REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellant,

-*versus*-

RONALD PUNAY ROBIN,
Accused-Appellee.

CTA CRIM. CASE NO. A-19
(Criminal Case No. R-MNL-22-04632-CR)
For: Violation of Section 255 of the NIRC of 1997, as amended

Members:

MANAHAN, *Chairperson*
REYES-FAJARDO, *and*
ANGELES, *JJ.*

Promulgated:

AUG 13 2025
2:30 pm.

x- -x

D E C I S I O N

MANAHAN, *J.*:

Before the Court is an appeal by plaintiff-appellant People of the Philippines ("**People**")[1] from the *Decision* dated November 13, 2023 ("**assailed *Decision***")[2] and *Resolution* dated January 4, 2024 ("**assailed *Resolution***")[3] of the Regional Trial Court - Branch 47, Manila ("**RTC**").

The assailed *Decision* granted the *Demurrer to Evidence*[4] filed by accused-appellee Ronald Punay Robin ("**Robin**") and acquitted him of the charge of violation of Section 255 of the Tax Code, while the assailed *Resolution* denied the plaintiff-appellant's *Motion for Reconsideration on the Civil Aspect of the Resolution.*[5]

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[1] Docket, pp. 88 to 99.
[2] Docket, pp. 15 to 30.
[3] Docket, pp. 31 to 33.
[4] RTC Docket, Volume II, pp. 537 to 540.
[5] RTC Docket, Volume II, pp. 647 to 659.

ANTECEDENT FACTS

On November 23, 2017, the Bureau of Internal Revenue ("**BIR**") issued a *Letter of Authority* ("**LOA**") authorizing Revenue Officer Jefferson Ocampo and Group Supervisor Imelda Alsol to examine Robin's books of accounts and other accounting records for all internal revenue taxes for taxable year ("**TY**") 2016.[6] The LOA, together with a *Checklist for the Presentation/Submission of Documents/Records*,[7] was allegedly served upon Robin on November 27, 2017 at his registered business address: Rm. 402, Champ Bldg., Bonifacio Drive, Brgy. 650 Zone 068, Port Area, Manila.[8] Said LOA and checklist indicate that it was received by "Donald M. Reyes."

The BIR subsequently issued a *First Notice* requesting Robin to present the required accounting records. This was received by Donald M. Reyes on December 8, 2017.[9] Unheeded, the same was followed by a *Second and Final Notice*, which was received by Nerissa R. Endozo on January 15, 2018.[10]

On November 5, 2018, the BIR issued a new LOA authorizing Revenue Officer Jefferson Ocampo and Group Supervisor Imelda Alsol. This new LOA shows that it was also received by Donald M. Reyes on December 5, 2018.[11]

The BIR then issued an undated *Notice for Informal Conference* ("**NIC**") requesting Robin to appear at Revenue District Office No. 033 on or before February 18, 2019. The acknowledgment receipt portion thereof was signed by Donald M. Reyes, who indicated his/her position or designation as "customs representative."[12]

On July 18, 2019, the BIR issued the *Preliminary Assessment Notice* ("**PAN**") with attached *Details of Discrepancies* assessing Robin for deficiency income tax, value-added tax, and compromise penalty in the total amount of

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[6] RTC Docket, Volume I, p. 32.
[7] *Id.*, p. 29.
[8] *Judicial Affidavit of Revenue Officer Jefferson B. Ocampo*, Q & A no. 13, RTC Docket, Volume I, p. 389; *Joint Complaint-Affidavit*, par. 5, RTC Docket, Volume I, p. 24.
[9] RTC Docket, Volume I, p. 30.
[10] RTC Docket, Volume I, p. 31.
[11] *Id.*, p. 32.
[12] *Id.*, p. 33.

Php3,721,695.29, inclusive of interests.[13] The *PAN* and *Details of Discrepancies* were received on July 29, 2019 by "Donald Reyes," who indicated his/her designation as "customs rep." In a *Memorandum* dated July 29, 2019, Revenue Officer Ocampo reported that he/she "went to serve the PAN at Rm. 402 4th Flr. Champ Bldg. Bonifacio Drive, Brgy. 650 Zone 068, Port Area, Manila with Revenue Officer Edcris T. Tolentino. The documents were received by Donald Reyes, Customs Representative."[14]

Thereafter, the BIR issued the *Formal Letter of Demand* with final *Assessment Notices* ("**FLD/FANs**") dated August 20, 2019, which was received by Donald Reyes on September 5, 2019.[15] The FLD/FANs reiterated the findings in the PAN and required Robin to pay the total amount of P3,764,475.29, inclusive of adjusted interests. In a *Memorandum* dated September 6, 2019, Revenue Officer Ocampo reported that he/she served the FLD/FANs at the same address and that it was "received by Donald Reyes, Customs Representative."[16]

Due to Robin's failure to file an administrative protest, the BIR instituted collection proceedings on the premise that the assessments have become final, executory, and demandable.[17] A *Warrant of Distraint and/or Levy* ("**WDL**") dated November 25, 2019 was issued and received by Nerissa R. Endozo on even date.[18] Several *Warrants of Garnishment* ("**WOG**") dated December 17, 2019 were also issued and served to different banks.[19] However, Robin allegedly had no properties nor bank accounts under his name which may be distraint and garnished.[20]

Having been informed of the collection proceedings against him, Robin filed with the BIR on December 26, 2019 a *Request for Reinvestigation* dated December 18, 2019, alleging non-receipt of the LOA, NIC, PAN, and FLD/FANs.[21] The BIR denied the same in a letter dated February 6, 2020,[22] stating that said notices were served and received at Robin's registered

[13] *Id.*, pp. 36 to 39.
[14] *Id.*, p. 40.
[15] *Id.*, pp. 41 to 47.
[16] *Id.*, p. 48.
[17] *Joint Complaint-Affidavit*, par. 13, RTC Docket, Volume I, p. 25.
[18] RTC Docket, Volume I, p. 49.
[19] RTC Docket, Volume I, pp. 50 to 58.
[20] *Joint Complaint-Affidavit*, par. 16, RTC Docket, Volume I, p. 26.
[21] RTC Docket, Volume I, pp. 340 to 342.
[22] RTC Docket, Volume I, pp. 345 to 346.

business address. Thereafter, the BIR instituted a criminal complaint against Robin for willful failure to pay taxes.

PROCEEDINGS BEFORE THE COURT *A QUO*

On June 10, 2022, an *Information* was filed with the RTC charging Robin as follows:[23]

> The undersigned Assistant State Prosecutor of the Department of Justice hereby accuses RONALD PUNAY ROBIN for violation of Section 255 of the National Internal Revenue Code of 1997 (NIRC), as amended, committed as follows:
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> > Than on or about October 5, 2019, in the City of Manila, and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino citizen and proprietor of R.E.N.Z.R. Enterprises, with Tax Identification Number 175-411-904-000, and who is required by law, rules and regulation to file an accurate value-added tax return and to pay the correct amount of value added tax pursuant to Sections 105 and 106 of the NIRC of 1997, as amended, did then and there knowingly, willfully and unlawfully fail and refuse to pay the deficiency value-added tax for the taxable year 2016 in the amount of Seven Hundred Forty-Five Thousand Four Hundred Fourteen and 59/100 (Php745,414.59) pesos, exclusive of surcharge and interest, despite receipt of the assessment notice, on September 5, 2019, including prior notices to pay the said deficiency tax, without filing any protest, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount.
> >
> > **CONTRARY TO LAW.**
> >
> > Manila, 21 March 2021.

Robin was arraigned on June 28, 2022 and pleaded not guilty to the offense charged.[24]

[23] RTC Docket, Volume I, pp. 2 to 4.
[24] *Order* dated June 28, 2022, RTC Docket, Volume I, p. 263; *Certificate of Arraignment*, *Id.* at p. 262. am

During trial, the People presented two witnesses: Jefferson B. Ocampo[25] and Kristine Jyka C. Mengullo.[26] On June 20, 2023, the People filed *Plaintiff's Formal Offer of Evidence*,[27] to which Robin filed his *Comment To the Plaintiff's Formal Offer of Evidence*.[28] The RTC admitted all of the offered evidence.[29]

On August 1, 2023, Robin filed a *Motion for Leave of Court to File Demurrer to Evidence.*[30] The People was given (5) days from notice to comment,[31] but it failed to do so. In an *Order* dated September 5, 2023, the RTC granted the motion.[32]

On September 14, 2023, Robin submitted the *Demurrer to Evidence*,[33] arguing that: 1.) none of the exhibits offered tend to prove that Donald Reyes was authorized by him to receive the BIR's notices; and 2.) the assessment issued against him for deficiency value-added tax ("**VAT**") on undeclared income from importations is not supported by import documents.

In its *Comment/Opposition to Dumurrer* (*sic*) *to Evidence* filed on October 23, 2023,[34] the People argued that there was valid substituted service, and that tax assessments issued by the BIR are presumed to be valid and correct. Since the tax assessments in this case had allegedly become final, executory, and demandable, it can no longer be disputed, especially since Robin failed to raise the lack of supporting documents in his *Request for Reinvestigation* with the BIR.

On November 13, 2023, the RTC rendered the assailed *Decision*, the dispositive portion of which reads:

> Accordingly, the Criminal Case No. R-MNL-22-04632-CR for violation of Section 255 of the National Internal Revenue Code of 1997, as amended, is **DISMISSED** and accused **RONALD PUNAY**

[25] *Transcript of Stenographic Notes* dated April 18, 2023, RTC Docket, Volume I, pp. 430-456; *Offer of Testimony with Attached Judicial Affidavit of Revenue Officer Jefferson B. Ocampo, Id.* at pp. 384 to 396.
[26] *Transcript* dated June 6, 2023, RTC Docket, Volume I, pp. 466-484; *Offer of Testimony with Attached Judicial Affidavit of Revenue Officer Kristine Jyka C. Mengullo, Id.* at pp. 318 to 327.
[27] RTC Docket, Volume I, pp. 488 to 499.
[28] RTC Docket, Volume II, pp. 500 to 505.
[29] *Order* dated July 17, 2023, *Id.* at p. 506.
[30] *Id.* at pp. 510 to 513.
[31] *Id.* at p. 519.
[32] *Id.* at pp. 524 to 525.
[33] *Id.* at pp. 537 to 540.
[34] *Id.* at pp. 583 to 591.

> **ROBIN** is hereby **ACQUITTED** on the ground of insufficiency of evidence.
>
> **SO ORDERED**.

In the assailed *Decision*, the RTC found that the People failed to present evidence of valid service of the PAN and FANs; hence, the subject deficiency VAT assessment is invalid and cannot be a source of criminal liability of the accused. Particularly, the first element of the offense of violation of Section 255 of the Tax Code—*i.e.* that the accused is required to pay tax at the time specified by law or upon notice and demand—cannot be established from the evidence. The RTC also found that even assuming that there was valid service of the assessment notices, the alleged VAT liability was not shown by sufficient and competent evidence. Said liability supposedly stemmed from undeclared importations, but since the import entry documents were not offered in evidence, there is no basis for the allegation of such undeclared importations.

On November 22, 2023, the People filed its *Motion for Reconsideration on the Civil Aspect of the Resolution*,[35] seeking that the RTC uphold the validity of the deficiency VAT assessment and order Robin to pay the tax with interests. The People argued once again that there was valid substituted service of the FLD/FANs—emphasizing that Robin admitted that his office address is at Rm. 402, Champ Bldg., Bonifacio Drive, Brgy. 650 Zone 068, Port Area, Manila, where the notices were served, and that Donald Reyes continuously received such notices at the same address. The People also maintained that tax assessments enjoy the presumption of regularity, therefore, the burden is upon the taxpayer to prove that the findings of the BIR are incorrect or not made in good faith.

On January 4, 2024, the RTC rendered the assailed *Resolution* denying the aforesaid motion. The RTC noted that the arguments raised in the motion are mere rehash of the arguments already passed upon, and that while the civil aspect of the case is deemed instituted with the criminal case, there is no civil liability considering that the assessment is void.

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[35] RTC Docket, Volume II, pp. 647 to 659.

Aggrieved, the People, through the special prosecutors for the BIR, filed a *Notice of Appeal* with the RTC on February 5, 2024.[36] Finding that the same was timely filed, the RTC gave due course and caused the transmittal of the complete records of the instant case to this Court.[37]

PROCEEDINGS BEFORE THIS COURT

On February 12, 2024, the Court received the entire records of Criminal Case No. R-MNL-22-04632-CR entitled "*People of the Philippines -versus- Ronald Punay Robin*" consisting of two case folders. Herein plaintiff-appellant was then given thirty (30) days from receipt of notice to file its appellant's brief. The *Appellant's Brief*[38] was filed on May 7, 2024 and, per the Court's directive,[39] Robin filed his *Appellee's Brief* on July 8, 2024.[40]

On August 29, 2024, the present case was submitted for decision.

ASSIGNMENTS OF ERROR

Appellant assigns the following errors to the RTC:

I. The Court *a quo* erred in ruling that the prosecution failed to prove the undeclared importation;

II. The Court *a quo* erred in ruling that the prosecution failed to adduce proof that the appellee received the PAN and the FLD; and

III. The Court *a quo* erred in ruling that the prosecution failed to prove all the elements of the crime.

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[36] *Id.* at pp. 674 to 676.
[37] *Order* dated February 5, 2024, *Id.* at p. 677.
[38] Docket, pp. 88 to 99.
[39] *Minute Resolution* dated May 28, 2024, *Id.* at p. 121.
[40] *Id.* at pp. 125 to 133.

Appellant's arguments

The appellant sets forth only two arguments in support of its assignments of errors: *first,* that the undeclared importation is based on a valid assessment which had already become final, executory, and demandable; and *second,* that there was a valid substituted service of the assessment notices.

As to the first argument, the appellant propounds that Robin is liable for deficiency VAT on undeclared importation because the tax assessment had attained finality, therefore, it can no longer be disputed or disturbed even by the courts. Allegedly, the subject tax liability is long overdue, delinquent, and incontestable due to Robin's own failure to avail of the proper administrative and judicial remedies. According to the appellant, even tax assessments which are contrary to law can attain finality and become incontestable if not protested within the periods prescribed by law, as in this case. Thus, the court *a quo* supposedly erred when it still examined the factual basis and validity of the undisputed assessment. The appellant also stands firm on the presumption of validity of a tax assessment, and the presumption of regularity in its issuance by the BIR.

As to the second argument, the appellant maintains that Donald Reyes is Robin's customs representative and the person having charge of his office. As such, substituted service was validly made when the former received the assessments. The appellant concludes that since Robin failed to pay the deficiency VAT despite service of the FLD/FANs and repeated demands, he is liable for violation of Section 255 of the Tax Code.

Appellee's arguments

The appellee asserts that the BIR's argument on the finality of the tax assessment amounts to both a confirmation that the alleged undeclared importation is unsubstantiated and an excuse from proving its existence.

According to the appellee, there is no documentary evidence to support the finding of deficiency VAT on the alleged undeclared importation. He points out that during trial, Revenue Officer Jefferson Ocampo testified that he did not attach nor identify the import entry documents of the alleged purchases on which the deficiency VAT assessment was based—and this omission is sufficient to overturn the presumption of regularity invoked by the appellant. Since the alleged purchases were not proven to exist, there can be no civil liability for deficiency VAT thereon.

The appellee also contends that aside from appellant's allegations, there is no independent proof of his receipt of the assessment notices, or of the authority of Donald Reyes to receive the same on his behalf.

THE COURT'S RULING

The Court rules for the appellee.

Improper service renders the tax assessment void; void assessments cannot attain finality

Section 228 of the Tax Code provides that when taxes should be assessed, the Commissioner of Internal Revenue ("**CIR**") or his or her authorized representative must first notify the taxpayer through the issuance of the PAN:

> **SEC. 228.** ***Protesting of Assessment.*** - When the Commissioner or his [or her] duly authorized representative finds that proper taxes should be assessed, he [or she] shall first notify the taxpayer of his [or her] findings: *Provided, however*, That a pre-assessment notice shall not be required in the following cases:
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> ...
>
> 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.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his [or her] duly authorized representative shall issue an assessment based on his [or her] findings.

The issuance of the PAN is crucial as it presents an opportunity for both the taxpayer and the BIR to settle the case at the earliest possible time, without the need for the issuance of a FAN. Hence, the sending and actual receipt of the PAN is considered "part and parcel of the due process requirement in the issuance of a deficiency tax assessment that the BIR must strictly comply with."[41] Failure to properly serve the PAN so as to ensure receipt thereof by the taxpayer renders the tax assessment void.[42]

Upon receipt of the PAN, Section 228 of the Tax Code, as implemented by Revenue Regulations ("**RR**") No. 18-2013,[43] requires the taxpayer to respond within fifteen (15) days; otherwise, the FLD/FAN shall be issued. Section 3.1.1 of RR No. 18-2013 states:

> **SECTION 3.** ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*** —
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> **3.1.1 Preliminary Assessment Notice *(PAN)*.** — If after review and evaluation by the Commissioner or his [or her] duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based...
>
> If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he [or she] shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

The FLD/FAN contains not only a computation of the assessed deficient taxes but also a demand for payment within a prescribed period. As soon as it is served, an obligation arises on the part of the taxpayer concerned to pay the amount demanded, signaling the time when interests and penalties begin to accrue.[44] Because of the gravity of the FLD/FAN and

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[41] *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*, G.R. No. 244202, July 10, 2023 [Per J. Dimaampao, Third Division].
[42] *Id.*
[43] Subject: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, November 28, 2013.
[44] *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 04, 2021 [Per J. Hernando, Second Division]. *an*

its possible financial impact on the taxpayer, due process demands that it must also be served on and received by the taxpayer[45] or a duly authorized representative possessing a certain degree of discretion or understanding of its consequences.[46]

The proper service and receipt of the FLD/FAN enables the taxpayer to protest and prevent the tax assessment from becoming final, executory, and demandable.[47] This right to protest—likewise an integral part of due process[48]—is also enshrined in Section 228 of the Tax Code:

> **SEC. 228.** ***Protesting of Assessment.*** - ...
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> ...
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

As can be gleaned from the law, the taxpayer's failure to lodge a protest or appeal within the prescribed periods renders the tax assessment final, executory, and demandable. Consequently, without proper service and receipt, the FLD/FAN cannot attain finality as the taxpayer could not have protested it in the first place.[49] It cannot become final, executory, and demandable as the prescribed periods under Section 228 of the Tax Code would not even begin to run. Conversely, without proper service and receipt, the assessment

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[45] *Commissioner of Internal Revenue v. Menguito,* G.R. No. 167560, September 17, 2008 [Per J. Austria-Martinez, Third Division].

[46] *Mannasoft Technology Corporation v. Commissioner of Internal Revenue,* G.R. No. 244202, July 10, 2023 [Per J. Dimaampao, Third Division].

[47] *People v. Tiotangco,* G.R. No. 264192, November 13, 2023 [Per J. Lopez, Second Division].

[48] *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.* G.R. No. 223767, April 24, 2023 [Per C.J. Gesmundo, First Division].

[49] *See Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue,* G.R. No. 241848, May 14, 2021 [Per J. Carandang, First Division].

is rendered void for denial of the taxpayer's right to due process.[50] Well-settled is the doctrine that a void assessment bears no fruit.[51]

Having established the foregoing, the Court is hereby tasked to look into whether there was valid service of the PAN and FLD/FANs upon appellee Robin. If there is none, then the BIR's claim that the VAT assessment against him can no longer be disturbed by the courts must fall.

Section 3.1.6 of RR No. 18-2013 provides for the proper modes of service of the PAN and FLD/FAN:

> **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.
>
> 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.
>
> ...
>
> (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.[52]

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[50] *Id.*
[51] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.,* G.R. No. 185371, December 8, 2010 [Per J. Mendoza, Second Division].
[52] *Emphasis supplied.*

Based on the above rules and regulations, service may be made through the following modes: 1.) personal service; 2.) substituted service; and 3.) service by mail. In this case, the PAN and FLD/FAN were served through substituted service.

For substituted service at the taxpayer's registered or known address to be valid, the rules require that: *first*, it was not practicable to effect personal service; and *second*, the assessment notice is left with a clerk or person having charge of the place. Herein appellant failed to prove these requisites.

To prove that there was valid substituted service, the appellant merely presented in evidence the certified true copies of the PAN and FLD/FANs showing receipt thereof by Donald Reyes, who indicated his or her designation as customs representative. However, the records of the case are bereft of evidence tending to prove the authority of Donald Reyes in relation to the taxpayer. A perusal of the evidence reveals that there is nothing to establish the fact that Donald Reyes was appellee Robin's customs representative, clerk, employee, or person having charge of his office. The appellant also failed to establish that personal service was not practicable, or why substituted service was resorted to.

In view of these lapses, the deficiency tax assessment against appellee Robin is inescapably void.

The Court cannot overemphasize the stringent requirement that an assessment notice must be satisfactorily proven to have been issued and, if its receipt is denied, properly served on the taxpayer. This is a substantive requirement for the validity of the assessment.[53] Taxing authorities cannot simply rely on the presumption of regularity in the issuance of an assessment—for in any administrative action resulting in the deprivation of property, due process of law prevails over such presumption.[54] Owing to the potentially destructive nature of the power to tax, due process must be religiously observed for its exercise to be valid.[55]

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[53] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.* G.R. No. 185371, December 8, 2010 [Per J. Mendoza, Second Division].

[54] *The City Government of Antipolo v. Transmix Builders & Construction, Inc.*, G.R. No. 235484, August 09, 2023 [Per C.J. Gesmundo, First Division].

[55] *Noemi S. Cruz and Heirs Hermenegildo T. Cruz, represented by Noemi S. Cruz v. City of Makati, City Treasurer of Makati, The Register of Deeds of Makati, Laverne Realty and Development Corporation*, G.R. No. 210894, September 12, 2018 [Per J. Del Castillo, First Division].

Notwithstanding, however, the foregoing conclusion that the assessment is void, prevailing jurisprudence instructs that the lack of a valid assessment does not automatically preclude the Court from finding civil liability for unpaid taxes in a criminal case. Thus, the Court shall now proceed to determine whether the appellee is civilly liable for the alleged VAT on undeclared importation.

Civil liability for unpaid tax is independent of a criminal tax case, but it must be simultaneously determined in the latter

In a criminal tax case, the civil liability for any unpaid tax is not civil liability *ex delicto* which arises from the same act or omission constituting the crime. Such civil liability arises from a different source of obligation, *i.e.* the law. *People v. Mendez* ("***Mendez***")[56] explains:

> The obligation of the taxpayer to pay the tax is an obligation created by law; it is not a mere consequence of the felonious acts charged in the Information, nor is it a civil liability arising from the crime that could be extinguished by his acquittal in the criminal charge. Instead, **the finding of liability for unpaid taxes in the criminal tax case is a consequence of the government's exercise of its remedy to collect taxes in the same action to prosecute a criminal offense under the tax laws**. [*Emphasis in the original*]

As an independent civil liability, it is possible for an accused to be acquitted of the tax offense charged but adjudged to be liable for payment of the tax subject of the criminal case. For instance, the prosecution may fail to establish criminal intent to evade tax, but successfully proves that the assessment against the accused-taxpayer has become final, executory, and demandable.[57] Notably, unlike other independent civil liabilities,[58] the liability for the tax is not

[56] G.R. No. 208662, March 28, 2023 [Per J. Lopez, M., *En banc*].
[57] *See People v. Judy Anne Santos y. Lumagui,* CTA Crim. Case No. O-012, January 16, 2013 [Per J. Bautista, Third Division].
[58] *See Dy v. People*, G.R. No. 189081, August 10, 2016 [Per J. Jardeleza, Third Division]. "Our law states that every person criminally liable for a felony is also civilly liable. This civil liability *ex delicto* may be recovered through a civil action which, under our Rules of Court, is deemed instituted with the criminal action... However, the Rules of Court limits this mandatory fusion to a civil action for the recovery of civil liability *ex delicto*. It, by no means, includes a civil liability arising from a different source of

litigated in a separate civil action because Republic Act No. 9282 expressly requires that it be "jointly determined in the same proceeding" as the criminal case, *viz*:

> **Sec. 7. Jurisdiction.** – The CTA shall exercise:
>
> ...
>
> b. Jurisdiction over cases involving criminal offenses as herein provided:
>
> 1. Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code...: *Provided, however,* That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate. *Any provision of law or the Rules of Court to the contrary notwith-standing, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized.*

Mendez is categorical on this point:[59]

> Indeed, the institution of the criminal action shall carry with it the corresponding civil action for taxes and penalties. We have repeatedly held that the use of "shall" in a statute connotes the mandatory nature of the requirements and denotes an imperative obligation. Its use rendered the provision mandatory. Therefore, ***the government cannot file a civil suit for tax collection independently from the related criminal case***. Simply, the filing of a complaint for an offense that involves liability for unpaid taxes, such as willful neglect to file a return and pay the tax, willful failure to supply correct information in the return, and willful failure to withhold, account for, or remit withholding taxes, automatically carries with it the filing of a collection case for deficiency taxes.

Simply put, a criminal tax case is automatically deemed a tax collection case.

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obligation, as in the case of a contract. Where the civil liability is *ex contractu*, the court hearing the criminal case has no authority to award damages."

[59] *Emphasis supplied, citations omitted.*

Nonetheless, given the independent nature of the collection aspect of the case, *Mendez* affirms the doctrine[60] that a final and executory tax assessment is not a precondition to the filing of the criminal case because "the crime is committed by the *mere conduct* of the taxpayer and *not because he had delinquent taxes*."[61] A taxpayer who is guilty of illicit schemes may be held criminally liable, regardless of the amount of tax assessed.

Meanwhile, for purposes of collecting the tax in the same criminal proceeding, the amount of tax due must necessarily be assessed and established. This begs the question: Should the Court, as long as a criminal tax case is *filed*, determine and impose the amount of tax due even in the absence of a valid tax assessment?

As a general rule, collection must be preceded by a valid assessment. By way of exception, taxes may be collected without an assessment if their non-payment is based on falsity, fraud, or willful omission.

Prior to *Mendez*, the well-recognized rule is that the collection of unpaid tax presupposes the existence of a formal assessment and final decision issued by the CIR, even if such collection is made through a criminal action.[62] Section 205 of the Tax Code provides that the judgment in the criminal case shall also order the payment of the taxes "as finally decided by the Commissioner," *viz*:

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[60] *See Ungab v. Cusi,* G.R. No. L-41919-24, May 30, 1980 [Per J. Concepcion, Second Division]. "While there can be no civil action to enforce collection before the assessment procedures provided in the [Tax] Code have been followed, there is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution under the Code."
[61] *People v. Mendez,* G.R. No. 208662, March 28, 2023 [Per J. Lopez, M., *En banc*]. *Emphasis supplied.*
[62] *Id.*

> **SEC. 205.** ***Remedies for the Collection of Delinquent Taxes***. - The civil remedies for the collection of internal revenue taxes, fees or charges, and any increment thereto resulting from delinquency shall be:
>
> (a) By distraint of goods, chattels, or effects, and other personal property...; and
>
> (b) By civil or *criminal action.*
>
> Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes: ...
>
> *The judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case as finally decided by the Commissioner.*[63]

The requirement of a formal assessment is in line with the principle that taxpayers must be informed of the factual and legal bases for the government's claim before being deprived of their property. Jurisprudence consistently warns that to proceed heedlessly with tax collection without first establishing a valid assessment violates the cardinal rule in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence.[64] As held by the Supreme Court in *Commissioner of Internal Revenue v. Unioil Corporation* ("***Unioil***"):[65]

> Tax collection must be preceded by a valid assessment to allow the taxpayer to protest the assessment, present their case and adduce supporting evidence. Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made.

The seminal case of *Commissioner of Internal Revenue v. Fitness by Design, Inc.* ("***Fitness by Design***")[66] is instructive:

> *The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes...* An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay.

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[63] *Emphasis supplied.*

[64] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 197945, July 9, 2018 [Per J. Leonardo-de Castro, First Division].

[65] G.R. No. 204405, August 04, 2021 [Per J. Hernando, Second Division]. *Citation omitted.*

[66] G.R. No. 215957, November 09, 2016 [Per J. Leonen, Second Division]. *Emphasis supplied, citations omitted.*

...

Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. *Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation.*

...

Taxes are the lifeblood of government and should be collected without hindrance. However, the collection of taxes should be exercised "reasonably and in accordance with the prescribed procedure.

The requirement of a tax assessment prior to collection also ensures that courts do not engage in judicial assessment. Under our system of government, tax administration is a function of the executive branch, and the power to make a tax assessment is statutorily lodged with the BIR.[67] Courts, therefore, cannot make a finding of deficiency taxes unless the BIR's assessment itself is the subject of judicial appeal. In the case of *SME-ID Philippines Technology, Inc. v. Commissioner of Internal Revenue* ("***SME-ID***"), the Supreme Court declared:[68]

The Court of Tax Appeals has no power to make an assessment at the first instance. On matters such as tax collection, tax refund, and others related to the national internal revenue taxes, the Court of Tax Appeals' jurisdiction is appellate in nature.

...

Thus, the BIR first has to make an assessment of the taxpayer's liabilities. When the BIR makes the assessment, the taxpayer is allowed to dispute that assessment before the BIR. If the BIR issues a decision that is unfavorable to the taxpayer or if the BIR fails to act on a dispute brought by the taxpayer, the BIR's decision or inaction may be brought on appeal to the Court of Tax Appeals. The Court of Tax Appeals then acquires jurisdiction over the case.

However, under Section 222(a) of the Tax Code, the requirement of a tax assessment does not apply in cases of false or fraudulent return, or failure to file return. This is because in such cases, the taxpayer in bad faith already has knowledge of the correct taxes that he or she ought to have

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[67] TAX CODE, Sec. 2 and Sec. 6.
[68] G.R. No. 175410, November 12, 2014 [Per J. Leonen, Second Division].

declared and paid, but deliberately[69] concealed the same. To go through the regular process of tax assessment would be a farce—as it is through the taxpayer's own conduct that the government was prevented from making a proper tax assessment in the first place. Thus, Section 222(a) of the Tax Code provides:

> **SEC. 222.** ***Exceptions as to Period of Limitation of Assessment and Collection of Taxes.*** –
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or ***a proceeding in court for the collection of such tax may be filed without assessment***, at any time within ten (10) years after the discovery of the falsity, fraud or omission: ...

The filing of a false or fraudulent return and the willful failure to file return constitute a criminal offense under Section 255 of the Tax Code. On this score, the new guideline laid down in *Mendez* is on point:[70]

> (1) ***When a criminal action for violation of the tax laws is filed, a prior assessment is not required. Neither a final assessment is a precondition to collection of delinquent taxes in the criminal tax case.*** The criminal action is deemed a collection case. Therefore, ***the government must prove two things***: *one*, the guilt of the accused by proof beyond reasonable doubt, and *two, the* ***accused's civil liability for taxes by competent evidence*** *(other than an assessment).*

To contextualize the new guideline, the Supreme Court in *Mendez* sustained this Court's conviction of therein accused for two counts of violation of Section 255, particularly <u>willful failure to file return</u> for TY 2002 and <u>willful failure to supply correct information</u> in the return for TY 2003. However, the Supreme Court noted:

> ... in various tax-related criminal actions filed before the [Court of Tax Appeals ("CTA")], the CTA ruled on the innocence or guilt of the accused, but without a finding for the taxpayer-accused's civil liability for taxes in the criminal case because of the absence of a formal assessment issued by the CIR. Given the rule that a criminal prosecution for tax violation need not be preceded by a valid assessment, the question to be resolved now is whether a final assessment is a prerequisite to a judgment for civil liability

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[69] *See Mcdonald's Philippines Realty Corporation v. Commissioner of Internal Revenue*, G.R. No. 247737, August 08, 2023 [Per J. Inting, *En banc*].
[70] *Emphasis supplied.*

for unpaid taxes in the same criminal action. The Court definitively settles this question once and for all.

Citing the legislature's intent "to curtail the needless delays in the final disposition of tax cases as jurisdiction over criminal cases involving violations of the tax laws and the corresponding civil aspect cases are lodged with different courts," the Supreme Court declared Section 7(b)(1) of Republic Act No. 9282—which required the collection case to be simultaneously instituted with the criminal case—to have *impliedly repealed Section 205 of the Tax Code* insofar as it requires the judgment in the criminal case to also order payment of the taxes "*as finally decided by the Commissioner.*" Hence, the new guideline in *Mendez* is clear: "a formal assessment is no longer a condition precedent to the imposition of civil liability for unpaid taxes relative to the criminal tax case."[71]

Specific applicability of Mendez to the offense of willful failure to pay tax under Section 255 of the Tax Code

In the present case, appellant Robin was likewise charged of violation of Section 255 of the Tax Code, but for willful failure to pay tax. Unlike in *Mendez*, the alleged tax liability arising from the offense in the present case is not premised on a fraudulent or willfully omitted tax return, but on a final tax assessment issued by the BIR itself.

For purposes of applying *Mendez* case, it is therefore important to distinguish between the two modes of commission of the offense of willful failure to pay tax, namely:

1. *By deliberate misdeclaration or non-declaration of the correct amount of tax—i.e.* the taxpayer willfully failed to pay the correct tax due at the time specified by law for its payment by filing a false or fraudulent return, or by not filing a return; or

[71] *People v. Mendez,* G.R. No. 208662, March 28, 2023 [Per J. Lopez, M., *En banc*].

2. *By deliberate <u>refusal</u> despite lawful notice and demand—i.e.* the taxpayer willfully failed to pay the assessed tax after demand or the lapse of the period given by the CIR.

1st mode of commission: Failure to pay by misdeclaration or non-declaration of the correct amount of tax

Taxes are generally self-assessed. They are computed and voluntarily paid by the taxpayer. The government does not have to demand it. If the tax payment is correct, the BIR need not make an assessment.[72]

The first mode of commission is premised on the falsity, fraud, or omission committed by the taxpayer in making such self-assessment. It involves a design or scheme on the part of the taxpayer to evade payment—and mislead the government—by making a false or fraudulent return, or by willfully not filing a return at all.

The non-payment of tax based on this premise triggers the direct application of **Section 222** of the Tax Code. Due to the disadvantage brought to the government by the taxpayer's falsity, fraud, or omission, the law permits that "a ***proceeding in court*** for the collection of such tax may be filed ***without assessment***."[73] Such collection proceeding may be filed "at any time within **ten (10) years** after the discovery of the falsity, fraud or omission."[74]

Applying the *Mendez* guideline, when the erring taxpayer is prosecuted for violation of Section 255 in such case, **the criminal action shall simultaneously be the "*proceeding in court*"** for tax collection contemplated by Section 222. Note, however, that for <u>criminal</u> actions, the law specifically provides for a <u>shorter</u> prescriptive period. Under Section 281 of the Tax Code, the criminal action shall prescribe after **five (5) years**

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[72] *SME-ID Philippines Technology, Inc. v. Commissioner of Internal Revenue,* G.R. No. 175410, November 12, 2014 [Per J. Leonen, Second Division].
[73] TAX CODE, Sec. 222(a). *Emphasis supplied.*
[74] *Id.*

from the date of commission or, if not known, the discovery of the offense.

When the accused is convicted, it is thus immaterial for purposes of tax collection that no prior assessment was made by the BIR, or that a void assessment was made. Conviction carries with it the finding that the element of falsity, fraud, or willful omission exists. Collection need not be based on a tax assessment because the taxpayer's own conduct prevented the proper assessment of taxes. As long as the criminal action is filed within the five (5)-year prescriptive period, *Mendez* instructs that the government may prove the tax liability before the court by **competent evidence** other than the assessment.

On the other hand, when the accused is acquitted, distinction as to the kind of acquittal should be made.

If the acquittal is based on reasonable doubt on the guilt of the accused, collection may still proceed without an assessment, pursuant to Section 222, provided that: 1.) the element of falsity, fraud, or willful omission is established by **clear and convincing evidence**,[75] unless presumed by law;[76] <u>and</u> 2.) the tax liability is established by **competent evidence** other than an assessment. This is because the collection proceeding, while simultaneously instituted with the criminal action, remains independent of the latter and is not automatically extinguished by the acquittal.

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[75] *Commissioner of Internal Revenue v. Spouses Magaan*, G.R. No. 232663, May 03, 2021 [Per J. Leonen, Third Division]. "[F]or petitioner to invoke [Section 222 of the Tax Code], it must prove the following with clear and convincing evidence: (1) respondents received taxable income; (2) they underdeclared or did not declare the taxable income in their tax returns; and (3) they intended to evade payment of correct taxes due."; *See also Commissioner of Internal Revenue v. Villanueva*, G.R. No. 249540, February 28, 2024 [Per J. Caguioa, Third Division].

[76] TAX CODE, Sec. 248. "**SEC. 248.** ***Civil Penalties.*** ... (B) In case of willful neglect to file the return... or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case, any payment has been made on the basis of such return before the discovery of the falsity or fraud: *Provided, That* **a substantial under-declaration of taxable sales, receipts or income, or a substantial overstatement of deductions,** as determined by the Commissioner... shall constitute *prima facie* evidence of a false or fraudulent return: *Provided, further,* That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding (30%) of actual deductions, shall render the taxpayer liable for substantial under-declaration of sales, receipts or income or for overstatement of deductions, as mentioned herein. [*Emphasis supplied*]

For instance, an accused who was discovered to have made a substantial underdeclaration of taxable income may fail to overcome the presumption of fraud.[77] Hence, for purposes of enforcing civil liability, Section 222 which permits the collection of taxes without an assessment applies. The prosecution may establish the tax liability by competent evidence. However, because the presumption of fraud does not operate in the criminal aspect where the constitutional presumption of innocence prevails and each element of the offense must be proven beyond reasonable doubt, the accused—*although civilly liable for the deficient tax*—may be acquitted.

If, however, the acquittal is based on the very lack of falsity, fraud, or willful omission, then the circumstances in *Mendez* no longer obtain. What governs is **Section 203** in relation to **Section 228** of the Tax Code, as well as the doctrine upheld in *Unioil*, *Fitness by Design*, and *SME-ID*—that **tax collection must flow from a valid assessment**.

Section 203 categorically provides that taxes shall be assessed within **three (3) years** after the last day prescribed by law for the filing of the tax return:

> **SEC. 203.** ***Period of Limitation Upon Assessment and Collection***. – Except as provided in Section 222, internal revenue *taxes shall be assessed within three (3) years* after the last day prescribed by law for the filing of the return, and *no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period*: ...

Meanwhile, as earlier discussed, Section 228 outlines the procedure and due process requirements in the assessment of deficiency taxes.

Without the element of falsity, fraud, or willful omission, the law and jurisprudence strictly require that the regular assessment process and the 3-year statute of limitation under Sections 228 and 203 of the Tax Code be religiously observed. These cannot be bypassed by the mere expedient of *filing* a criminal case, and for the Court to determine the tax liability *despite finding the lack of falsity, fraud, or willful omission* would constitute a circumvention of these requirements.

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[77] *Id.*

In other words, if the Court, in the criminal action for violation of Section 255, acquits the taxpayer on the ground that no falsity, fraud, or willful omission was committed, the joined collection proceeding shall be extinguished by such acquittal because Section 222 no longer applies. The Tax Code expressly mandates that "except as provided in Section 222"[78]—*i.e.* except in cases of falsity, fraud, or willful omission—no collection shall be instituted without an assessment made pursuant to Section 228 and within 3 years pursuant to Section 203.

To be clear, the *Mendez* guideline which dispensed with said requirements applies in cases attended by bad faith or intent to evade tax. If the accused-taxpayer is found to be in good faith, then the government's legal ground for seeking the collection of taxes in a criminal case—outside the proper assessment procedure and ordinary prescriptive period—ceases to exist. There is no reason for the BIR to not have regularly and promptly made an assessment of any deficient taxes.

Accordingly, if a tax assessment was not validly made within the 3-year ordinary prescriptive period, collection can no longer be enforced even in the criminal case. The mere filing of a criminal case cannot resurrect the government's right to collect once it has already been barred by provision of law.

In *Commissioner of Internal Revenue v. Villanueva*,[79] the Supreme Court reaffirmed the time-honored rationale for the prescriptive period for the assessment and collection of taxes:

> The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because *after the lapse of the period of prescription, citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens.* Without such a legal defense, taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents.

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[78] TAX CODE, Sec. 203.
[79] G.R. No. 249540, February 28, 2024 [Per J. Caguioa, Third Division].

Verily, if the government fails to establish falsity, fraud, or willful omission at least by clear and convincing evidence, the Court can only impose civil liability for any unpaid tax if there is a valid assessment issued pursuant to the prescribed procedure and within the three-year prescriptive period set by law.

2nd mode of commission: Refusal to pay despite lawful notice and demand

The second mode of commission of the offense of willful failure to pay tax under Section 255 presupposes the existence of a deficiency tax assessment which has become final, executory, demandable, and upon which the collection is based. However, despite final notice and demand, the taxpayer refused to pay the deficiency tax due stated therein.

If the assessment is issued pursuant to Section 222 of the Tax Code (fraud assessment), the rule is that the fact of fraud shall be judicially taken cognizance of in a criminal case for the collection of the unpaid tax. Thus, the government has **five (5) years** from the date stated in the assessment to file a criminal case for violation of Section 255 and, in the same proceeding, enforce civil liability for the unpaid deficiency tax as determined in the same assessment. Pertinent portions of Section 222 are reproduced below for ease of reference:

> **SEC. 222.** ***Exceptions as to Period of Limitation of Assessment and Collection of Taxes***. –
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That *in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.*
>
> ...
>
> (c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof *may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.*

On the other hand, **if the assessment is issued pursuant to Section 203 in relation to Section 228 of the Tax Code, the government only has three (3) years to enforce collection,**[80] **whether by civil, criminal, or administrative action.**[81] It should be emphasized, however, that since the very cause of action in this particular mode of commission is grounded upon the supposed final, executory, and demandable assessment itself, it is logically necessary that the same be valid. Simply put, a taxpayer cannot be liable for failure to pay the tax as demanded in the FLD/FAN if the FLD/FAN itself is void.

The case of *Commissioner of Internal Revenue, et al. v. Court of Appeals, et al.*[82] illustrates the subtle but significant distinction of the non-payment of deficiency tax as finally determined and demanded by the CIR (second mode of commission) from the non-payment of correct tax by falsifying or not filing a return (first mode of commission):

> ...before the tax liabilities of Fortune are first finally determined, it cannot be correctly asserted that private respondents have willfully attempted to evade or defeat the taxes sought to be collected from Fortune. In plain words, before one is prosecuted for willful attempt to evade or defeat any tax under Sections 253 and 255 of the Tax Code, the fact that a tax is due must first be proved.
>
> Suppose the Commissioner eventually resolves Fortune's motion for reconsideration of the assessments by pronouncing that the taxpayer is not liable for any deficiency assessment, then, the criminal complaints filed against private respondents will have no leg to stand on.
>
> ...
>
> *There was a wilful attempt to evade tax in Ungad* [*sic*] *because of the taxpayer's failure to declare in his income tax return "his income derived from banana saplings."* In the mind of the trial court and the Court of Appeals, *Fortune's situation is quite apart factually since the registered wholesale price of the goods, approved by the BIR, is presumed to be the actual wholesale price, therefore, not fraudulent and unless and until the BIR has made a final determination of what is supposed to be the correct taxes, the taxpayer should not be placed in the crucible of criminal prosecution.* Herein lies a whale of difference between *Ungad* [*sic*] and the case at bar.

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[80] *Commissioner of Internal Revenue v. Philippine Global Communication, Inc.*, G.R. No. 167146, October 31, 2006 [Per J. Chico-Nazario, First Division].
[81] TAX CODE, Sec. 205.
[82] G.R. No. 119322 June 4, 1996 [Per J. Kapunan, First Division]. *am*

As can be gleaned from the foregoing, where the basis of the collection of tax in the criminal case is not the taxpayer's deceitful conduct but the BIR's own final assessment of what is supposed to be the correct taxes due, a declaration that such assessment is void extinguishes the very basis of the taxpayer's liability. There is no tax liability because there is no tax due.

The VAT sought to be collected in this case is neither premised on falsity/fraud nor proven by competent evidence other than the assessment; it is based solely on the void assessment.

Here, the appellant seeks to enforce civil liability for the alleged deficiency VAT for TY 2016 arising from the appellee's alleged undeclared importations.

A perusal of the records, however, shows that in making the tax assessment, the BIR did not impute falsity or fraud on the part of the appellee-taxpayer for the alleged undeclared importations. Neither did the appellant discuss falsity or fraud in its pleadings before this Court and the court *a quo*, much less prove the same by clear and convincing evidence.

The lone basis for the present action to collect is the uncontested tax assessment, which the appellant claims to be final, executory, and demandable.

However, as herein found by the Court, said assessment is void due to improper service. Consequently, there is no basis for the imposition of civil liability. For the Court to engage anew in its determination given the particular backdrop of this case would circumvent Section 203 and Section 228 of the Tax Code.

In any case, even if civil liability should be determined, the Court finds that there is no deficiency tax due.

In both the PAN and FLD/FANs, the basic deficiency VAT of Php745,414.59, which was the subject of the criminal case (and consequently collection case) against herein appellant, was computed in the following manner:

II. VALUE-ADDED TAX	
VATable Sales per return	₱ 332,191.67
Add: Adjustments per investigation: **Purchases not subjected to VAT**	**₱ 6,211,788.27**
Adjusted VATable Sales	₱ 6,543,979.94
Output Tax	₱ 785,277.59
Less: Input Tax claimed	-
VAT Due	₱ 785,277.59
Less: VAT Payments	₱ 39,863.00
Basic Tax Due	**₱ 745,414.59**

In the *Details of Discrepancies* attached to the PAN, the basis of the alleged VAT deficiency was explained as follows:

> Sir:
>
> I. INCOME TAX
>
> - Undeclared Income (Importation), ₱ 6,211,788.27 - Based on the submitted documents, **the company had importation amounting to ₱ 6,211,788.27 but failed to report to** [*sic*] **its income tax return**; hence assessed pursuant to Sec. 32 of the 1997 NIRC.
>
> Schedule 1:
>
> | | |
> |---|---|
> | Purchases per import entry documents | ₱ 6,211,788.27 |
> | Purchases per return | - |
> | Undeclared Income (Importation) | ₱ 6,211,788.27 |
>
> II. VALUE-ADDED TAX
>
> - Purchases not subjected to VAT ₱ 6,211,788.27 - As previously discussed above under income tax, **the undeclared importation (Schedule 1) resulted to undeclared sales which is also subject to VAT** under Title IV, Sections 105 and 108 of the NIRC of 1997, as amended which state that:
>
> Section 105. ...
>
> Section 108. ...[83]

The *Details of Discrepancies* attached to the FLD/FANs has the same contents.

[83] *Emphasis supplied.*

Records of the instant case, however, do not contain any document evidencing the alleged importation. Aside from the total amount of ₱6,211,788.27 "per import entry documents," no details such as a simple breakdown were provided. Even the import entry documents, which are the source of the amount of ₱6,211,788.27, were not attached. Glaringly, there is no basis for the tax liability in this case.

In fact, the appellant's own witness admitted during trial before the court *a quo*:[84]

> ATTY. NEPOMUCENO:
>
> Alright. Did you attach the documents that should prove the exact amount of Php745,414.59 to your judicial affidavit?
>
> WITNESS:
>
> No, Ma'am.
>
> ATTY. NEPOMUCENO:
>
> I have no more question, Your Honor.

Having failed to prove the alleged deficiency tax by any evidence, let alone competent evidence, there is no ground for the Court to order the payment of VAT for TY 2016.

ACCORDINGLY, plaintiff-appellant's appeal filed on May 7, 2024 is **DENIED** for lack of merit. The appealed *Decision* dated November 13, 2023 and *Resolution* dated January 4, 2024, both rendered by the Regional Trial Court - Branch 47, Manila in Criminal Case No. R-MNL-22-04632-CR, are hereby **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

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[84] *Transcript of Stenographic Notes* dated April 18, 2023, RTC Docket, Volume I, pp. 454.

WE CONCUR:

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
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.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice