22-000623-0055

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. O-999

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

NOTICE OF DECISION

LANILA MADAYAG DIAZ,
Accused.

To:

PROSECUTOR GENERAL RICHARD ANTHONY D. FADULLON
SENIOR DEPUTY STATE PROSECUTOR PETER L. ONG
PROSECUTION ATTORNEY CRISELDA B. TEOXON-YANGA
Department of Justice
Padre Faura Street, Ermita, Manila 1000

ATTY. CATHERINE ROSE R. TORTOLES
ATTY. JAMAICA KAY DELA CRUZ
ATTY. JAYSON G. ELLADO
ATTY. FRANCIS P. PRINCIPE
Bureau of Internal Revenue
Room 704, Prosecution Division, BIR National Office Building
BIR Road, Diliman, Quezon City

LANILA MADAYAG DIAZ-SALAYOG
1081 Millora Street, Lucao District
Dagupan City, Pangasinan

GALIAS & RIVERA LAW OFFICES
3rd Floor, Prestige Tower, F. Ortigas Jr. Road
Ortigas Center, Pasig City

GREETINGS:

You are hereby notified by these presents that on **January 15, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **January 15, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case No. O-999** For: Violation of Section 255 of the NIRC of 1997, as amended
-versus-	*Members:* **DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.*
LANILA MADAYAG DIAZ a.k.a. LANILA MADAYAG G. DIAZ-SALAYOG, Callejon Extension, Pogo Chico, Dagupan City, Pangasinan *Accused.*	Promulgated: JAN 15 2025 ; 8:33 a.m.

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DECISION

CUI-DAVID, J.:

Before the Court is the *Information*[1] filed on December 6, 2022, by plaintiff People of the Philippines (**Plaintiff**), charging accused Lanila Madayag G. Diaz-Salayog, with a violation of Section 255 of the National Internal Revenue Code (**NIRC**) of 1997, as amended.

THE PARTIES

Plaintiff is represented by the Bureau of Internal Revenue (**BIR**), the government agency mandated to collect national internal revenue taxes, with office address at the Prosecution Division, Room 704, 7th Floor, BIR National Office Building, Senator Miriam Defensor-Santiago Avenue, Diliman, Quezon City.[2]

[1] Docket, pp. 5–6.
[2] *Id.* at 432–451; Plaintiff's *Memorandum*, par. 3.

Accused Lanila Madayag Diaz-Salayog is of legal age, married, and with postal address at Callejon Extension, Pogo Chico, Dagupan City, Pangasinan.[3] She was the former sole proprietress of L.M. Diaz Trading and Construction, a sole proprietorship with registered business address at Callejon Ext. Brgy. Pogo-Chico, Dagupan City, Pangasinan.[4]

THE FACTUAL ANTECEDENTS

On December 6, 2022, plaintiff filed an *Information*[5] charging accused of committing a violation of Section 255 of the NIRC of 1997, as amended. The relevant portion of the *Information* reads as follows:

> That on or about 10 February 2020, in Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, being the owner of L.M. Diaz Trading and Construction, engaged in the business of building components and installation contractors and other retail sale in specialized works, with Tax Identification Number 401-216-779-000, and who is required by law, rules and regulations to file correct and accurate annual income tax return and to pay the corresponding income tax, did then and there, knowingly, willfully and unlawfully fail to pay deficiency income tax in the amount of Ten Million Six Hundred Seventy-Three Thousand One Hundred Fifty-Five and 74/100 (P10,673,155.74) Pesos, exclusive of interest and surcharge, for taxable year 2014, despite receipt of the Preliminary Assessment Notice, with Details of Discrepancies, on 14 November 2017, and Final Assessment Notice and Formal Letter of Demand, with Details of Discrepancies, and Assessment Notices issued on 11 December 2017, including prior and post-notices and demands to pay, the last of which being the Final Notice and Demand Before Suit dated 10 February 2020, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount.
>
> **CONTRARY TO LAW**.

The Court, finding probable cause, issued a warrant of arrest against accused in a *Resolution* dated January 10, 2023.[6] Subsequently, on March 2, 2023, the Court issued an *Order* accepting and approving accused's cash bail.[7]

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[3] *Id.* at 432–451, Accused's Memorandum, Parties, par. 2.
[4] *Id.* at 220–232, Pre-Trial Order, Summary of Stipulated Facts, par. 3.
[5] *Id.* at 5–6.
[6] *Id.* at 67–70.
[7] *Id.* at 105–106.

Accused was arraigned on September 6, 2023, during which she entered a plea of not guilty.[8]

At the hearing on October 11, 2023, plaintiff presented two witnesses: (1) Revenue Officer (**RO**) Grace May DG. Pacanas; and (2) RO Mary Ann R. Balubal, both of whom testified by way of their judicial affidavits.

RO Pacanas is currently a Revenue Officer IV and the OIC-Chief of the Tax Clearance Section. Previously, she served as a Seizure Agent in the Arrears Management Section, Collection Division of Revenue Region No. 1, Calasiao, Pangasinan. She testified regarding the personal service of the Preliminary Collection Letter (**PCL**) to Ms. Lina De Guzman, the service and receipt of the Warrant of Distraint and Levy (**WDL**) by accused, and the service of Warrants of Garnishment to various banks. She prepared the Memorandum Report recommending the filing of legal action against accused for her alleged willful failure to pay her income tax delinquent account for taxable year (**TY**) 2014. She also executed a *Joint Complaint-Affidavit* with Ms. Josephine B. Paragas (**Ms. Paragas**), which they filed before the Department of Justice in Dagupan City.[9]

RO Balubal currently serves as a Revenue Officer III in the Excise Large Taxpayers Audit Division I. Formerly, she was a Revenue Examiner in the Assessment Section of Revenue District Office No. 4, Calasiao, Pangasinan. She was the assigned RO who audited the accused's internal revenue tax liabilities for TY 2014. She testified about the service of the Letter of Authority (**LOA**) with the Checklist of Requirements to accused through Mr. Pedro S. Diaz (**Mr. Diaz**), the personal service of the *First Notice* to accused, and the service of the *Second and Final Notice Before Issuance of Subpoena Duces Tecum* to Ms. Elma Lorenzo. She further testified that she forwarded the docket to the Assessment Division, which led to the issuance of the *Preliminary Assessment Notice* (**PAN**) and the *Final Assessment Notice* and *Formal Letter of Demand* (**FAN/FLD**).[10]

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[8] *Id.* at 193–196.
[9] *Id.* at 182–188. Judicial Affidavit of Grace May DG. Pacanas.
[10] *Id.* at 168–176. Judicial Affidavit of Mary Ann R. Balubal.

On November 8, 2023, plaintiff filed its *Formal Offer of Evidence.* [11] The Court admitted plaintiff's exhibits in a *Resolution* dated January 12, 2024.[12]

During the hearing on January 17, 2024, the Court granted the defense counsel leave to file a *Demurrer to Evidence.* [13] Thus, on January 29, 2024, accused filed the *Demurrer to Evidence,*[14] but it was denied by the Court on June 13, 2024.[15] Accused's *Motion for Reconsideration (Re: Resolution dated 13 June 2024),* filed on June 25, 2024,[16] was also denied by the Court on August 5, 2024.[17]

On August 9, 2024, accused filed an *Omnibus Motion: 1) For Leave of Court to Present Additional Witness for the Accused 2) Admit Judicial Affidavit of Witness Pedro S. Diaz.*[18] The Court granted the motion during the hearing on August 14, 2024,[19] where it also resolved accused's *Formal Offer of Evidence.*

Accused's counsel presented accused Diaz-Salayog, who testified by way of her judicial affidavit.

On the August 14, 2024, the defense counsel presented two witnesses, namely: 1) Accused Lanila Madayag Diaz-Salayog; and 2) Mr. Diaz. Both witnesses testified by way of their judicial affidavits.

Accused testified that she was the former sole proprietor of L.M. Diaz Trading and Construction, which had its registered business address at Callejon Ext. Brgy. Pogo-Chico, Dagupan City, Pangasinan. She stated that the business ceased operations in 2017. She further testified that Mr. Diaz was not authorized to receive the LOA, Mr. Diaz was not connected to her business, and she offered and paid a compromise settlement equivalent to 10% of the basic tax assessment issued against her.[20]

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[11] *Id.* at 233–242.
[12] *Id.* at 268–269.
[13] *Id.* at 273–274.
[14] *Id.* at 278–285.
[15] *Id.* at 310–318.
[16] *Id.* at 319–331.
[17] *Id.* at 359–368.
[18] *Id.* at 369–372.
[19] *Id.* at 399–401.
[20] *Id.* at 199–206, Judicial Affidavit of Lanila Madayag Diaz-Salayog.

Mr. Diaz testified that the LOA was served by the BIR to him at his residential address at **Purok 1, Millora Street, Lucao District,** Dagupan City, Pangasinan on February 2, 2016, rather than accused's registered business address at **Callejon Ext., Brgy. Pogo-Chico**, Dagupan City, Pangasinan.[21]

Accused filed her *Memorandum* on September 13, 2024,[22] while plaintiff filed its *Memorandum* on September 16, 2024.[23]

The case was submitted for decision on October 7, 2024.[24]

THE ISSUES

The parties stipulated the following issues for this Court's resolution, *viz.*:[25]

As regards the ***criminal aspect***:

1. Whether or not accused Lanila Madayag Diaz-Salayog is liable for the alleged violation of Section 255 of the NIRC of 1997, as amended; and

As regards the ***civil aspect***:

2. Whether or not accused Lanila Madayag Diaz-Salayog is liable to pay the alleged deficiency income tax of P10,673,155.74, exclusive of surcharge and interest for taxable year 2014.

PLAINTIFF'S ARGUMENTS

Plaintiff argues that it has established all the elements of **Willful Failure to Pay Tax** under Section 255 of the NIRC of 1997, as amended. According to plaintiff, accused was required to pay taxes for TY 2014 amounting to ₱10,673,155.74, as a result of an audit investigation and assessment; that a formal demand was issued to accused, and her obstinate failure to pay the overdue tax, as indicated in the FAN/FLD, constitutes willful failure to pay taxes due to the government.

Plaintiff maintains the validity of the assessment, claiming that the LOA was properly served by way of substituted service.

[21] *Id.* at 373–375, Judicial Affidavit of Pedro S. Diaz.
[22] *Id.* at 432–451.
[23] *Id.* at 412–426.
[24] *Id.* at 455.
[25] *Id.* at 226, Pre-Trial Order, Issues to be Tried or Resolved.

It states that the LOA was received by accused's father, Mr. Diaz, on February 2, 2016. Plaintiff also emphasizes that accused duly received the FAN/FLD, as evidenced by Exhibit "P-10," and admitted receipt of the same in her *Protest* dated January 5, 2018.

Plaintiff further argues that accused's compromise payment cannot be deemed accepted, stating that the approval of a compromise is discretionary on the part of the BIR.

ACCUSED'S ARGUMENTS

Accused counters that plaintiff failed to prove the elements of the offense charged. She asserts that she filed her annual income tax return, submitted audited financial statements, and paid the taxes due for TY 2014.

Accused also states that the element of **willfulness** can only be established upon the valid service of the FLD, which she claims was not satisfied in this case. She alleges the improper service of the LOA, as it was served to her father, Mr. Diaz, who was not authorized to receive such document. Similarly, accused questions the service of the FAN/FLD, claiming that neither she nor her authorized representative personally received it. She highlights the irregularity in the process, stating, "why suddenly out of all the notices issued against [her], the [FAN/FLD] was sent through mail."

Accused maintains that the filing of a protest does not cure the defect of improper service of the LOA and the FAN/FLD. Accordingly, she argues that the element of willfulness has not been proven due to the improper service of the required notices.

Without admitting liability, accused claims that she has already settled the matter by paying a compromise amount equivalent to 10% of the basic tax assessed, which was approved by Ms. Paragas. Further, plaintiff presented evidence confirming that she had previously made an offer to settle her alleged tax liabilities, citing financial incapacity and business closure.

THE COURT'S RULING

The Court has jurisdiction over the instant case.

Section 7(b)(1) of Republic Act (**RA**) No. 1125,[26] as amended by RA No. 9282,[27] vests this Court with jurisdiction over criminal violations of the NIRC of 1997, as amended, to wit:

> 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 or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs: 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 notwithstanding, 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.

Similarly, Section 3(b)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals (**RRCTA**) provides:

> *Section 3. Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
>
> ... ...
>
> (b) Exclusive jurisdiction over cases involving criminal offenses, to wit: ...

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[26] An Act Creating the Court of Tax Appeals, June 16, 1954.

[27] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, March 30, 2004.

> (1) Original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs, where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is one million pesos or more; ...

Considering that the *Information* charges accused with a violation of Section 255 of the NIRC of 1997, as amended, and involves a principal tax amount of ₱10,673,155.74, exclusive of surcharges and penalties, the Court finds that it has jurisdiction over the instant case.

The Court now proceeds to determine the merits of the case. It finds it proper to first address the ***criminal aspect*** of the case, focusing on the following issue:

> Whether or not accused Lanila Madayag Diaz-Salayog is liable for the alleged violation of Section 255 of the NIRC of 1997, as amended;

Plaintiff failed to prove the <u>elements</u> required to establish a violation of Section 255 of the NIRC of 1997, as amended.

To reiterate, in the *Information* filed on December 6, 2022, accused was charged with violating Section 255 of the NIRC of 1997, as amended.

Section 255 reads:

> 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, ...

To sustain a conviction for failure to pay any tax under Section 255 of the NIRC of 1997, as amended, the following elements must be established:

1. The accused was **required under the NIRC of 1997 to pay any tax**, make a return keep any record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations; and

2. The accused **failed to pay the required tax**, make a return or keep the required record, or supply the correct and accurate information; and

3. The accused **willfully failed 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.

Under Section 2, Rule 133 of the Revised Rules of Court, plaintiff must prove accused's guilt beyond reasonable doubt, as follows:

"Rule 133

Sec. 2. *Proof beyond reasonable doubt.* – In a criminal case, the accused is entitled to an acquittal unless his guilt is shown beyond reasonable doubt. **Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty.** Moral certainty only is required or that degree of proof which produces conviction in an unprejudiced mind." (Emphasis supplied)

It is well-settled that the burden of proof rests with plaintiff. Unless plaintiff discharges this burden, accused is entitled to acquittal.

After a meticulous review of both the documentary and testimonial evidence presented by the parties, the Court finds the evidence offered by plaintiff to be insufficient to support a conviction for failure to pay tax under Section 255 of the NIRC of 1997, as amended.

Section 6 of the NIRC of 1997, as amended, requires taxpayers to pay assessed deficiency taxes upon notice and demand by the Commissioner of Internal Revenue (**CIR**) or his duly authorized representative, to wit:

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SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —

(A) Examination of Return and Determination of Tax Due. After a return has been filed as required under the provisions of this Code, the **Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax, ...**

<u>The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative</u>. ... . (Emphasis and underscoring supplied)

Accused was charged with failure to pay the assessed deficiency income tax despite the BIR's notice and demand. Plaintiff, therefore, must prove, through competent evidence, the *validity* of the assessment, as well as *proper* notice and demand for payment by the BIR.

In the instant case, accused claims that the assessment is void due to violations of due process. Specifically, she claims that both the LOA and the FLD were not personally served upon her. The LOA, with a checklist of requirements, was allegedly "improperly served" to Mr. Diaz, who was neither authorized by accused to receive such document nor her designated and authorized employee, [28] while the FAN and FLD were "improperly served" by mail without any explanation for deviating from the usual procedure of personal service. She noted that the FLD does not indicate receipt by her or her authorized representatives. Additionally, no registry return card or affidavit from the person who mailed the document was presented. Without valid proof of service, there can be no valid assessment, which is tantamount to a clear violation of accused's right to due process.[29]

On the other hand, plaintiff counters that the LOA was properly served on accused and the assessment is valid. Plaintiff argues that, based on the records, "the LOA was served by means of a substituted service and in accordance with [the pertinent regulations]. Thus, there is a proper service of LOA when the person who received it is Mr. Diaz, father of the accused, on February 2, 2016 at accused's registered address at Callejon Ext., Pogo Chico, Dagupan City, Pangasinan."[30]

[28] Docket, pp. 432–451, Accused's Memorandum, par. 41.
[29] *Id.* at 432–451, Accused's Memorandum, pars. 47–48.
[30] *Id* at 412–426: Pars. 25 to 28, Plaintiff's Memorandum.

Revenue Memorandum Order (**RMO**) No. 19-2015 provides that the assigned RO must present or serve the electronic LOA to the taxpayer or their representative in accordance with Section 3.1.6 of Revenue Regulations (**RR**) No. 12-1999, as amended by RR No. 18-2013. Revenue Memorandum Circular (**RMC**) No. 110-2020[31] reiterates this requirement.[32]

Thus, the modes of service under Section 3.1.6 of RR No. 18-2013, amending RR No. 12-1999, [33] apply not only to the service of notices (PAN/**FLD/FAN**/FDDA) to the taxpayer but also to the service of LOA. Section 3.1.6 provides:

> 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**.
>
> ... ...
>
> In case **personal service is not practicable**, <u>the notice shall be served by substituted service or by mail.</u>
>
> (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, <u>**with his clerk or with a person having charge thereof.**</u>
>
> If the known address is a place where business activities of the party are conducted, <u>**the notice may be left with his clerk or with a person having charge thereof.**</u>
>
> ... ...
>
> (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. ...

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31 Subject: Clarifications on the Proper Modes of Service of an Electronic Letter of Authority.

32 Under item III.23 of Revenue Memorandum Order (RMO) No. 19-2015, the Revenue Officer (RO) authorized to conduct examination of the books of accounts of a particular taxpayer shall present/serve a copy of the electronic Letter of Authority (eLA) to the concerned taxpayer in accordance with Section 3.1.6 of Revenue Regulations No. 12-99, as amended by RR No. 18-2013.

33 SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

> **The server shall accomplish the bottom portion of the notice**. He **<u>shall</u>** also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, **setting forth the manner, place and date of service**, the name of the person/barangay official/professional courier service company who received the same and such other relevant information. **The registry receipt issued by the post office** or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and **<u>shall be attached to the case docket</u>**. (*Emphasis supplied)*

In light of the foregoing, the Court now examines whether the LOA and the FAN/FLD were properly served in accordance with the specific guidelines provided under Section 3.1.6.

a. The LOA was improperly served to accused.

An LOA is the authority given to the appropriate RO assigned to perform assessment functions. It empowers or enables said RO to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax[34] or to recommend the assessment of any deficiency tax due.[35] The issuance of an LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representative.[36]

Clearly, there must be a grant of authority before any RO can conduct an examination or assessment. [37] In the absence of such authority, the assessment or examination is a nullity.[38] *The issuance of an LOA prior to examination and assessment is a requirement of due process.* It is not a mere formality or technicality.[39]

Accused's registered address, as stated in her Certificate of Registration with the BIR, is "**Callejon Ext., Pogo Chico,**

hm

[34] *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010, 649 SCRA 519–537 [Per J. Mendoza, Second Division].
[35] NIRC of 1997, as amended, Sec. 13.
[36] *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*, G.R. No. 242670, May 10, 2021 [Per J. Lopez, J., Third Division].
[37] *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010 [Per J. Mendoza, Second Division].
[38] *Id.*
[39] *Id.*

Dagupan City, Pangasinan."[40] This is the same address specified in the LOA.

During the October 11, 2023 hearing, plaintiff's witness, RO Balubal, testified that the LOA[41] was served at the registered or residential address indicated in the LOA and received by Mr. Diaz, who allegedly represented himself as accused's authorized representative:[42]

> ATTY. ELLADO:
> The person who received the document you mentioned a while ago, the person received the Letter of Authority is Mr. Pedro Diaz based on records.
>
> MS. BALUBAL:
> Yes.
>
> ATTY. ELLADO:
> Is it in their home or in their registered address?
>
> MS. BALUBAL:
> **Yes, registered address stated in her Letter of Authority.**
>
> ATTY. ELLADO:
> And why you served the Letter of Authority to Mr. Pedro Diaz? Is the accused not present during that time?
>
> MS. BALUBAL:
> Yes, Attorney.
>
> ATTY. ELLADO:
> So, what's the relationship of Pedro Diaz to the accused? Can you recall?
>
> MS. BALUBAL:
> I'm not sure if he is her father or husband.
>
> ATTY. ELLADO:
> Ms. Diaz is her maiden name. Diaz is her maiden name, the accused, so not the husband.
>
> MS. BALUBAL:
> I don't know, Attorney.
>
> ATTY. ELLADO:
> So, you're not sure?
>
> MS. BALUBAL:
> Yes, the relationship.

[40] Docket, p. 22, Exhibit "P-3".
[41] *Id.* at 23, Exhibit "P-4".
[42] TSN, Revenue Officer Mary Ann R. Balubal, October 11, 2023, pp. 34-36.

ATTY. ELLADO:
So, it was (inaudible) that he can receive the document because he was present at the house during that time?

MS. BALUBAL:
Yes, Attorney. He is at the residential address stated in the Letter of Authority.

ATTY. ELLADO:
Did Pedro Diaz represent himself as authorized representative of Lanila Diaz?

MS. BALUBAL:
Yes.

ATTY. ELLADO:
What did he tell you? Can you still recall when he received the Letter of Authority?

MS. BALUBAL:
I cannot remember anymore, Attorney. (*Emphasis supplied*)

However, contrary to the testimony of RO Balubal, Mr. Diaz testified that he received the LOA at his residence at *Purok 1, Millora Street, Lucao District, Dagupan City, Pangasinan*, not at the address specified in the LOA.[43]

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[43] Judicial Affidavit, Pedro S. Diaz, August 8, 2024, pp. 2-3.
5. Q : Mr. Witness, considering that you said that you are aware that your testimony will be offered in connection with this case, how are you familiar with this case, if at all?
A : I am familiar with this case because **I received the LOA dated 20 January 2016** related to this case.

6. Q : Where did you receive the LOA dated 20 January 2016?
A : I received the LOA dated 20 January 2016 at my residence at Purok 1, Millora Street, Lucao District, Dagupan City, Pangasinan.

7. Q : When did you receive it?
A : On 2 February 2016.

8. Q: What is this LOA dated 20 January 2016 all about, if you know?
A : I did not understand its contents other than the fact that it was addressed to my daughter Lanila Madayag Diaz at **Callejon Ext. Pogo Chico, Dagupan City.**

9. Q A Why did you receive it?
A : A representative of the BIR told me it was addressed to my daughter and I thought it was just an ordinary letter.

10. Q : Did the BIR explain to you the contents of the LOA dated 20 January 2016?
A : No ma'am. The representative of the BIR only told me "Wala namang magiging problema diyan kapag ni-receive niyo po yan sir."

11. Q : What happened next, if any?
A : I informed my daughter that there was a letter that was served by the BIR but the contents of which I did not understand.

On cross-examination, Mr. Diaz further clarified that accused resides in a different house on *Millora Street,* approximately 50 or 100 meters away from his residence.[44]

Thus, the Court notes that the LOA was not delivered to accused's registered or residential address. It was served to accused's father, Mr. Diaz, who was not authorized to receive such a document on her behalf.

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[44] TSN, Pedro S. Diaz, August 14, 2024, pp. 26-29.
ATTY. ELLADO:
Good morning, Mr. Witness.
Q. Nakakaintindi ka ba ng Ingles?
MR. DIAZ:
A. Puwede po ba tagalog?
ATTY. ELLADO:
Q. Mr. Witness, base sa Question No. 5, ikaw ay nakatira, saan ka nakatira nung na received mo yung Letter of Authority?
MR. DIAZ:
A. **Millora, Lucao District, Dagupan City, po.**
ATTY. ELLADO:
Q. **Nung panahon na 'yun nakatira din ba sayo si Lanila Diaz?**
MR. DIAZ:
A. **Hindi po, ako lang po ang nakatira doon.**
ATTY. ELLADO:
Q. Ah, ikaw lang mag-isa?
MR. DIAZ:
A. Oo.
ATTY. ELLADO:
Q. **So, saan mo natanggap ang Letter of Authority galing ng BIR?**
MR. DIAZ:
A. **Sa Lucao po. Sa aming bahay po sa Lucao District, Dagupan, po.**
ATTY. ELLADO:
Q. Lucao District?
MR. DIAZ:
A. Millora, Lucao District, Dagupan City, po.
ATTY. ELLADO:
Q. **So, hindi sa address ni Lanila Diaz?**
MR. DIAZ:
A. **Hindi po, may ibang bahay po sila.**
ATTY. ELLADO:
Q. **Saan po 'yung address ni Lanila Diaz?**
MR. DIAZ:
A. Sa Lucao din po pero malayo sa aming bahay po.
ATTY. ELLADO:
Q. Anong street po?
MR. DIAZ:
A. Millora din po.
ATTY. ELLADO:
Q. **Gaano po siya kalayo sa inyo, mga ilang bahay?**
MR. DIAZ:
A. **50 meters po. 50 or 100 meters ata yun, hindi ko matandaan, Sir.**
ATTY. ELLADO:
Q. Mga ilang bahay na lang po ang pagitan?
MR. DIAZ:
A. Walong (8) bahay po, eh.
ATTY. ELLADO:
Okay.
Walong bahay.
Q. Binigay mo ba 'yung Letter of Authority kay kay Lanila Diaz pagkatapos mong matanggap?
MR. DIAZ:
A. Hindi ko na po matandaan, Sir, dahil matagal na po
ATTY. ELLADO:
Q. Anong year po 'yun?
MR. DIAZ:
A. 2016 po.

Furthermore, RO Balubal's claim that she served the LOA to Mr. Diaz at the *registered address or residential address* indicated in the LOA is contradicted by the evidence on record. Upon review, the Court finds that the LOA was addressed to accused at *Callejon Ext., Pogo Chico, Dagupan City, Pangasinan.* Mr. Diaz's unrefuted testimony also revealed that it was instead served at his residence, located at *Purok 1, Millora Street, Lucao District, Dagupan City* — a location that is neither the registered address nor the residential address specified in the LOA – nor is it the residence of accused.

In addition, plaintiff failed to provide any justification for resorting to substituted service of the LOA on Mr. Diaz. The records lack any indication that personal service to accused was impracticable, which would have warranted such an alternative method.

Considering the above, the Court concludes that the LOA was invalid as it was improperly served to an unauthorized person. Without a valid LOA, the ROs named therein are without legal authority to conduct the examination or assessment. Consequently, the FAN and FLD issued against accused are null and void and cannot be enforced.

b. The FAN and FLD were not duly served and received by accused.

Plaintiff asserts that accused duly received the FAN/FLD as evidenced by Exhibit "P-10" and claims that accused admitted receipt of the FAN/FLD in her *Protest* dated January 5, 2018. On the other hand, accused contends that the FAN and FLD were improperly served, pointing out that neither she nor her authorized representatives received them. She questions why the FAN and FLD, unlike other notices issued against her, were suddenly sent via mail. She also maintains that the filing of a protest does not cure the defect of improper service.

Here, RO Balubal testified that the Assessment Division forwarded the FAN/FLD to the Administrative Division of Revenue Region I-Calasiao with instructions to serve them to accused. The Administrative Division purportedly mailed them to accused.[45] During cross-examination, RO Balubal admitted that she *did not personally serve* the FAN/FLD to accused, as

[45] Q & A Nos. 25 and 26, Judicial Affidavit of Mary Ann R. Balubal, Docket, pp. 168–176.

they were sent via *registered mail.* She claimed that accused received the notice, citing her *Protest Letter* on the FAN/FLD dated January 5, 2018, stating the Assessment Notice number.[46]

Upon examination of the *Protest Letter,*[47] the Court finds that accused did not acknowledge receipt of the FAN and FLD, and there is no indication of how they were served or received by accused.

Section 3.1.6 of RR No. 12-1999,[48] as amended by RR No. 18-2013,[49] expressly provides that the FAN/FLD be served by *personal delivery.* It is only when personal service is not practicable may *substituted service* or *service by mail* be employed.

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[46] ATTY. BALOLONG:
Okay. So, I will move on to my next question. In Answer No. 26 of your Judicial Affidavit, you mentioned that the FLD and FAN was served to Ms. Diaz. Your Honors, may I request that Exhibit P-9, FLD and FAN be shown to the accused? **So, Ms. Witness, did you personally serve the FLD and FAN to the accused?**
MS. BALULAL:
No, Attorney.
ATTY. BALOLONG:
To whom were these documents serve?
MS. BALUBAL:
It was the Assessment Division who mailed the Final Assessment Notice.
ATTY. BALOLONG:
So, you confirm that you did not serve it, Ms. Witness?
MS. BALUBAL:
Yes.
ATTY. BALOLONG:
And you mentioned that it was sent via registered mail, correct?
MS. BALUBAL:
It was mailed.
ATTY. BALOLONG:
It was mailed. So, was there an Affidavit stating that the FLD was sent via registered mail to the accused? Based on your Judicial Affidavit, did you mention of an Affidavit of Service?
MS. BALUBAL:
No.
ATTY. BALOLONG:
And can you confirm whether this FLD and FAN was received by the accused?
MS. BALUBAL:
Yes.
ATTY. BALOLONG:
What is your proof that it was received?
MS. BALUBAL:
Because of the letter protest submitted dated January 5, 2018 stating the Assessment Notice number.
ATTY. BALOLONG:
But can you confirm, Ms. Witness, that there was no attempt to serve the FLD and FAN personally to the person of the accused, that they immediately send it via mail? Can you confirm?
MS. BALUBAL:
It was the actually Assessment Division who will mail the Assessment Notices.
ATTY. BALOLONG:
So, you have no idea whether it was personally served?
MS. BALUBAL:
Yes, Attorney. (*Emphasis supplied*)

[47] Docket, pp. 48–51, Exhibit "P-10".

[48] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

[49] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

Notably, the prosecution failed to present competent evidence to justify why personal service was impracticable, which would have warranted service by mail. It bears stressing that Section 3.1.6 requires that resorting to sending the assessment notices via mail can only be done when personal service is not practicable.

Further, even if service by registered mail were justified, the prosecution failed to show compliance with the stringent requirements of RR No. 18-2013. The following deficiencies were noted:

(1) The space beneath the phrase "Copy Received by" at the bottom of the FLD, where accused or her duly authorized representative should have signed, was left blank;[50]

(2) The required "accomplishment at the bottom portion of the assessment notice" as mandated by RR No. 18-2013 was noticeably absent; and

(3) The required "written report under oath setting forth the manner, place, and date of service," and the "registry receipt issued by the post office" among other details required under RR No. 18-2013, were not submitted.

The prosecution's failure to present and formally offer the registry receipt and return card as proof of mailing and actual receipt of the FLD/FAN or to provide a witness who could testify accused's receipt of the assessment notice is fatal.

In *Republic v. Resins, Inc.*, [51] the Supreme Court emphasized the necessity of proper proof to establish actual receipt, stating:

> OSG's denial of receipt of the 17 March 1993 Judgment required Resins, Inc. to show proof that the Judgment was sent through registered mail and that it was received by the Republic. While the certification from the RTC Clerk of Court and photocopies of the return slips prove that the Republic was served the judgment, it does not follow that the Republic, via the OSG, actually received the judgment. Receipts for registered letters and return receipts do not prove themselves, they must be properly authenticated in order to serve as proof

[50] Docket, p. 36, Exhibit "P-9".
[51] G.R. No. 175891, January 12, 2011 [Per J. Carpio, Second Division].

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> of receipt of the letters. Resins, Inc. also did not show a certification from the postmaster that notice was duly issued and delivered to the OSG such that service by registered mail may be deemed completed. **It cannot be stressed enough that "it is the registry receipt issued by the mailing office and the affidavit of the person mailing, which proves service made through registered mail." Absent one or the other, or worse both, there is no proof of service**.
>
> Mere certification of the RTC Clerk of Court is insufficient because the Clerk of Court may not be the person who did the mailing. The certification in this case is also not under oath. There must be an affidavit of the person who actually did the mailing. In the present case, the certification of the Clerk of Court states:
>
> ...
>
> It is clear that the certification does not state that the Clerk of Court did the mailing. Mere photocopies of the return slips are also insufficient. **The original copies of the registry receipt or, in lieu thereof, the unclaimed notice and a certification from the postmaster of the issuance of notice, should be presented**. Indeed, we declared in *Delgado v. Hon. P.C. Ceniza*, et al. that:
>
> > We find that the service of the judgment rendered in the case suffers from two defects, namely, there is no affidavit of the clerk of court, the person mailing, and there is no registry return card, or a certified or sworn copy of the notice given by the postmaster to the addressee.
>
> While we concede that there may be a presumption of regularity, in the ordinary course of events, that the RTC Clerk of Court sent the 17 March 1993 Judgment to the OSG, such presumption should fail when the OSG itself denies receipt. **When the service of the judgment is questioned, such as in the present case, there is a need to present both the registry receipt issued by the mailing office and the affidavit of the person mailing**. Since the OSG presented proof of non-receipt, it became incumbent upon Resins, Inc. to prove receipt, which Resins, Inc. failed to do. [*Emphasis and underscoring supplied.*]

In *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc. (SEGI),* [52] the Supreme Court voided a deficiency assessment due to failure to prove proper service of the FLD by registered mail, *viz.*:

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[52] G.R. No. 223767, April 24, 2023 [Per C.J. Gesmundo, First Division].

> Guided by the rulings in *Menguito* and *Metro Star*, the Court holds that insofar as **the proper service of the formal letter of demand and assessment notice is part of the due process** requirement in the issuance of a deficiency tax assessment under Sec. 3 of RR No. 12-99, **the absence of such service renders nugatory any assessment made by the tax authorities.**
>
> In line with *Metro Star*, the Court similarly rules that the word "shall" in subsection 3.1.4 of RR No. 12-99 likewise describes the mandatory nature of the service of the formal letter of demand and assessment notice. In view of the ruling therein that the persuasiveness of the right to due process reaches both substantial and procedural rights, and that the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of the taxpayer's right to due process, the Court declares that **the CIR's failure to prove that the FLD-DDAN was properly served** on SEGI **by registered mail renders void the deficiency assessment issued by the CIR.** (Emphasis supplied)

Given the above precedents, the CIR's failure to properly serve the FLD/FAN to accused by registered mail renders the deficiency income tax assessment against her null and void. Without the registry receipt and an affidavit from the individual who mailed the notices, receipt of the FAN cannot be proven.

The fact that accused was able to file a protest against the FLD/FAN and even mention the FAN/FLD that was "issued to [her]" does not denigrate the fact that the FAN/FLD were improperly served and that she was deprived of her statutory and procedural due process right to contest the assessment. It is well settled that tax assessments issued in violation of a taxpayer's right to due process are null and void and bear no fruit.

The case of *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*[53] is particularly instructive:

> Notably, **this defect in complying with the requirements of due process was not cured by the fact that the taxpayer was able to file a protest to the FAN.** This Court has repeatedly enjoined strict observance by the BIR of the prescribed procedure for issuance of the assessment notices in order to uphold the taxpayers' constitutional rights. [*Emphasis supplied*]

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[53] G.R. No. 244202, July 10, 2023 [Per J. Dimaampao, Third Division].

In summary, the improper service of the LOA, coupled with the absence of proof of proper service and receipt of the FLD and FAN, renders the deficiency income tax assessment void. Without a valid assessment, the accused cannot be held to have committed the *second* (**failure to pay the required tax**) and *third* (**willful failure to pay such tax**) elements of the offense under Section 255 of the NIRC of 1997, as amended.

Plaintiff failed to establish accused's civil liability.

As regards the civil aspect of the case, the Court now determines the issue of:

> Whether or not accused Lanila Madayag Diaz-Salayog is liable to pay the alleged deficiency income tax of P10,673,155.74, exclusive of surcharge and interest for taxable year 2014.

Section 7(b)(1) of RA No. 9282 states that the *civil action* for the recovery of the civil liability of accused is deemed instituted with the filing of the criminal case against her, thus:

> **SEC. 7.** *Jurisdiction.* — The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> ... ...
>
> 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 ... and other laws administered by the Bureau of Internal Revenue ... . Any provision of law or the Rules of Court to the contrary notwithstanding, **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, <u>the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action</u>, and no right to reserve the filing of such civil action separately from the criminal action will be recognized.** (Emphasis supplied)

Based on the foregoing, the corresponding civil action arising from the violation of Section 255 of the NIRC of 1997, as amended, was likewise instituted with the instant criminal case.

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However, considering the Court's finding that the prosecution *failed* to prove the *second* and *third* elements of the offense, there can be no conviction of the offense charged. The *omission* punished under Section 255 of the NIRC of 1997, as amended, from which civil liability may arise, did *not* exist. This is explicit in Section 253 (a) of the NIRC of 1997, as amended, *viz.*:

> **Sec. 253.** *General Provisions.* —
>
> (a) **Any person convicted of a crime penalized by this Code shall, in addition to being liable for the payment of the tax, be subject to the penalties imposed herein:**
>
> *Provided,* That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution for violation of any provision of this Code or in any action for the forfeiture of untaxed articles. [*Emphasis supplied*]

It is settled that the civil aspect of a criminal case may survive an acquittal when based on reasonable doubt. [54] However, in this case, the Court finds no basis for civil liability since the acquittal of accused was grounded on the prosecution's failure to prove that the LOA, FAN and FLD were properly served to and received by accused. As such, the assessment notice was deemed null and void, thereby negating any obligation to pay the assessed deficiency income tax.

In fine, accused's civil liability was not proven. The improper service of the LOA and the lack of proof of proper service and receipt of the FAN and FLD render the deficiency income tax assessment null and void. Without a valid assessment, neither a conviction nor any corresponding civil liability can arise under the NIRC of 1997, as amended.

WHEREFORE, in light of the foregoing, accused Lanila Madayag Diaz a.k.a. Lanila Madayag G. Diaz-Salayog is **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt. There being no competent evidence to prove any civil liability on her part, accused is also exonerated from the same.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

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[54] *Dy v. People of the Philippines, et al.*, G.R. No. 189081, August 10, 2016 [Per J. Jardeleza, Third Division].

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice