REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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NIANG-NIANG LIM DONG, *Petitioner,*	**CTA EB Crim. No. 173** (RTC Case No. 24674) (MTCC Case No. 31633)
-versus-	Present: **RINGPIS-LIBAN,** *PJ* **BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** and, **ANGELES,** *JJ.*
HON. MARIVIC A. CACATIAN-BELTRAN, PRESIDING JUDGE OF REGIONAL TRIAL COURT BRANCH 03 CARIG, TUGUEGARAO, BUREAU OF INTERNAL REVENUE 03[,] *Respondents.*	Promulgated: APR 3 0 2026 1:15

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DECISION

REYES-FAJARDO, ***J.*****:**

Before Us is the Petition for Review[1] dated December 7, 2024, impugning the Judgment[2] dated June 28, 2024 and Order[3] dated October 1, 2024, both rendered by Branch 03, Regional Trial Court of Cagayan (RTC-Cagayan) in Criminal Case No. 24674. The impugned Judgment and Order sustained the Decision[4] dated March 30, 2023 and Resolution[5] dated June 19, 2023, both issued by Branch 02, Metropolitan Trial Court in Cities of Tuguegarao City (MTCC-Tuguegarao) in Criminal Case No. 31633. In turn, MTCC-Tuguegarao

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1 *Rollo,* pp. 8-34.
2 *Id.* at pp. 174-181.
3 *Id.* at p. 191.
4 *Id.* at pp. 116-131.
5 *Id.* at p. 142.

convicted Niang-Niang Lim Dong, for violation of Section 266, in relation to Section 5(c) of the 1997 National Internal Revenue Code (NIRC), as amended.

The facts follow.

In the Information[6] dated February 28, 2020, petitioner was charged before MTCC-Tuguegarao, for violation of Section 266, in relation to Section 5(c) of the 1997 NIRC, as amended, purportedly committed as follows:

> That on May 22, 2019, and subsequent thereto, in the City of Tuguegarao, Province of Cagayan, and within the jurisdiction of this Honorable Court, [petitioner] NIANG NIANG LIM DONG, who is an individual with the obligation to pay taxes pursuant to law[;] being the owner of the Minolta 888 General Merchandise located at No. 84 Bonifacio Street, Centro 7, this city, did then and there, willfully, unlawfully, and feloniously, fail to obey summons to generate/submit and/or release the following documents relative to her business, to wit: Z-reading, eSales, Journal, Sales Book for Cash Register Machine (CRM), back-end reports[,] and sworn statement; that despite the issuance of notices and a "SUBPOENA DUCES TECUM" for [petitioner] to appear at the Bureau of Internal Revenue (BIR), Revenue Region No. 03, this city, and to present and/or submit her eSales Journal for the year 2018 and 1st and 2nd quarter[s] of the year 2019, she failed and refused, and still fails and refuses up to the present to comply, resulting [in] the loss, damage, and prejudice of the Government, particularly the BIR, Revenue Region No. 03, this city, represented by the private complainants ANGELICA A. GUIMMNAYEN, BRIAN O. JURADO, and HOUDINI M. VIDAD, who are currently assigned as Revenue Officers at the Assessment Section of the BIR, Revenue District Office No. 13, Carig Sur, Tuguegarao City.
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> CONTRARY TO LAW.

Petitioner pleaded not guilty to said indictment.[7]

Via Decision[8] dated March 30, 2023, it was found that Regional Director[9] Clavelina S. Nacar (RD Nacar) issued a *Subpoena Duces Tecum* (SDT) dated July 2, 2019 to petitioner, commanding her to

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6 *Id.* at pp. 36-37.
7 Page 2, Decision (MTCC-Tuguegarao). *Id.* at p. 117.
8 *Supra* note 4.
9 Revenue Region No. 3.

appear on July 16, 2019 at 10:00 a.m., to bring and submit the documents specified therein. Petitioner received said SDT, through one Jaimie Anne Y. Datol. Despite receipt thereof, petitioner failed to appear on the scheduled date specified therein to produce the required documents. Specifically, instead of producing the same, petitioner moved to reschedule her appearance on the date and time in the SDT; precisely, MTCC-Tuguegarao disposed Criminal Case No. 31633, as follows:

> *WHEREFORE,* premises considered, this Court finds [petitioner] NIANG NIANG LIM DONG ***GUILTY*** beyond reasonable doubt and hereby enters a judgment of *CONVICTION* and sentences her to pay a fine of ₱10,000.00 with subsidiary imprisonment in case of non-payment and to suffer the straight penalty of imprisonment of [o]ne (1) year and four (4) months.
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> No pronouncement as to cost.
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> SO ORDERED.

Unconvinced, petitioner moved,[10] but failed[11] to overturn MTCC-Tuguegarao's Decision; thus, petitioner appealed[12] to RTC-Cagayan, docketed as Criminal Case No. 24674.

On June 28, 2024, RTC-Cagayan handed down the assailed Judgment,[13] affirming the verdict of MTCC-Tuguegarao, in this wise:

> **WHEREFORE**, premises considered, the court **DISMISSES** the appeal for lack of merit and **AFFIRMS** the Decision dated March 30, 2023 of the Municipal Trial Court in Cities Branch 02, Tuguegarao City in Criminal Case No. 31633.
>
> **SO ORDERED**.

Unrelenting, petitioner likewise moved,[14] but failed[15] to secure the reversal of RTC-Cagayan's verdict; hence, the present[16] recourse.

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10 *Rollo,* pp. 131-141.
11 *Id.* at p. 142.
12 Notice of Appeal. *Id.* at pp. 143-144.
13 *Supra* note 2.
14 Motion for Reconsideration (of the [Judgment] dated 28 June 2024). *Id.* at pp. 181-190.
15 *Supra* note 3.
16 *Supra* note 1.

Petitioner argues that the mission order (MO) from which the Bureau of Internal Revenue (BIR)'s investigation was based is irregular because: (1) it was issued based on Revenue Memorandum Order (RMO) No. 15-2008, an issuance not unrelated to the conduct of said investigation; and (2) Minolta Corporation cannot be required to produce the eSales Journal pertaining to other branches since the MO only stated "main branch."

Petitioner further gripes that no Formal Letter of Notice was given by the BIR to MC. What was provided instead are two (2) pieces of scratch papers, violative of pertinent rules and regulations.

Petitioner also complains that the Post Evaluation Guide (PEG) Form, issued after the post evaluation activity on May 22, 2019 was neither signed nor acknowledged by MC's supervisor. Upon return of the BIR Revenue Officer (RO) on May 27, 2019, a different PEG Form was given to Minolta Corporation's supervisor.

Petitioner, too, asserts that the SDT issued to MC is void because of the absence of the Memorandum Report required under RMO No. 10-2013, and the Demand Letter for production of eSales Journal.

Petitioner as well contends that the prosecution lacks evidence to show the basis for requiring her to submit the eSales journal mentioned in the SDT.

Besides, petitioner submitted the eSales Journal required in the SDT.

All in all, petitioner believes that she is entitled to an acquittal of the crime charged before MTCC-Tuguegarao, for failure to prove her guilt beyond reasonable doubt.

Respondent BIR failed to file its comment on petitioner's Petition, despite notice.[17]

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[17] Records Verification Report dated May 22, 2025. *Rollo*, p. 499.

RULING

We grant the Petition.

One of the tools in aiding the BIR in evaluating tax compliance is found under Section 5(c) of the 1997 NIRC, as amended. Such provision endows upon the Commissioner of Internal Revenue or his duly authorized representatives, the power to command the production of books, papers, records, or other data of any person liable for tax, required to file a tax return, or in the possession of said documents:

> SEC. 5. *Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons.* - In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or **in evaluating tax compliance**, the Commissioner is authorized:
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> ...
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> (C) **To summon** the person liable for tax or required to file a return, or any officer or employee of such person, or **any person having possession, custody, or care of the books of accounts and other accounting records containing entries relating to the business of the person liable for tax, or any other person, to appear before the Commissioner or his duly authorized representative at a time and place specified in the summons** and **to produce such books, papers, records, or other data, and to give testimony**;
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> ...[18]

To give teeth to Section 5(c) of the 1997 NIRC, as amended, Section 266 of the same Code, punishes by fine and imprisonment, neglect to comply with the BIR's **duly** issued summons:

> SEC. 266. *Failure to Obey Summons.* - **Any person who, being duly summoned to appear to testify, or to appear and produce books of accounts, records, memoranda or other papers,** or to furnish information as required under the pertinent provisions of this Code, neglects to appear or to produce such books of accounts, records, memoranda or other papers, or to

[18] Boldfacing ours.

> furnish such information, shall, upon conviction, be punished by a fine of not less than Five thousand pesos (P5,000) but not more than ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than two (2) years.

Indeed, Section 266 of the 1997 NIRC, as amended, punishes any person, who, despite being **duly** summoned, neglects to produce books of account, records, memoranda, or other papers required therein. The elements of this offense are: *first,* the offender is **duly** summoned; *second,* the offender is summoned to appear and produce books of accounts, records, memoranda or other reports, or to furnish information as required by the 1997 NIRC, as amended; and *third,* the offender neglects to appear or to produce the documents just mentioned.[19]

In relation to the *first* element, Black defines the word "duly" as "[i]n due or proper form or manner; according to legal requirements."[20] Following this definition, the summons issued to the offender must be in consonance with the legal requirements.

Towards this end, RMO No. 10-2013 spells out the legal requirements for the proper issuance of an SDT. Particularly, pertinent provisions of Roman Numeral III thereof read:

> III. Guidelines and Procedures
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> ...
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> 3.2 The Head of the Revenue District Office/Large Taxpayers Audit Division/Large Taxpayers District Office/National Investigation Division/Special Investigation Division concerned or any other officer duly delegated by the Commissioner (e.g., Head of the Letter Notice Task Force) **shall make a written notice** to any of the persons enumerated above to provide information or the **pertinent** books of accounts, accounting records and **particular or specific** documents.
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> ...
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> 3.3 **In case the information or records requested are not furnished within the period prescribed in the written notice, or when the information or records submitted are incomplete**, the concerned revenue officer conducting a verification or investigation

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19 See *Ang v. People,* CTA EB Crim. No. 096, February 22, 2024; *Ang v. People,* CTA EB Crim. No. 095, August 2, 2023; and *Go Lo v. People,* CTA EB Crim. No. 049, November 22, 2019.

20 Black's Law Dictionary, Revised Fourth Edition, p. 591.

> (covered by a Memorandum Order, Mission Order, Letter of Authority, Tax Verification Notice or Letter Notice) shall request for the issuance of SDT through a Memorandum Report, stating therein the relevant facts, specifying the particular documents or records not made available to him and the taxpayer liable or the third party/office concerned.
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> ...
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> 3.5 The Prosecution Division at the National Office, the Legal Divisions at the Regional Offices, or any other officer duly delegated by the Commissioner, as the case may be, **shall evaluate the request** within two (2) working days from receipt, **and on the basis thereof, undertake either of the following courses of action**:
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> ...
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> b. **Prepare the corresponding SDT** in three copies for signature of the Assistant Commissioner, Enforcement and Advocacy Service; Assistant Commissioner, Large Taxpayers Service; Revenue Regional Director; or any other officer duly delegated by the Commissioner, as the case may be, the distribution of which shall be as follows:
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> Original — to be served to the taxpayer
> Duplicate — attached to the docket of the case
> Triplicate — action lawyer file[21]

As it stands, for an SDT to be considered as being duly issued, *i.e.*, compliant with Section 5(c) of the 1997 NIRC, as amended, as implemented by RMO No. 10-2013, the following steps should be undertaken: *first*, the concerned BIR official shall make written notice to the pertinent person, requesting the latter "to provide information or the **pertinent** books of accounts, accounting records and **particular or specific** documents";[22] *second*, in case of failure to submit, or incomplete submission of specific or particular documents **requested in said written notice**, the pertinent BIR official shall prepare a memorandum report (MR) requesting for issuance of SDT;[23] and *third*, if the MR has merit, an SDT shall accordingly be issued.[24]

Reasonable doubt exists as to the observance of the *first* and *second* steps just mentioned.

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21 Boldfacing ours.
22 Item 3.2 of RMO No. 10-2013.
23 Item 3.3 of RMO No. 10-2013.
24 Item 3.5 of RMO. 10-2013.

To recount, petitioner was criminally charged[25] before MTCC-Tuguegarao, for failure to submit and/or present Minolta 888 General Merchandise (**MGM**)'s eSales Journal **for year 2018 and 1st and 2nd Quarters of year 2019**, per SDT[26] dated July 2, 2019.

Revenue Officer Brian O. Jurado (RO Jurado) said that the SDT dated July 2, 2019 was a result of a favorable action on its MR, recommending for the issuance thereof, for petitioner's failure to submit MGM's eSales Journal **for year 2018 and 1st and 2nd Quarters of year 2019**.[27]

RO Jurado then expressed that the BIR previously served RD Nacar's Letter-Directive[28] to MGM, requesting the submission of, *inter alia*, eSales Journal, ***sans* the specific periods**, within three (3) days from receipt of the Mission Order.[29]

Our evaluation of these incidents, in relation to the case record, yielded reasonable doubt as to the BIR's obedience with items 3.2 and 3.3 of RMO No. 10-2013. Consider:

First. RO Jurado said that he is cognizant that the directive to produce MGM's eSales Journal for 2018 and 1st and 2nd Quarters of 2019, should be contained in a letter-demand. Yet, RO Jurado professed that such letter-demand was not issued to MGM or petitioner, generating uncertainty as to adherence with item 3.2 of RMO No. 10-2013. Thus:

> ATTY. MATAMMU:
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> ....
> Mr. Witness, isn't it that you made mention in your judicial affidavit that you required based on a certain document[,] particularly your Question and Answer number 20 in your judicial affidavit that you asked Miss Datol to generate E-sales [journal for] taxable period 2018, [and] first and second quarter[s] 2019, as required in the letter directive, am I correct?
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> [RO JURADO:]

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25 *Supra* note 6.
26 See Annex "O28," Petition for Review. *Rollo*, p. 259.
27 See JA of RO Jurado. Annex "O4," Petition for Review. *Id.* at p. 235.
28 Annex "O8," Petition for Review. *Id.* at p. 239.
29 See JA of RO Jurado. Annex "O2" and "O3," Petition for Review. *Id.* at pp. 233-234.

Yes, attorney.

[ATTY. MATAMMU:]

I am showing to you what you claim as letter-directive, is there any specific statement in your letter-directive requiring the 2019 taxable period first quarter and second quarter of 2019 in your letter directive as you are claiming, Mr. Witness?

[RO JURADO:]

There is **no specified period as to the letter-directive** but documents are being required, attorney.

[ATTY. MATAMMU:]

Okay, and **despite the absence of the specific taxable period as to the E-sales journal of the accused [now petitioner], Mr. Witness, you did not issue any demand letter for that, am I correct?**

[RO JURADO:]

We did not issue, ma'am.

[ATTY. MATAMMU:]

You are mandated to issue a demand letter[,] stating that the accused [now petitioner] shall submit [the eSales Journal for] the first and second quarter[s] of 2019 and the whole year of 2018, am I correct?

[RO JURADO:]

Yes, attorney, however, there has been several times that we have reminded the taxpayer to submit to us the said requirements.

[MTCC-Tuguegarao:]

How did you remind the tax payer, the accused [now petitioner] in this case?

[RO JURADO:]

From the time, Your Honor...(unfinished).

[MTCC-Tuguegarao:]

...how, please understand my question: How?

[RO JURADO:]

Verbally[,] your Honor.

...[30]

Second. Assuming *arguendo* that RD Nacar's Letter-Directive was intended as the letter-demand referred to in RMO No. 10-2013, it fell short in complying with the condition of particularity or specificity of the required document likewise set forth in item 3.2[31] thereof.

Specifically, RD Nacar's Letter-Directive[32] mentioned eSales Journal. However, nowhere in said Letter-Directive does it hint, much less show, the particular or specific periods of eSales Journal MGM or petitioner is required to submit. If the BIR expects petitioner to compulsorily produce MGM's eSales Journal for 2018 and 1st and 2nd Quarters of 2019 in furtherance of tax compliance, it should have inscribed those periods in RD Nacar's Letter-Directive to particularize the same. Instead of writing what is needed, the BIR chose to just remind MGM *verbally*.[33] To stress, the eSales Journal referred to in RD Nacar's Letter-Directive, *sans* the precise period/s written therein, is a general, rather than a specific or particular document, offensive of item 3.2 of RMO No. 10-2013.

Third. The recommendation for the issuance of the SDT, along with the SDT itself, are rooted on the written notice to the pertinent person, requesting the latter "to provide information or the **pertinent** books of accounts, accounting records and **particular or specific** documents." To be precise, only upon failure to submit the particular or specific document referred to in said written notice, would the recommendation for the issuance of SDT be feasible.[34] *A fortiori*, the specific document in said written notice, should be the same as that of the recommendation for issuance of, and the SDT itself. Here, however, the recommendation for the issuance of, and the SDT stated eSales Journal *with* specified periods, *i.e.*, 2018 and 1st and 2nd Quarters of 2019, whereas the supposed written notice (RD Nacar's Letter-Directive) mentioned eSales Journal *without* periods. It means that the SDT and recommendation for the issuance thereof, did *not* match with such written notice, violative of item 3.3 of RMO No. 10-2013.

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30 Pages 25-26, TSN of Hearing held on February 16, 2022 in Crim. Case No. 31633. Boldfacing and words in brackets ours. *Rollo*, pp. 437-438.

31 Quoted in page 6 of this Decision.

32 *Supra* note 28.

33 *Supra* note 30.

34 Item 3.3, RMO No. 10-2013.

Fourth. In view of the reasonable doubt surrounding the BIR's proper adherence with items 3.2 and 3.3 of RMO No. 10-2013, the first element, *i.e.*, the summons should be **duly** issued, for one to be penalized under Section 266 of the NIRC, as amended, is likewise attended with uncertainty; precisely, petitioner is deserving of an acquittal. The ensuing passage from *People v. Sangcajo, Jr.*[35] warrants recapitulation as appropriate ending:

> The presumption of innocence in favor of an accused in a criminal case is a basic constitutional guarantee. It demands that the State must establish his [or her] guilt beyond reasonable doubt. To do so, the Prosecution must rely on the strength of its evidence, not on the weakness of his [or her] defense. Every reasonable doubt of his [or her] guilt entitles him [or her] to an acquittal.

ACCORDINGLY, the Petition for Review dated December 7, 2024, in CTA EB Crim. No. 173 is **GRANTED**. The Judgment dated June 28, 2024 and Order dated October 1, 2024, both rendered by Branch 03, Regional Trial Court of Cagayan in Criminal Case No. 24674 are **REVERSED** and **SET ASIDE**. Niang-Niang Lim Dong is **AQUITTED** of the crime charged in the Information dated February 28, 2020 in Criminal Case No. 31633 filed before Branch 02, Metropolitan Trial Court in Cities of Tuguegarao City, on the ground of reasonable doubt.

SO ORDERED.

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

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

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35 G.R. No. 229904, September 5, 2018.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

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

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice