REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus-

MANUEL S. KOA,
Accused.

CTA Crim. Case No. O-344
For: Violation of Sec. 255 & 256 of the NIRC

Members:
Castañeda, Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

Promulgated:

JUN 2 5 2015
1:50 p.m.

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RESOLUTION

For resolution is the accused's *Motion to File Demurrer to Evidence with Express Leave of Court (with the Attached Demurrer to Evidence)* filed on June 1, 2015 without the prosecution's comment despite due notice.

Accused Manuel S. Koa is charged before this Court with violation of Sections 255 and 256 of the National Internal Revenue Code (NIRC) of 1997, under an Information which reads as follows:

> "That on or about February 17, 2012 in Caloocan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above name accused, in his capacity as President of Citypoly Industries, Inc., located in Ugong, Valenzuela City, did then and there willfully, unlawfully, feloniously, fail to pay deficiency Value-Added Tax liabilities amounting to P11,168,730.81 for the taxable year 2006 arising from a final, demandable and executory Assessment Notice/Formal Letter of Demand No. 31261[1] dated January 8, 2010, to the prejudice of the government in the aforementioned amount.
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> CONTRARY TO LAW."

A Warrant of Arrest[2] and Alias Warrant of Arrest[3] was issued against accused on February 4, 2014 and March 14, 2014, respectively. Accused

[1] Should be Demand No. 30680; see Exhibit "P-15", docket, p. 313.
[2] Docket, p. 158.
[3] Docket, p. 166.

posted a cash bail bond in the amount of P20,000.00 for his provisional liberty on September 15, 2014.[4]

Upon arraignment held on October 22, 2014, accused, assisted by his *de parte* counsel, Atty. Jerome F. del Rosario, entered a plea of "Not Guilty" to the charge.[5]

The preliminary conference was held on November 12, 2014[6] while the pre-trial conference was held on January 21, 2015[7].

During trial, prosecution presented the following witnesses to establish its case against the accused:

1. Ms. Corazon Cruz, Administrative Assistant with the Bureau of Internal Revenue (BIR) – Revenue Region (RR) No. 5, Caloocan City, to prove that assessment notices were issued, mailed and received by Citipoly Industries, Inc. (Citipoly, for brevity).[8]

2. Revenue Officer Angelita M. Saloritos, who prepared and reviewed the assessment notices, to prove that assessment notices were issued against Citipoly and that the assessment notices became final and executory.[9]

The prosecution also formally offered its exhibits marked as Exhibits "P-12" to "P-15", "P-31" to "P-31-A", "P-16", "P-30" to "P-30-A", and "P-32" to "P-32-A", which were admitted by the Court as evidence for the prosecution in the Resolution dated May 25, 2015.

On May 27, 2015, the Court granted the defense counsel a period of five (5) days from May 27, 2015 or until June 1, 2015 to file his Demurrer to Evidence and the prosecution was granted the same period of time from receipt thereof within which to file his comment thereto. Thereafter, the Demurrer to Evidence shall be deemed submitted for resolution.

On June 1, 2015, accused filed his *Motion to File Demurrer to Evidence with Express Leave of Court (with the Attached Demurrer to Evidence)*, while the prosecution failed to file its comment despite due notice. Hence, this resolution.

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[4] Docket, p. 174.
[5] Minutes of the hearing held on October 22, 2014, docket, p. 211; Resolution dated October 22, 2014, docket, pp. 214-215.
[6] Minutes of the preliminary conference, docket, pp. 218-229.
[7] Minutes of the hearing dated January 21, 2015, docket, p. 241.
[8] Exhibit "P-30" to "P-30-A", docket, pp. 268-270; minutes of the hearing dated February 18, 2015, docket, p. 272.
[9] Exhibit "P-32" to "P-32-A", docket, pp. 273-277; minutes of the hearing dated March 9, 2015, docket, p. 290.

In his *Motion to File Demurrer to Evidence with Express Leave of Court*, accused asserts that the prosecution's evidence failed to establish the commission of the offense based on clear and positive evidence, instead, prosecution relied on mere presumptions. Thus, the instant motion with the permission of the Court.

In the attached *Demurrer to Evidence*, accused argues that the prosecution failed to sufficiently establish the guilt of the accused.

The prosecution's first witness, Ms. Corazon Cruz, the Process Server of the BIR testified that she is the one who mailed the assessments and demand letter to the accused. But during her cross examination, she admitted that she is not the one who personally served the said assessments and demand letters to the address of Citiploy. Ms. Cruz even admitted that she did not know if the one who received the said assessments and demand letters is the duly authorized representative of Citiploy. Hence, there is doubt whether the said assessments and letters were indeed received by Citipoly.

The prosecution's second witness, Ms. Angelita M. Saloritos, revenue reviewer of the BIR, testified that she was the one who reviewed the assessment notices for Citipoly. However, accused submits that Ms. Saloritos is not credible to testify on the liability of Citipoly for the reason that she merely reviewed the findings, if any, of the revenue examiner. Ms. Saloritos is not the one who personally conducted the investigation and not the one who personally conducted the inspection of the books and accounts of Citipoly. In her cross examination, Ms. Saloritos admitted that she is not the one who conducted the investigation on Citipoly. She has no personal and special knowledge on the findings of the examiner and on the liability of Citipoly. Her testimony is hearsay and cannot be given credence and lacks probative value. The presentation of the examiner is material to establish the liability of Citipoly, without his testimony, prosecution cannot precisely establish the guilt of the accused.

Considering that the Court already allowed accused to file his Demurrer to Evidence during the May 27, 2015 hearing, accordingly, the *Motion to File Demurrer to Evidence with Express Leave of Court* is granted. The Court shall now resolve accused's *Demurrer to Evidence.*

A demurrer to evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.[10]

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

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

In relation to the above provision, Section 253 (d) of the NIRC of 1997, as amended, provides that "[i]n 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."

To establish the offense of "willfully fails to pay tax", the following elements 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.[11]

Considering that the instant case involves willful failure to pay deficiency VAT liabilities for the taxable year 2006 arising from a final, demandable and executory Assessment Notice/Formal Letter of Demand, it is proper to resolve first whether there is a valid Assessment Notice/Formal Letter of Demand from which the accused's requirement to pay deficiency VAT arises, since "a void assessment bears no fruit"[12]. Moreover, resolving this issue will likewise show if the failure to pay tax was "willful". It

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[10] *Gutib vs. Court of Appeals*, G.R. No. 131209, August 13, 1999.
[11] *People of the Philippines vs. Typingco*, CTA Crim. Case No. O-114, May 16, 2012.
[12] *Commissioner of Internal Revenue vs. Azucena T. Reyes*, G.R. No. 159694 & G.R. No. 163581, January 27, 2006.

becomes necessary for the prosecution to prove beyond reasonable doubt that accused, in representation of Citipoly, received the assessment notices or was aware of Citipoly's tax liabilities in order to impute upon him the required element of "willfulness" in the instant criminal prosecution.[13]

A careful review of the evidence presented by the prosecution shows that the prosecution failed to prove that Citipoly received the Final Assessment Notice (FAN) and Formal Letter of Demand (FLD).

In this case, a FAN[14] and FLD[15] dated January 8, 2010 were issued against Citipoly for taxable year 2006. To prove that the same were mailed to Citipoly on January 11, 2010, prosecution presented Registry Receipt No. 573[16] and to prove that the same were received by Citipoly on January 14, 2010, prosecution presented the corresponding Registry Return Notice No. 573[17].

However, based on the testimonial evidence presented by prosecution, prosecution failed to prove that the FAN and FLD were actually received by Citipoly, which violates the due process requirement of informing the taxpayer of the assessment enshrined in Section 228 of the NIRC of 1997, as amended, and Section 3 of Revenue Regulations No. 12-99.

In the case of *Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue*[18], the Supreme Court held that it is a requirement of due process that the taxpayer must actually receive the assessment, *to wit*:

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

[13] *People of the Philippines vs. Typingco*, CTA Crim. Case No. O-114, May 16, 2012.
[14] Exhibit "P-15", docket, pp. 311-316.
[15] *Ibid.*
[16] Exhibit "P-31" to "P-31-A", docket, p. 271.
[17] Exhibit "P-16", docket, p. 317.
[18] G.R. No. 155541, January 27, 2004.

> **enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer.**
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> In *Republic v. De le Rama*, ... We said:
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> The notice was not sent to the taxpayer for the purpose of giving effect to the assessment, and said notice could not produce any effect. In the case of *Bautista and Corrales Tan v. Collector of Internal Revenue* . . . this Court had occasion to state that 'the assessment is deemed made when the notice to this effect is released, mailed or sent to the taxpayer for the purpose of giving effect to said assessment.' ***It appearing that the person liable for the payment of the tax did not receive the assessment, the assessment could not become final and executory."*** *(Emphasis supplied)*

On cross examination, Ms. Cruz admitted that she does not know if the one who received the assessment notice was a representative of Citipoly, thus:

Q You said that a representative of Citipoly Industries received the Notices and Letters, correct?

A Yes, sir

ATTY. IROG:
Q And how sure are you that the one who received the Letters and Notices were indeed the Representative of Citipoly, the taxpayer in this case? You have no assurance that indeed it is the representative?

WITNESS:
A Sir nagdadala lang ito sa amin eh for mailing. Nagdadala lang po sa amin ng mga letters for mailing.

Q But you have no personal knowledge that it was indeed the representative? You have no personal knowledge of that?

A Yes, sir.[19]

The same was likewise admitted by Ms. Saloritos on her cross examination, *to wit*:

ATTY. IROG:
Q. Madame Witness, you mentioned in your answer, in Question No. 21 of your Judicial Affidavit, that Citipoly Industries Incorporated received the final assessment and formal letters of demand?

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[19] TSN, February 18, 2015 hearing, pp. 10-11.

MS. SALORITOS:
A. Yes, sir.

ATTY. IROG:
Q. How can you say that?

MS. SALORITOS:
A. We have a registered...(paused)

ATTY. IROG:
Q. Are you the one who sent the letter?

MS. SALORITOS:
A. No, the Billing Section and Administrative Division who is responsible for mailing.

ATTY. IROG:
Q. So, you are relying your answer based only on the registry receipt?

MS. SALORITOS:
A. Yes.

ATTY. IROG:
Q. But you have no knowledge if the Citipoly or any of the responsible officers duly received the letters?

MS. SALORITOS:
A. No.[20]

From the foregoing, there is doubt whether the accused or Citipoly or any of its duly authorized representative indeed received the FAN/FLD. Thus, the FAN/FLD issued by the BIR cannot be considered as final, demandable and executory.

A person is presumed innocent, unless proven otherwise. Finding that the prosecution's evidence against accused is insufficient to secure a conviction, the demurrer to evidence is granted.

In *People vs. Sandiganbayan*[21], the Court discussed the effect of granting a demurrer to evidence, *to wit*:

> "The demurrer to evidence in criminal cases, such as the one at bar, is *filed after the prosecution had rested its case*, and when the same is granted, it calls for an appreciation of the evidence adduced by the prosecution and its sufficiency to warrant conviction beyond reasonable

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[20] TSN, March 9, 2015 hearing, pp. 9-10.
[21] G.R. Nos. 137707-11, December 17, 2004.

doubt, resulting in a *dismissal of the case on the merits, tantamount to an acquittal of the accused.*"

Verily, the accused is acquitted of the crime charged.

WHEREFORE, premises considered, accused's *Motion to File Demurrer to Evidence with Express Leave of Court (with the attached Demurrer to Evidence)* is hereby **GRANTED**.

Accused's *Demurrer to Evidence* is **GRANTED**. Accordingly, Criminal Case No. O-344 is **DISMISSED** for failure of the prosecution to present sufficient evidence to establish the guilt of the accused. Consequently, the accused is **ACQUITTED** of the crime charged.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice