the National Bureau of Investigation.[75] However, a perusal of the records of the case shows that consistently all of the mailed documents were sent to the address at No. 36 Lipa Street, Philam Homes, Quezon City, which was his registered address based on the GIS. While accused denies receiving all documents, it is quite surprising that he was actually served with the Warrant of Arrest at the same address, before he was taken into custody.

Given this circumstance, the Court can surmise that there was some type of avoidance in receiving the prior notices in order to maintain his claim that he was not informed of the proceedings. Thus, accused was fully aware of what was happening during the entire period, but was willfully avoiding his duty to comply with his legal liabilities.

The Court also finds that the accused's claim that he voluntary paid ten percent of the alleged VAT liabilities in order to help the Government with its collection drive to be illogical.[76] A person who staunchly maintains his innocence would not voluntarily pay a single centavo of a tax liability.

Equally telling is the accused's own submissions to the Court, specifically BIR Form No. 0605 (Payment Form).[77] A close scrutiny of the said document shows not only Pic N' Pac Mart, Inc. paying for its Value Added Taxes, but that Wong Yan Tak signed it in his capacity as President, even at that late date and for a

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[75] *Records*, p. 629.
[76] *Id.*, p. 569.
[77] Exhibit "2."

liability incurred in 2002 when he supposedly cut ties with Pic N' Pac Mart, Inc. in 2000.

Willfulness involves the mental state of the offender, and as seen throughout the entire proceeding and the submissions of the parties, accused willfully refused to pay the tax liabilities of Pic N' Pac Mart, Inc. which he, as President, was responsible for.

Thus, after a careful consideration and evaluation of the testimonial and documentary evidence presented by both parties, this Court finds that the prosecution was able to establish the guilt of the accused beyond reasonable doubt of the crime charged.

Moreover, the Final Assessment Notice and Demand for Payment had already become final, executory and demandable, for failure of Pic N' Pac Mart, Inc. or its responsible officers to dispute the said assessment. Accordingly, accused is barred from disputing the correctness of the assessments. Thus the accused is liable to pay the Bureau of Internal Revenue the 2002 deficiency value-added tax assessment, plus 20% delinquency interest per annum from September 9, 2005 until fully paid, pursuant to Section 249 of the 1997 NIRC, as amended, taking into consideration the amount already paid on March 17, 2009.

Also, as explicitly provided in Section 255 of the same Code, any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, who willfully fails to pay such tax, 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 not less than Ten thousand pesos

(Php10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years. Accused is not disqualified from the scope of the Indeterminate Sentence Law,[78] thus the same shall apply.

Considering the circumstances of the case involved, the imposition of a fine of Ten thousand pesos (P10,000.00) is proper, likewise, the imposition of indeterminate penalty of imprisonment of one (1) year as minimum, to two (2) years as maximum is appropriate. Section 280 of the 1997 NIRC, as amended, also provides for the imposition of subsidiary penalty in the event that accused has no property with which to meet the fine imposed upon him by the court, or is unable to pay such fine.

In addition, Section 256 of the same Code also imposes a monetary fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand (P100,000) on the corporation which has be held liable for any acts or omissions penalized under the 1997 NIRC, as amended, in addition to the penalties imposed on the responsible corporate officers upon conviction for each act or omission. Thus, a fine of Fifty thousand pesos (P50,000) is proper in this case.

WHEREFORE, premises considered, the Court finds and so holds that:

1) Accused **WONG YAN TAK** is **GUILTY BEYOND REASONABLE DOUBT** of Violation of Section 255 of the National Internal Revenue Code of 1997, *as amended*, and is hereby sentenced to suffer an indeterminate penalty of imprisonment of one (1) year, as minimum, to two (2) years, as

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[78] Act No. 4103, as amended by Act No. 4225 and Republic Act No. 4203, June 19, 1965.

maximum, and is **ORDERED** to pay a fine in the amount of P10,000.00, with subsidiary imprisonment in case accused has no property with which to meet the said fine, pursuant to Section 280 of the same Code;

2) As regards the civil liability, Court hereby **ORDERS** the accused **WONG YAN TAK** to pay the Bureau of Internal Revenue the amount of Php3,552,716.81, representing the 2002 deficiency value-added tax assessment, plus 20% delinquency interest per annum from September 9, 2005, until fully paid pursuant to Section 249 of the National Internal Revenue Code of 1997, as amended, taking into consideration the amount of Php232,134.00, already paid on March 17, 2009;

3) In addition, Court hereby **ORDERS** Pic N' Pac Mart, Inc. to pay Fifty thousand pesos (P50,000.00), pursuant to Section 256 of the same Code.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

	(On Leave)
OLGA PALANCA-ENRIQUEZ	**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice	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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII 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's Division.

ERNESTO D. ACOSTA
Presiding Justice