REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

IRA GENERAL SECURITY SERVICES, INC. and TRANQUILINO R. AGLUGUB, JR.,
Accused.

CTA Crim. Case No. O-776

For: Violation of Section 255, in relation to Sections 253 and 256, of the NIRC of 1997, as amended

x - x

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

IRA GENERAL SECURITY SERVICES, INC. and TRANQUILINO R. AGLUGUB, JR.,
Accused.

CTA Crim. Case No. O-777

For: Violation of Section 255, in relation to Sections 253 and 256, of the NIRC of 1997, as amended

x - x

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

IRA GENERAL SECURITY SERVICES, INC. and TRANQUILINO R. AGLUGUB, JR.,
Accused.

CTA Crim. Case No. O-778

For: Violation of Section 255, in relation to Sections 253 and 256, of the NIRC of 1997, as amended

Present:

CASTAÑEDA, JR., *Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated: JUN 22 2022
9:30 a.m.

x - x

DECISION

BACORRO-VILLENA, J.:

At bar are three (3) consolidated criminal actions filed against accused Ira General Security Services, Inc. (**IGSSI**) and Tranquilino R. Aglugub, Jr. (**Aglugub**) for violations of Section 255[1], in relation to Sections 253[2] and 256[3] of the National Internal Revenue Code (**NIRC**)

---

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

Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of an internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years.

[2] **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.

(b) Any person who willfully aids or abets in the commission of a crime penalized herein or who causes the commission of any such offense by another shall be liable in the same manner as the principal.

(c) If the offender is not a citizen of the Philippines, he shall be deported immediately after serving the sentence without further proceedings for deportation. If he is a public officer or employee, the maximum penalty prescribed for the offense shall be imposed and, in addition, he shall be dismissed from the public service and perpetually disqualified from holding any public office, to vote and to participate in any election. If the offender is a Certified Public Accountant, his certificate as a Certified Public Accountant shall, upon conviction, be automatically revoked or cancelled.

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

(e) The fines to be imposed for any violation of the provisions of this Code shall not be lower than the fines imposed herein or twice the amount of taxes, interests and surcharges due from the taxpayer, whichever is higher.

[3] **SEC. 256.** *Penal Liability of Corporations.* - Any corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000).

of 1997, as amended, for the alleged willful failure to pay deficiency income tax (**IT**), value-added tax (**VAT**) and improperly accumulated earnings tax (**IAET**), all for taxable year (**TY**) 2009.

Accused IGSSI is a domestic corporation registered with the Securities and Exchange Commission (**SEC**) under SEC Registration No. 192768 and with the Bureau of Internal Revenue (**BIR**) Revenue District Office (**RDO**) No. 40 – Cubao, Quezon City with Taxpayer Identification Number (**TIN**) 000-837-213-000.[4] Accused IGSSI is engaged in the business of security services, with registered address at No. 99-A 12th Avenue, Brgy. Socorro, Cubao, Quezon City.[5] On the other hand, accused Aglugub is alleged to be the President of accused IGSSI.

The three (3) separate Informations were docketed as CTA Crim. Case Nos. O-776, O-777 and O-778, respectively. An Amended Information was later on filed for CTA Crim. Case No. O-778 to clarify that accused IGSSI is charged together with accused Aglugub. The Informations and Amended Information in these consolidated cases respectively read as follows:

<u>CTA Crim. Case No. O-776</u>[6]

> ...
>
> The undersigned Assistant State Prosecutor of the Department of Justice, with the approval of the Commissioner of Internal Revenue, hereby accuses **IRA GENERAL SECURITY SERVICES, INC.** and its President, **TRANQUILINO R. AGLUGUB, JR.**, of violating Section 255, in relation to Sections 253 and 256, of the National Internal Revenue Code of 1997, as amended, committed as follows:
>
>> "That sometime March 2017 and thereafter, in Quezon City and within the jurisdiction of this Honorable Court, accused **TRANQUILINO R. AGLUGUB, JR.**, being the President of **IRA GENERAL SECURITY SERVICES, INC.**, a domestic corporation registered under SEC Registration No. 192768 and a registered taxpayer with BIR Revenue District Office No. 40-Cubao, Quezon City, with Tax Identification

[4] Pre-Trial Order dated 29 September 2020, Division Docket (CTA Crim. Case No. O-776), p. 190.
[5] Id.
[6] Id., pp. 8-10.

> No. 000-837-213-000, and at that time required by law, rules and regulation to pay taxes for the said corporation, did then and there, willfully and knowingly fails to pay its **INCOME TAX** deficiency for taxable year 2009, despite prior and post notices, including final assessment and formal demands to pay, the latest being in the nature of demand before suit issued by the Bureau of Internal Revenues [sic] on March 20, 2017, to the damage and prejudice of the Government in terms of income tax deficiency in the amount of **Twelve Million Three Hundred Seventy-Five Thousand Eight Hundred Forty-Five Pesos and 10/100 (Php12,375,845.10)**, exclusive of surcharges and interest.
>
> **CONTRARY TO LAW.**

...

CTA Crim. Case No. O-777[7]

...

The undersigned Assistant State Prosecutor of the Department of Justice, with the approval of the Commissioner of Internal Revenue, hereby accuses **IRA GENERAL SECURITY SERVICES, INC.** and its President, **TRANQUILINO R. AGLUGUB, JR.**, of violating Section 255, in relation to Sections 253 and 256, of the National Internal Revenue Code of 1997, as amended, committed as follows:

> "That sometime March 2017 and thereafter, in Quezon City and within the jurisdiction of this Honorable Court, accused **TRANQUILINO R. AGLUGUB, JR.**, being the President of **IRA GENERAL SECURITY SERVICES, INC.**, a domestic corporation registered under SEC Registration No. 192768 and a registered taxpayer with BIR Revenue District Office No. 40-Cubao, Quezon City, with Tax Identification No. 000-837-213-000, and at that time required by law, rules and regulation to pay taxes for the said corporation, did then and there, willfully and knowingly fails to pay its **VALUE ADDED TAX** deficiency for taxable year 2009, despite prior and post notices, including final assessment and formal demands to pay, the latest being in the nature of demand before suit issued by the Bureau of Internal Revenues [sic] on March 20, 2017, to the damage and prejudice of the Government in terms of Value Added

7 Division Docket (CTA Crim. Case No. O-777), pp. 8-10.

Tax deficiency in the amount of **Nine Million One Hundred Seven Thousand Three Hundred Twenty-Seven Pesos and 14/100 (Php9,107,327.14)**, exclusive of surcharges and interest.

CONTRARY TO LAW.

...

CTA Crim. Case No. O-778[8]

...

The undersigned Assistant State Prosecutor of the Department of Justice, with the approval of the Commissioner of Internal Revenue, hereby accuses **IRA GENERAL SECURITY SERVICES, INC.** and its President, **TRANQUILINO R. AGLUGUB, JR.**, of violating Section 255, in relation to Sections 253 and 256, of the National Internal Revenue Code of 1997, as amended, committed as follows:

That sometime March 2017 and thereafter, in Quezon City and within the jurisdiction of this Honorable Court, accused **TRANQUILINO R. AGLUGUB, JR.**, being the President of accused **IRA GENERAL SECURITY SERVICES, INC.**, a domestic corporation registered under SEC Registration No. 192768 and a registered taxpayer with BIR Revenue District Office No. 40-Cubao, Quezon City, with Tax Identification No. 000-837-213-000, and at that time required by law, rules and regulation to pay taxes for the said corporation, did then and there, willfully and knowingly fails to pay its **IMPROPERLY ACCUMULATED EARNING TAX** deficiency for taxable year 2009, despite prior and post notices, including final assessment and formal demands to pay, the latest being in the nature of demand before suit issued by the Bureau of Internal Revenues [sic] on March 20, 2017, to the damage and prejudice of the Government in terms of improperly accumulated earning tax deficiency in the amount of **One Million Ninety-Four Thousand One Hundred Eighteen Pesos and 53/100 (Php1,094,118.53)**, exclusive of surcharges and interest.

CONTRARY TO LAW.

...

8 Division Docket (CTA Crim. Case No. O-778), pp. 84-86.

To the above charges, accused Aglugub pleaded not guilty[9] but admitted that he is the same Tranquilino R. Aglugub, Jr. being charged in the said Informations.[10]

Upon filing of the parties' "Joint Motion to Consolidate Trials of Related Offenses"[11] on 09 December 2019, CTA Crim. Case Nos. O-777 and O-778 were subsequently consolidated[12] with CTA Crim. Case No. O-776 pending before the Second Division.

On 01 September 2020, accused Aglugub filed his Pre-Trial Brief[13] while the plaintiff filed its own on 15 September 2020.[14] On 29 September 2020, the Court issued the Pre-Trial Order.[15]

EVIDENCE FOR THE PLAINTIFF

On 30 September 2020, plaintiff presented its first witness, Revenue Officer (**RO**) Alexander A. Perez (**Perez**) who, through his Judicial Affidavit[16], testified by direct examination, that: (1) As RO, his task is to conduct the audit of all internal revenue taxes of cases assigned to him; (2) he is aware of the subject matter of the case, *i.e.*, the taxpayer is being sued for its failure to pay the deficiency tax assessments in the aggregate amount of ₱34,336,941.46, inclusive of surcharge and interest for TY 2009; (3) he is one of the ROs previously assigned at Revenue District Office (**RDO**) No. 40 and was tasked to audit or examine the books of accounts and other accounting records of accused IGSSI for TY 2009, pursuant to Letter of Authority (**LOA**) No. LOA-2009-00032251 dated 24 June 2010[17] (**manual LOA**) and LOA

---

9 Certificate of Arraignment dated 09 December 2019, Division Docket (CTA Crim. Case No. O-776), p. 138; Certificate of Arraignment dated 26 February 2020, id., p. 161; and, Certificate of Arraignment dated 20 November 2019. Division Docket (CTA Crim. Case No. O-778), p. 157.

10 Identity Admission of the Accused dated 09 December 2019, Division Docket (CTA Crim. Case No. O-776), p. 137; Identity Admission of the Accused dated 26 February 2020, id., p. 162; and Identity Admission of the Accused dated 20 November 2019, Division Docket (CTA Crim. Case No. O-778), p. 158. See also Pre-Trial Order dated 29 September 2020, Division Docket (CTA Crim. Case No. O-776), p. 191.

11 Division Docket (CTA Crim. Case No. O-777), pp. 120-122; Division Docket (CTA Crim. Case No. O-778), pp. 164-166.

12 Third Division's Resolution dated 17 December 2019, Division Docket (CTA Crim. Case No. O-776), pp. 140-141; First Division's Resolution dated 17 January 2020, id., pp. 147-148.

13 Id., pp. 174-177.

14 Id., 178-183. The Court also notes that plaintiff earlier filed a Pre-Trial Brief but for CTA Crim. Case Nos. O-776 and O-778 only.

15 Id., 190-197.

16 Exhibits "P-23" and "P-23-A", id., pp. 372-379.

17 Exhibit "P-1", id., p. 307.

No. LOA-040-2011-00000165 dated 11 November 2011[18] (**electronic LOA/eLA**); (4) as the audit examination and investigation commenced, a First Request for Presentation of Records[19] was issued and sent to accused IGSSI; (5) since accused IGSSI failed to present its records, a Second and Final Notice[20] was issued; (6) as accused IGSSI still failed to present its records despite the said notices, he executed a Request for Subpoena *Duces Tecum*[21] against accused IGSSI to compel it to produce its books of account and other accounting records; (7) the Legal Division then issued the Subpoena *Duces Tecum*[22] (**Subpoena**) to accused IGSSI's President, accused Aglugub, directing him to appear before the Office of the Chief, Legal Division and to submit accused IGSS's books of accounts and other accounting records; (8) thereafter, he prepared a Post-Reporting Notice[23] and Amended Post Reporting Notice[24] stating therein the result of the investigation conducted as well as the computation of assessed deficiency taxes; (9) since accused Aglugub failed to comply with the Subpoena, he based his assessment on the records readily available, specifically, accused IGSSI's Annual Income Tax Return[25] (**ITR**) and Audited Financial Statements[26] (**AFS**), in accordance with the rule of Best Evidence Obtainable, under Section 6(B)[27] of the NIRC of 1997, as amended; (10) subsequently, a Memorandum Report dated 04 July 2012[28] was issued stating the findings of the audit and recommending the issuance of Preliminary Assessment Notice[29] (**PAN**); (11) he personally served the PAN at the registered address of accused IGSSI

---

18 Exhibit "P-7", id., p. 316.
19 Exhibit "P-2", id., p. 308.
20 Exhibit "P-3", id., p. 309.
21 Exhibit "P-4", id., p. 310.
22 Exhibit "P-5", id., p. 311.
23 Exhibit "P-6", id., pp. 312-315.
24 Exhibit "P-8", id., pp. 317-321.
25 Exhibit "P-20", id., pp. 346-349.
26 Exhibit "P-21", id., pp. 350-361.
27 **SEC. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –

> ...
>
> (B) *Failure to Submit Required Returns, Statements, Reports and other Documents.* - When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by laws or rules and regulations or when there is reason to believe that any such report is false, incomplete or erroneous, the Commissioner shall assess the proper tax on the best evidence obtainable.
>
> In case a person fails to file a required return or other document at the time prescribed by law, or willfully or otherwise files a false or fraudulent return or other document, the Commissioner shall make or amend the return from his own knowledge and from such information as he can obtain through testimony or otherwise, which shall be *prima facie* correct and sufficient for all legal purposes.
>
> ...

28 Exhibit "P-9", Division Docket (CTA Crim. Case No. O-776), pp. 322-323.
29 Exhibit "P-10", id., pp. 324-328.

and it was received by its alleged authorized representative, a certain Guada Sangalang (**Sangalang**); (12) after the lapse of the 15-day period to reply to the PAN without the same being filed, the Formal Letter of Demand with Details of Discrepancies[30] (**FLD**) and Assessment Notices[31] (**ANs**) were issued; (13) he personally served the said FLD and ANs at the registered address of accused IGSSI and it was received by one Insp. Romeo T. Francisco (**Francisco**), allegedly its authorized representative, who introduced himself as the Operations Officer of accused IGSSI; (14) accused IGSSI failed to file a valid and timely protest against the FLD and ANs and thus, the assessment against it had become final, executory and demandable; and, (15) since accused IGSSI failed to file its protest, he indorsed the entire case docket to the Collection Division for the execution of summary administrative enforcement remedies.

On cross examination, RO Perez testified that: (1) he is working with the BIR since 2005, occupying the position of an RO I; (2) he participated in several assessments against other taxpayers; (3) the BIR held seminars on the proper procedure of assessment; (4) he is knowledgeable of the procedures to be undertaken in the conduct of assessment; (5) when the subject assessment of accused was conducted, he followed the proper procedure; (6) he is certain that everything was conducted in a manner that would give accused adequate time for them to comply with the requirements of the BIR; (7) Sangalang, the authorized representative and employee of accused IGSSI, received the BIR's Subpoena; (8) he inquired about Sangalang's designation as such; (9) the [Amended Post]-Reporting Notice was received by Sheena R. Seguban (**Seguban**)[32], also an employee of accused IGSSI; (10) he made an inquiry as to the extent of the Seguban's authority; (11) during the times he went to the office [of accused IGSSI], he always looked for its President but the latter was always not around and he was told that Seguban is the person authorized to receive documents; (12) when asked if aside from his general inquiry, he also made confirmation as to the extent of the Sangalang's and Seguban's authority, he replied that he checked their IDs and he was able to verify that they are accused IGSSI's employees; (13) he made a written report to that effect (but the counsel for plaintiff later on manifested that there was no such report); (14) there

---

30 Exhibit "P-11", id., pp. 329-333.

31 Exhibits "P-11-A", "P-11-B", "P-11-C" and "P-11-D", id., pp. 334-337.

32 The Court notes that the counsel for accused Aglugub referred to Sheena R. Seguban as "Sheena Sagisag". (See TSN dated 30 September 2020, pp. 11-12).

is a Memorandum Report[33] stating that Sangalang is the authorized person to receive the Subpoena; (15) when asked to read the specific paragraph in the said Memorandum Report as to whether he made an inquiry on the extent of Sangalang's authority, he admitted that he did not mention the same in the said report; and, (16) he said that he made an inquiry as to Francisco's authority to receive the FLD and that he prepared a report in support thereof but when asked to read the second paragraph of the said document, he confirmed that he did not state anything about his supposed verification of Francisco's authority.

In his redirect examination, RO Perez further testified that: (1) the electronic LOA is a replacement of the previously issued manual LOA; (2) there is a revenue regulation stating that the manual LOA will be replaced by an electronic LOA; and, (3) the manual LOA was duly received on 21 July 2010 and the same was timely served within thirty (30) days from its issuance.

RO Perez also testified on the BIR's standard procedure in serving notices, as follows: (1) the LOA will be served on the taxpayer within 30 days with a checklist of the requirements; (2) after ten (10) days without compliance, a first notice would be issued; and, (3) if after 10 days there remains no compliance, a final notice would be prepared.

As for the PAN's and FLD's service, RO Perez stated that they usually prepare a post-reporting notice in the district office and they will forward the same to the Assessment Division. In turn, the latter would issue the PAN and FAN, and serve them on the taxpayer within 10 days.

During the re-cross examination, RO Perez confirmed that the electronic LOA (dated 11 November 2011) was received by the supposed authorized representative of accused IGSSI on 06 June 2012.

On 19 October 2020, plaintiff presented its second and last witness, Group Supervisor (**GS**) Federico P. Doria, Jr. (**Doria**) who, through his Judicial Affidavit[34], testified by way of direct examination

---

33 Exhibit "P-24", Division Docket (CTA Crim. Case No. O-776), p. 380.
34 Exhibit "P-25", id., pp. 264-269.

that: (1) as a GS, he is tasked to monitor and supervise the conduct of execution of summary remedies for the collection of delinquent accounts, among others; (2) he is the GS who filed the Joint Complaint-Affidavit[35] before the Department of Justice (**DOJ**); (3) as part of due process requirement and to afford the accused ample time to pay the tax liabilities issued against them, the BIR sent a Preliminary Collection Letter[36] (**PCL**) at its registered address; (4) when accused IGSSI still failed to pay despite the issuance of the PCL, the BIR sent a Final Collection Letter[37] (**FCL**) at its registered address through registered mail, evidenced by a Registry Receipt dated 25 January 2013[38]; (5) since accused IGSSI failed to settle the tax liabilities despite several notices and demand to pay, the Collection Division of Revenue Region No. 7 (**RR No. 7**), Quezon City, proceeded with the execution of the summary remedies for collection; (6) the Collection Division issued a Warrant of Distraint and/or Levy (**WDL**) dated 05 August 2013[39] which was personally served on and received by Sangalang, the alleged authorized representative of accused IGSSI; (7) the administrative summary remedies of collection were continued and the BIR, through the Collection Division, issued Warrants of Garnishment[40] (**WG**) to several banks; (8) considering that accused failed to pay despite repeated demands, the case docket was forwarded to the Legal Division for collection through judicial action; and, (9) thereafter, a Demand Before Suit[41] was sent by the Chief of Legal Division through registered mail, as evidenced by Registry Receipt dated 22 March 2017.[42]

During his cross examination, GS Doria confirmed that: (1) his responsibility is limited to monitoring and supervising the conduct of execution of summary remedies; (2) it was RO Perez who personally conducted the audit and assessment; and, (3) he did not participate in the preparation of Exhibits "P-12" to "P-19".[43] Plaintiff did not conduct any re-direct examination.[44]

---

35 Exhibit "P-22", id., pp. 362-368.
36 Exhibit "P-12", id., p. 338.
37 Exhibit "P-13", id., p. 339.
38 Exhibit "P-13-A", id.
39 Exhibit "P-14", id., p. 340.
40 Exhibits "P-15", "P-16", "P-17" and "P-18", id., pp. 341-344.
41 Exhibit "P-19", id., p. 345.
42 Exhibit "P-19-A", id.
43

Exhibit	Description
P-12	Preliminary Collection Letter dated 03 December 2012
P-13	Final Collection Letter dated 18 January 2013
P-14	Warrant of Distraint and/or Levy dated 05 August 2013

On 03 November 2020, plaintiff filed its "Formal Offer of Documentary Evidence"[45] (**FOE**), with accused Aglugub's "Comment/Objection (To Plaintiff Formal Offer of Documentary Evidence)" filed on 10 November 2020.[46] On 04 January 2021, the Court issued a Resolution[47] denying admission to all of plaintiff's documentary evidence, except Exhibits "P-23"[48], "P-23-A"[49], "P-25"[50] and "P-25-A".[51]

On 01 February 2020, plaintiff filed a "Motion for Reconsideration (Resolution dated January 04, 2021)"[52] (**MR**) on the denial of most of its documentary evidence, with accused Aglugub's "Comment/Opposition (To Plaintiff's Motion for Reconsideration dated 01 February 2021)" thereto filed on 04 March 2021.[53]

Subsequently, accused Aglugub filed a Demurrer to Evidence[54] (**Demurrer**) on 12 January 2021 to which plaintiff filed its Comment/Opposition[55] on 03 February 2021. Thereafter, accused Aglugub filed a "Motion for Leave to File and Admit Attached Reply"[56] with the attached Reply[57] on 08 February 2021.

Meanwhile, on 18 May 2021, the Court issued a Resolution[58] granting plaintiff's MR and thus admitting into evidence all of the previously denied exhibits.

P-15	Warrant of Garnishment duly received by United Coconut Planters Bank
P-16	Warrant of Garnishment duly received by China Banking Corporation
P-17	Warrant of Garnishment duly received by Banco de Oro Universal Bank
P-18	Warrant of Garnishment duly received by Bank of Philippine Islands
P-19	Demand Before Suit dated 20 March 2017

44 TSN dated 19 October 2020, p. 8.
45 Division Docket (CTA Crim. Case No. O-776), pp. 293-306.
46 Id., pp. 390-399.
47 Id., pp. 401-402.
48 Judicial Affidavit of Revenue Officer Alexander A. Perez.
49 Signature of Revenue Officer Alexander A. Perez.
50 Judicial Affidavit of Revenue Officer Federico P. Doria, Jr.
51 Signature of Revenue Officer Federico P. Doria, Jr.
52 Division Docket (CTA Crim. Case No. O-776), pp. 422-426.
53 Id., pp. 479-487.
54 Id., pp. 403-419.
55 Id., pp. 437-445.
56 Id., pp. 462-464.
57 Id., pp. 465-476.
58 Id., pp. 499-502.

On 18 June 2021, the Court resolved to deny accused Aglugub's Demurrer.[59] Thus, accused Aglugub proceeded to present his evidence.

<u>EVIDENCE FOR THE ACCUSED</u>

On 15 November 2021, Maria Elizabeth A. Lualhati (**Lualhati**), through Judicial Affidavit[60], testified by way of direct examination that: (1) accused Aglugub is her father and she used to work for accused IGSSI as a member of the finance staff; (2) she is mostly in charge of the bookkeeping and has access to the records of her father's business; (3) the BIR did not properly serve the notices on accused IGSSI as the people who received the same are not even his father's employees, let alone the authorized representatives; (4) specifically, Sangalang, Seguban and Francisco are not employed by his father but that of another relative; (5) since they are not accused IGSSI's authorized representatives, they cannot receive anything on its behalf.

On cross examination, Lualhati further testified that: (1) the function of accused IGSSI's Finance Department is to handle payroll, bank transactions, and collect billings; (2) she is not in the position to designate the authorized representative for accused IGSSI; (3) she does not have a list of authorized representatives of accused IGSSI although they have a payroll; (4) there are approximately ten (10) office staff employees; (5) the relative who hired the employees who received the BIR notices is her aunt named "Isabelita Jaingue" (**Jaingue**) who is also engaged in a security agency business; and, (6) she does not know the number of employees working for her aunt but she is certain that those who received the BIR notices are not accused IGSSI's staff but her aunt's.

No redirect examination was conducted.[61]

Later, accused Aglugub was presented as the second and last witness who, through his Judicial Affidavit[62], declared that: (1) he assumes that the BIR filed a case against him because of the impression that he is a corporate officer of accused IGSSI; (2) the BIR,

---

59 See Resolution dated 18 June 2021, id., pp. 504-520.
60 Exhibits "A-1" and "A-1-A", id., pp. 533-537.
61 TSN dated 15 November 2021, p. 15.
62 Exhibits "A-2" and "A-2-A", Division Docket (CTA Crim. Case No. O-776), pp. 527-532.

however, did not provide proof that he was a corporate officer, particularly, the 2009 GIS which would have shown accused IGSSI's corporate officers for that period; (3), although his name appears in the 2009 AFS' Statement of Management's Responsibility[63] as accused IGSSI's President, someone else had signed over his name as the same is not his signature; (4) the BIR did not even conclusively establish nor present any evidence to prove whether he is an officer of accused IGSSI for the year 2009; (5) accused IGSSI was not properly notified of the BIR's notices; (6) Sangalang, Seguban and Francisco are not, in any way, authorized representatives of accused IGSSI and the BIR should not have given the notices to these persons; (7) based on his understanding, plaintiff's witness did not present evidence to prove that they conducted reasonable inquiry on whether these people were in any way connected nor authorized representatives of accused IGSSI; and, (8) because the BIR gave the notices to unauthorized persons, accused IGSSI was not able to properly address the notices and the latter would have cooperated with the BIR if only it was properly notified.

On cross examination, accused Aglugub stated that he did not authorize Mr. [Mamerto] Jaingue to sign for him on the Statement of Management Responsibility. Also, upon being shown page 3[64] of the 2009 Annual ITR of accused IGSSI, accused Aglugub admitted that the signature appearing above the typewritten name Tranquilino R. Aglugub, Jr. (with the designation of President/General Manager) is his. Furthermore, although he testified during the cross examination that he is not denying that he is the President of accused IGSSI[65], he later on denied such fact.[66]

Similarly, no redirect examination was conducted.[67]

Still later, accused Aglugub filed his "Defense Formal Offer of Documentary Evidence"[68] offering in evidence the judicial affidavits of his witnesses. After plaintiff filed a Comment/Opposition[69] thereto,

---

63 Exhibit "P-21", id., p. 351.
64 Exhibit "P-20", id., p. 348.
65 TSN dated 15 November 2021, p. 21.
66 Id., pp. 23-24.
67 Id., p. 24.
68 Division Docket (CTA Crim. Case No. O-776), pp. 540-542.
69 Id., pp. 554-557.

the Court resolved to admit accused Aglugub's documentary evidence.[70]

In the meantime, accused Aglugub filed a "Motion for Leave of Court to Allow Accused to Travel Abroad"[71] on 02 February 2022, to which plaintiff filed a Comment[72] on 11 February 2022. Thereafter, the Court denied the said motion in its Resolution dated 16 February 2022.[73]

In compliance with the Court's Resolution dated 09 February 2022[74], plaintiff filed its Memorandum[75] on 10 March 2022 while accused Aglugub filed his Memorandum[76] on 21 March 2022. Thus, on 25 March 2022, the Court submitted the case for decision.[77]

ISSUES

In the Pre-Trial Order, the following issues[78] are to be resolved:

I
WHETHER THE DEFICIENCY ASSESSMENT ISSUED AGAINST THE ACCUSED FOR TAXABLE YEAR 2009 HAVE BECOME FINAL, EXECUTORY AND DEMANDABLE; AND,

II
WHETHER HEREIN ACCUSED IGSSI AND AGLUBUB ARE GUILTY OF THE CRIMES CHARGED.

ARGUMENTS FOR THE PLAINTIFF

Plaintiff claims that the evidence it presented sufficiently establishes the elements of the crime of willful failure to pay under

70 See Resolution dated 09 February 2022, id., pp. 564-565.
71 Id., pp. 558-561.
72 Id., pp. 574-577.
73 Id., pp. 569-573.
74 Supra at note 70.
75 Division Docket (CTA Crim. Case No. O-776), pp. 578-602.
76 Id., pp. 603-619.
77 See Resolution dated 25 March 2022, id., p. 620.
78 Id., p. 192.

Section 255[79], in relation to Sections 253[80] and 256[81] of the NIRC of 1997, as amended.

Specifically, plaintiff contends that accused IGSSI, being a domestic corporation, is subject to IT under Section 27(A)[82], in relation to Section 23(E)[83]; VAT under Sections 105[84] and 108(A)[85]; and IAET under Section 29[86], all of the NIRC of 1997, as amended. According to plaintiff, it was able to prove that accused IGSSI is required by law to file the necessary IT and VAT returns and pay or remit the taxes due

79 Supra at note 1.

80 Supra at note 2.

81 Supra at note 3.

82 **SEC. 27.** *Rates of Income Tax on Domestic Corporations.* —
(A) *In General.* — Except as otherwise provided in this Code, an income tax of thirty-five percent (35%) is hereby imposed upon the taxable income derived during each taxable year from all sources within and without the Philippines by every corporation, as defined in Section 22(B) of this Code and taxable under this Title as a corporation, organized in, or existing under the laws of the Philippines: Provided, That effective January 1, 1998, the rate of income tax shall be thirty-four percent (34%); effective January 1, 1999, the rate shall be thirty-three percent (33%); and effective January 1, 2000 and thereafter, the rate shall be thirty-two percent (32%).
...

83 **SEC. 23.** *General Principles of Income Taxation in the Philippines.* — Except when otherwise provided in this Code:
...
(E) A domestic corporation is taxable on all income derived from sources within and without the Philippines; and
...

84 **SEC. 105.** *Persons Liable.* — Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.
...

85 **SEC. 108.** *Value-added Tax on Sale of Services and Use or Lease of Properties.* —
(A) *Rate and Base of Tax.* — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of the gross receipts derived from the sale or exchange of services, including the use or lease of properties: *Provided,* That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:
...

86 **SEC. 29.** *Imposition of Improperly Accumulated Earnings Tax.* —

(A) *In General.* — In addition to other taxes imposed by this Title, there is hereby imposed for each taxable year on the improperly accumulated taxable income of each corporation described in Subsection B hereof, an improperly accumulated earnings tax equal to ten percent (10%) of the improperly accumulated taxable income.

(B) *Tax on Corporations Subject to Improperly Accumulated Earnings Tax.* —
(1) *In General.* — The improperly accumulated earnings tax imposed in the preceding Section shall apply to every corporation formed or availed for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other corporation by permitting earnings and profits to accumulate instead of being divided or distributed.
(2) *Exceptions.* — The improperly accumulated earnings tax as provided for under this Section shall not apply to:
(a) Publicly-held corporations;
(b) Banks and other nonbank financial intermediaries; and
(c) Insurance companies.

...

thereon. Moreover, since it appears that IGSSI had improperly accumulated retained earnings *per* its ITR and AFS, IAET is likewise imposable.

Plaintiff adds that contrary to the allegation of both accused, the manual LOA was duly served on accused IGSSI on 21 July 2010 authorizing RO Perez to examine its books of account and other accounting records for TY 2009. However, despite repeated demands, accused IGSSI failed to comply thereto thus, it was assessed based on the rule of "best evidence obtainable" pursuant to Section 6(B)[87] of the NIRC of 1997, as amended.

Consequently, in the course of the audit and investigation of accused IGSSI's taxes for TY 2009, it was assessed the following taxes *per* FLD and ANs: (1) IT - ₱18,540,033.15; (2) VAT - ₱14,042,749.90; and, (3) IAET - ₱1,746,542.91.

Plaintiff likewise maintains that the PAN, FLD and ANs were duly issued to and served on accused IGSSI in accordance with the existing rules and regulations. Despite receipt thereof, accused IGSSI still failed to file a timely protest which then rendered the assessments as final, executory and demandable. In addition, several notices were likewise sent to accused IGSSI demanding the payment of its deficiency taxes such as the PCL, FCL and the latest being the Demand Before Suit but to no avail.

Accused IGSSI's failure of action accompanied by willfulness, bad faith, deliberate and evil state of mind resulted in the payment of less taxes. Simply stated, accused IGSSI is well-aware of its obligation to pay its tax liabilities but intentionally did not pay. As such, plaintiff claims that it was also able to prove that accused IGSSI willfully failed to pay deficiency tax liabilities at the time required by law.

Plaintiff further asserts that accused Aglugub, being the President of accused IGSSI, is the corporate officer responsible for the violation. The same is clearly proven by the 2009 Annual ITR signed by accused Aglugub which he even admitted during the hearing on 15 November 2021.

---

87 Supra at note 27.

Granting for the sake argument that the signature appearing on the Statement of Management's Responsibility in the 2009 AFS had only been appended thereto in his behalf, still it was accused Aglugub himself who signed the 2009 Annual ITR. In the normal course of things, accused Aglugub could not be expected to not have the prudence to read the contents of documents he signs.

Lastly, plaintiff claims that it ably discharged the burden of establishing by proof beyond reasonable doubt each and every element of the crime charged.

ARGUMENTS FOR THE ACCUSED

On the other hand, accused Aglugub maintains that plaintiff failed to prove his guilt beyond reasonable doubt hence, he should be acquitted of the crimes he was charged with. Specifically, accused Aglugub points out that RO Perez admitted serving the LOA beyond the period required by the rules. As confirmed by RO Perez himself during his re-cross examination, the LOA was issued on 11 November 2011 and was served only on 06 June 2012 or after almost six (6) months.

According to accused Aglugub, BIR Revised Audit Memorandum Order (**RAMO**) No. 01-2000[88] requires that the LOA must be presented to the taxpayer within thirty (30) days from its issuance; otherwise, it becomes null and void. In fact, the face of the LOA itself states that the LOA becomes void if not served on the taxpayer within 30 days from the date thereof. Consequently, all subsequent actions and assessments made by the BIR, after a void LOA, are likewise void, including the present indictments.

Furthermore, accused Aglugub argues that plaintiff failed to establish that the persons who received the BIR's notices, namely, Sangalang, Seguban and Francisco, were actually authorized representatives of accused IGSSI.

[88] Updated Handbook on Audit Procedures and Techniques Volume I (Revision —Year 2000).

From the testimony of RO Perez, it can be deduced that the BIR did not conduct any verification as regards the authority of the supposed authorized representatives. As such, these individuals' receipt of the BIR notices cannot be considered as receipt by accused IGSSI. Accused Aglugub thus maintains that such non-receipt should invalidate the subsequent processes for being violative of his and accused IGSSI's right to due process.

In addition, accused Aglugub claims that not one evidence, testimonial or documentary, was presented to show that he is connected to accused IGSSI as its president, general manager, branch manager, treasurer, officer-in-charge or employee.

According to accused Aglugub, the best evidence to establish his connection to accused IGSSI would have been the presentation of the latter's corporate records like the GIS for a particular period when the tax supposedly fell due. Plaintiff failed in this respect even if the GIS is a public record and easily obtainable. He also points out that GS Doria, one of plaintiff's witnesses, has admitted that he had no participation in the conduct of the assessment against the taxpayer.

Lastly, accused Aglugub insists that plaintiff failed to present proof of either positive or negative acts done by him that could even be remotely considered criminal. Thus, plaintiff's evidence did not overcome the constitutional presumption of innocence.

RULING OF THE COURT

Accused IGSSI and Aglugub are charged with willful failure to pay tax under Section 255 of the NIRC of 1997, as amended, which reads as follows:

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

accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, **at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.**

Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years.[89]

...

The same was filed in relation to Section 253 and 256 of the NIRC of 1997, as amended, to wit:

...

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.

(b) Any person who willfully aids or abets in the commission of a crime penalized herein or who causes the commission of any such offense by another shall be liable in the same manner as the principal.

(c) If the offender is not a citizen of the Philippines, he shall be deported immediately after serving the sentence without further proceedings for deportation. If he is a public officer or employee, the maximum penalty prescribed for the offense shall be imposed and, in addition, he shall be dismissed from the public service and perpetually disqualified from holding any public office, to vote and to participate in any election. If the offender is a Certified Public

89 Emphasis supplied.

> Accountant, his certificate as a Certified Public Accountant shall, upon conviction, be automatically revoked or cancelled.
>
> (d) **In the case of** associations, partnerships or **corporations, the penalty shall be imposed on the** partner, **president, general manager**, branch manager, treasurer, officer-in-charge, and the employees **responsible for the violation**.
>
> (e) The fines to be imposed for any violation of the provisions of this Code shall not be lower than the fines imposed herein or twice the amount of taxes, interests and surcharges due from the taxpayer, whichever is higher.[90]
>
> ...
>
> **SEC. 256.** *Penal Liability of Corporations.* - **Any corporation**, association or general co-partnership **liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers**, partners, or employees **shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000)**.[91]
>
> ...

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

1. A person is required under the NIRC of 1997, as amended, or its rules and regulations to pay any tax;

2. The said person failed to pay the required tax at the time required by law or rules and regulations; and,

3. Such failure to pay the required tax at the time required by law or rules and regulations is willful.

Moreover, considering that accused IGSSI is a corporation, it must be shown further that accused Aglugub is the president, general manager, branch manager, treasurer, officer-in-charge or employee

---

90 Emphasis supplied.
91 Emphasis supplied.

responsible for the violation before the penalty may be imposed upon him.

FIRST ELEMENT:
A PERSON IS REQUIRED UNDER THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED, OR ITS RULES AND REGULATIONS TO PAY ANY TAX.

The legal obligation to pay tax under the NIRC of 1997, as amended, arises from two (2) specific instances: *first,* at the time required by the law to pay a particular tax; or *second,* upon being informed of a tax assessment issued by the BIR, requiring the taxpayer to pay the assessed tax or deficiency tax within a specific period, as set forth in the assessment.[92]

With respect to the first instance, a taxpayer is required to pay tax when the law subjects it to such. The taxpayer thus will undergo self-assessment by initially computing the tax due, files the pertinent tax return and voluntarily pays the said tax.

As applied to accused IGSSI, being a domestic corporation engaged in the business of security services, it is required to pay IT pursuant to Sections 27(A)[93], in relation to Section 56(A)(1)[94], and VAT pursuant to Sections 105[95], 108(A)[96], in relation to Section 114(A)[97], all of the NIRC of 1997, as amended. Furthermore, as shown in the

---

92 See *People of the Philippines v. Cross Country Oil & Petroleum, Corp., et al.*, CTA Crim. Case No. O-620, 19 May 2021.

93 Supra at note 82.

94 **SEC. 56.** *Payment and Assessment of Income Tax for Individuals and Corporations.* —

(A) *Payment of Tax.* —

(1) *In General.* — The total amount of tax imposed by this Title shall be paid by the person subject thereto at the time the return is filed...

...

95 Supra at note 84.

96 Supra at note 85.

97 **SEC. 114.** *Return and Payment of Value-added Tax.* —

(A) In General. — Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis.

...

accused IGSSI's AFS[98] for TY 2009, its retained earnings exceeded 100% of its paid-up capital, which is indicative that it is accumulating profits beyond the reasonable need of its business. As accused IGSSI is not one of the entities exempt from the imposition of IAET listed under Section 29(B)(2)[99], it is subject to such tax imposed under Section 29(A)[100] of the NIRC of 1997, as amended.

The second instance, on the other hand, involves the issuance by the BIR of a tax assessment, when the tax obligation was not properly computed or paid. The deficiency tax assessment, shall then be paid by the taxpayer upon notice and demand. These notice and demand are predicated upon a valid assessment issued in full compliance with the requirements on procedural due process.[101] This finds support in Section 6(A) of the NIRC of 1997, as amended, which reads as follows:

> ...
>
> **SEC. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
>
> (A) *Examination of Returns 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, notwithstanding any law requiring the prior authorization of any government agency or instrumentality: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> **The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.**[102]
>
> ...

In fact, with respect to IT, Section 56(B) of the NIRC of 1997, further provides as follows:

---

[98] Supra at note 26.
[99] Supra at note 86.
[100] Id.
[101] Supra at note 92.
[102] Emphasis supplied.

> ...
>
> **SEC. 56.** *Payment and Assessment of Income Tax for Individuals and Corporations. —*
>
> ...
>
> (B) Assessment and Payment of Deficiency Tax. — After the return is filed, the Commissioner shall examine it and assess the correct amount of the tax. **The tax or deficiency income tax so discovered shall be paid upon notice and demand** from the Commissioner.
>
> ...

These instances were briefly discussed by the Supreme Court in the case of *Commissioner of Internal Revenue v. Fitness by Design, Inc.*[103] (**Fitness by Design**), as follows:

> ...
>
> An assessment "refers to the determination of amounts due from a person obligated to make payments." "In the context of national internal revenue collection, it refers to the determination of the taxes due from a taxpayer under the National Internal Revenue Code of 1997."
>
> The assessment process starts with the filing of the tax return and payment of tax by the taxpayer. **The initial assessment evidenced by the tax return is a self-assessment of the taxpayer.** The tax is primarily computed and **voluntarily paid** by the taxpayer without need of any demand from government. If tax obligations are properly paid, the Bureau of Internal Revenue may dispense with its own assessment.
>
> **After filing a return, the Commissioner or his or her representative may allow the examination of any taxpayer for assessment of proper tax liability.** The failure of a taxpayer to file his or her return will not hinder the Commissioner from permitting the taxpayer's examination. The Commissioner can examine records or other data relevant to his or her inquiry in order to verify the correctness of any return, or to make a return in case of noncompliance, as well as to determine and collect tax liability.
>
> ...

---

[103] G.R. No. 215957, 09 November 2016; Citations omitted and emphasis supplied.

Based on the subject Informations, accused IGSSI and Aglugub are being prosecuted for its alleged willful failure to pay tax under the second instance, that is, accused IGSSI's failure to pay deficiency IT, VAT and IAET for TY 2009, despite prior and post notices, including the FLD[104] and ANs[105], the latest being the Demand Before Suit.[106]

As such, plaintiff must prove that the deficiency taxes which accused IGSSI allegedly failed to pay are based on valid assessments, notice and demand from the BIR.[107] It thus behooves the Court to examine the validity of the subject assessments.

In this case, accused IGSSI argues that the subject assessments are void due to the following defects:

1. The LOA was sent to the taxpayer beyond the 30-day reglementary period; and,

2. The notices from the BIR were received by individuals not duly authorized by accused IGSSI to receive the same;

We shall resolve the foregoing *in seriatim*.

THE ASSESSMENTS WERE BASED ON A VALID LETTER OF AUTHORITY (LOA).

Accused IGSSI avers that the assessments are void since the electronic LOA[108] dated 11 November 2011 was received only on 06 June 2012 which is beyond the 30-day reglementary period to serve the same under RAMO No. 01-2000.[109] *On the other hand*, plaintiff argues that the manual LOA[110] dated 24 June 2010 was received on 21 July 2010 within such 30-day reglementary period.

104 Supra at note 30.
105 Supra at note 31.
106 Supra at note 41.
107 Supra at note 92; See also *Commissioner of Internal Revenue, v. T Shuttle Services, Inc.*, G.R. No. 240729, 24 August 2020, where the Supreme Court ruled that the assessment becoming final, executory and demandable should be premised on the validity of the assessments themselves.
108 Supra at note 18.
109 Supra at note 88.
110 Supra at note 17.

We find for the plaintiff.

Indeed, RAMO No. 01-2000 mandates that an LOA must be served within thirty (30) days from the time it is issued, otherwise it becomes null and void *unless* revalidated, to wit:

> ...
>
> *VIII. Preliminary Approach to Examination*
>
> ...
>
> *C. Contact With Taxpayer*
>
> ...
>
> *2. Serving of Letter of Authority*
>
> ...
>
> 2.2 A Letter of Authority authorizes or empowers a designated Revenue Officer to examine, verify and scrutinize a taxpayer's books and records in relation to his internal revenue tax liabilities for a particular period.
>
> 2.3 A Letter of Authority **must be served** or presented to the taxpayer **within 30 days** from its date of issue; **otherwise it becomes null and void, unless revalidated**. The taxpayer has the right to refuse its service if presented beyond the 30-day period depending on the policy set up by management. Revalidation is done by issuing a new Letter of Authority or by just simply stamping the words 'Revalidated on ______________' on the face of the copy of the Letter of Authority issued.[111]
>
> ...

However, it bears noting that the electronic LOA was just issued pursuant to Revenue Memorandum Order (**RMO**) No. 69-2010[112], which requires that the manual LOAs be retrieved and replaced with new electronic LOA.

In this case, the manual LOA, which was issued on 24 June 2010, was served on 21 July 2010 or within the 30-day reglementary period. Thus, the said manual LOA still clothed the examiners the authority

111 Emphasis supplied.
112 Guidelines on the Issuance of Electronic Letters of Authority, Tax Verification Notices, and Memoranda of Assignment.

needed to conduct an examination or assessment in accordance with Section 13[113] of the NIRC of 1997, as amended.

SERVICE TO UNAUTHORIZED REPRESENTATIVES VIOLATED ACCUSED IGSSI'S RIGHT DUE PROCESS.

Accused Aglugub argues that the assessments are void since the manual LOA[114], First Request for Presentation of Records[115], Second and Final Notice[116], Subpoena[117], Post-Reporting Notice[118], electronic LOA[119], PAN[120], FLD[121], ANs[122] and WDL[123], were all received by individuals not duly authorized by accused IGSSI.

We agree.

Section 3.1.4 of Revenue Regulations (**RR**) No. 12-99[124] provides that:

> ...
>
> 3.1.4 *Formal Letter of Demand and Assessment Notice.* — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void... **The same shall be**

113 **SEC. 13**. *Authority of a Revenue Officer.*— Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.

114 Supra at note 17.

115 Supra at note 19.

116 Supra at note 20.

117 Supra at note 22.

118 Supra at note 23.

119 Supra at note 18.

120 Supra at note 29.

121 Supra at note 30.

122 Supra at note 31.

123 Supra at note 39.

124 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.

> **sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.**[125]
>
> ...

As can be gleaned from the foregoing, should the FAN be sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt in a duplicate copy, with the following details: (1) name; (2) signature; (3) designation and **authority to act for and in behalf of the taxpayer, if not received by the taxpayer himself**; and (4) date of receipt.

An examination of the records would show that the FLD[126] and AN for IT[127] have stamps which provide Francisco's name, signature, designation and date of receipt. However, the authority to act on behalf of the taxpayer is wanting, *viz*:

> ...
>
> (SGD.)
> INSP. ROMEO T. FRANCISCO
> Printed Name & Signature
>
> Operation Officer
> Designation
>
> 9/12/12
> Date
>
> ...

Further, during the cross examination[128] of plaintiff's witness, RO Perez himself testified as follows:

[125] Emphasis and underscoring supplied.
[126] Supra at note 30.
[127] Exhibit "P-11-a", Division Docket (CTA Crim. Case No. O-776), p. 120.
[128] TSN dated 30 September 2020, pp. 15-16.

...

ATTY. DUMALAO:

Thank you. With regard to the document that was supposedly received by one Mr. Romeo Francisco, the formal letter of demand (FLD) with detailed [sic] of discrepancies and assessments notice. **Did you make an inquiry that this Mr. Romeo Francisco was in fact authorized by the taxpayer or as an authorized representative of a taxpayer?**

WITNESS:

Yes, sir. I made an inquiry.

ATTY. DUMALAO:

If you put this in record, Mr. witness, did you prepare a report in support of this?

WITNESS:

Yes, sir.

ATTY. DUMALAO:

May we see the document for the record, Mr. witness?

ATTY. LABUCAY:

Your Honors, for the record I am presenting the original Bureau of Internal Revenue (BIR) record to Mr. Alexander A. Perez. The memorandum executed by Revenue Officer Alexander A. Perez on September 13, 2012.

ATTY. DUMALAO:

Could you read the second paragraph of the document that was presented to you, Sir?

WITNESS:

Please be informed that the final assessment notice (FAN) has been received by Romeo Francisco, the company's authorized representative on September 12, 2012.

ATTY. DUMALAO:

I assume, **Mr. Witness that this paragraph does not state anything with regard to your verification of the authority of this Mr. Francisco**. Am I correct, Mr. witness?

WITNESS:

Yes, sir.

ATTY. DUMALAO:
No further question, Your Honors.[129]

...

Clearly, the BIR was short of the diligence required in ensuring the proper service of the assessment. It bears noting that the rationale of the rule that the BIR's assessment notices must only be served or presented to the concerned taxpayer or its authorized representative is to ensure that that the recipient has sufficient discretion and understanding of the importance of the documents delivered to him or her and has the requisite authority to act on the same.

Accordingly, since the FLD and ANs were not actually received by accused IGSSI's authorized representative, the same cannot be considered as having been validly issued and therefore, is considered void.

GROUP SUPERVISOR MARIO GUIANG WAS NOT AUTHORIZED, THROUGH A LETTER OF AUTHORITY (LOA), TO CONTINUE THE AUDIT.

In addition, the Court also finds the deficiency tax assessments void for lack of authority of the GS who participated in the audit and recommended for the issuance of PAN.

Section 13 of the NIRC of 1997, as amended, provides:

...

> **SEC. 13.** *Authority of a Revenue Officer.* — Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a **Revenue Officer assigned** to perform assessment functions in any district may, **pursuant to a Letter of Authority issued by the Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or **to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself.[130]

...

---

129 Emphasis supplied.
130 Emphasis supplied.

In the instant case, both the manual LOA[131] and the electronic LOA[132] were issued to RO Perez and GS Lorenzo C. Delos Santos. However, as early as in the Post-Reporting Notice[133], which was issued prior to the issuance of electronic LOA, a certain "Mario Guiang" (**Guiang**) was already designated as the GS, as follows:

> ...
>
> **POST-REPORTING NOTICE**
>
> The President
> IRA GENERAL & SECURITY SERVICES, INC.
> 99-A 12th Avenue, Socorro, Cubao, Quezon City
> TIN: 000-837-213-000
>
> Sir/Madam:
>
> Please be advised that the report of investigation of your *All Internal Revenue Tax Liabilities* for the year 2009, under Letter of Authority No. 00032251 dated June 24, 2010, was submitted **by Revenue Officers Alexander Perez and Mario Guiang (Group Supervisor)**, for appropriate action. The findings on the assessed deficiency taxes had been computed in the attached sheets.
>
> ...

The same is true with respect to the Amended Post Reporting Notice dated 05 June 2012[134] which was issued after the issuance of the electronic LOA, to wit:

> ...
>
> **AMENDED POST REPORTING NOTICE**
>
> The President
> IRA GENERAL & SECURITY SERVICES, INC.
> 99A 12th Avenue, Cubao, Quezon City
> TIN: 000-837-213-000
>
> Sir/Madam:
>
> Please be advised that the report of investigation of your *All Internal Revenue Tax Liabilities* for the year 2009, under electronic

---

131 Supra at note 17.
132 Supra at note 18.
133 Supra at note 23; Emphasis supplied.
134 Supra at note 24; Emphasis supplied.

> Letter of Authority No. 201000085254 dated November 11, 2011, was submitted **by Revenue Officers Alexander Perez and Mario Guiang (Group Supervisor)**, for appropriate action. The revised findings on the assessed deficiency taxes had been computed in the attached sheets.
>
> ...

Moreover, GS Guiang signed the Memorandum[135] to the RDO which recommended the issuance of PAN, *viz*:

> ...
> MEMORANDUM
>
> FOR: THE REVENUE DISTRICT OFFICER
> This District
>
> RE: IRA GENERAL & SECURITY SERVICES, INC.
> No. 99A 12th Avenue, Cubao, Quezon City
>
> ...
>
> RECOMMENDATION
>
> In view of the foregoing, it is respectfully recommended that this docket be forwarded back to Assessment Division **for issuance of Preliminary Assessment Notice in accordance with law.**
>
> (SGD.)
> ALEXANDER A. PEREZ
> Revenue Officer
>
> Reviewed by:
>
> (SGD.)
> MARIO S. GUIANG
> Group Supervisor
>
> ...

As early as in 2010 in *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[136], the Supreme Court already ruled that:

[135] Supra at note 28; Emphasis supplied.
[136] G.R. No. 178697, 17 November 2010; Emphasis and underscoring supplied.

> ...
> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity.**
> ...

In the more recent case of *Commissioner of Internal Revenue v. Opulent Landowners, Inc.*[137], the Supreme Court further reiterated that only the revenue officers **actually named** in the LOA are authorized to examine the taxpayer, to wit:

> ...
> ... Likewise, the CTA *EB* correctly held that the deficiency tax assessments were invalid due to revenue officers' lack of authority to do so. Under prevailing jurisprudence, a LOA is statutorily required under the National Internal Revenue Code in order to clothe the revenue officers with authority to examine taxpayers. It is axiomatic that only the revenue officers actually named under the LOA are authorized to examine the taxpayer... In the absence of a new LOA issued in favor of the revenue officers who recommended the issuance of the deficiency tax assessments against respondent, the resulting assessments are void.
> ...

Considering that no new LOA was issued authorizing GS Guiang to continue the audit or investigation, the latter does not have the authority to conduct the examination of accused IGSSI's books of account and other accounting records. In the absence of such authority, the assessments are considered void.

Relatedly, the deficiency tax assessments issued against accused IGSSI for TY 2009 cannot become final, executory and demandable. As held in *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*[138], **the assessment becoming final, executory and demandable should be premised on the validity of the assessments themselves,** *viz*:

[137] G.R. Nos. 249883-84, 27 January 2020 (Resolution); Citations omitted.
[138] G.R. No. 240729, 24 August 2020.

> ...
>
> Additionally, the argument of the CIR that the deficiency tax assessments have already become final, executory, and demandable should be premised on the validity of the assessments themselves. As it was established that the deficiency IT and VAT assessments for CY 2007 are void for failure to accord respondent due process in their issuance, the CIR's argument necessarily fails.
>
> ...

SECOND ELEMENT:
THE SAID PERSON FAILED TO PAY THE REQUIRED TAX AT THE TIME REQUIRED BY LAW OR RULES AND REGULATIONS.

THIRD ELEMENT:
SUCH FAILURE TO PAY THE REQUIRED TAX AT THE TIME REQUIRED BY LAW OR RULES AND REGULATIONS IS WILLFUL.

As can be gleaned from the elements cited above, the second and third elements are dependent on the first element. Specifically, the showing of failure to pay the pertinent tax and the willfulness of such failure rest on whether the taxpayer is required to pay the said tax in the first place. Thus, it is only when the first element is established that the remaining elements must be determined to exist. In other words, there can be no willful failure to pay tax if there is no requirement to pay the same at all.

Since the subject FLD and ANs are void, and considering that an invalid assessment bears no valid fruit[139], accused IGSSI cannot be said to have failed to pay the deficiency taxes (second element) much more to have done so willfully (third element).

"Willful" in the tax crime statutes means a voluntary, intentional violation of a known legal duty and bad faith or bad purpose need not be shown.[140] Thus, to attribute to the accused a "willful failure to pay"

---

139 See *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, 26 November 2014.

140 *People of the Philippines v. Bonner Purpura Armada*, CTA Crim. Case Nos. O-617 & O-618, 08 June 2020 citing Mertens (Law of Federal Income Taxation) Chapter 47.04, page 28, Volume 13, see *U.S. v. Green*, 757 F2d 116, 85-1 USTC 9178 (CA7 1985), in which the Court, citing *U.S. v.*

the tax, it must be shown that such failure or omission by accused was done knowingly, intentionally and with the specific intent not to pay the tax. In other words, it must be shown that accused was aware of his obligation to pay the tax, but he nevertheless voluntarily, knowingly and intentionally failed to pay it.[141]

Having failed to establish the validity of the assessments, accused IGSSI cannot be deemed to have willfully failed to pay the alleged deficiency IT, VAT, and IAET liabilities. Consequently, with plaintiff's failure to prove all the elements of the offense charged, accused IGSSI and Aglugub are entitled to acquittal.

In addition, no civil liability may likewise be adjudged against accused IGSSI and Aglugub. Section 2, Rule 111 of The Revised Rules of Criminal Procedure provides:

> ...
>
> **SEC. 2.** *When separate civil action is suspended.* — ...
>
> ...
>
> The extinction of the penal action does not carry with it extinction of the civil action. **However, the civil action based on delict shall be deemed extinguished if there is a finding in a final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist.**[142]
>
> ...

In this case, since the subject assessments were found to be void, the civil liability *ex delicto* is likewise deemed extinguished considering that the act or omission from which the civil liability may arise did not exist.

As a final note, the Court wishes to emphasize that in all criminal prosecutions, **the prosecution must rely on the strength of its own evidence and not anchor its success upon the**

Moore, 627 F2d 830 (CA 1980) and *U.S. v. Verkuilen*, 690 F2d 648, 82-2 USTC 9618 (CA7 1982), upheld the conviction of a tax protester for willful failure to file returns. Also cited in *People of the Philippines v. Estelita Delos Angeles*, CTA Crim. Case No. O-027, 25 November 2009.

141 Id., citing *People of the Philippines v. Corazon C. Gernale*, CTA Crim. Case No. O-336, 26 September 2018.

142 Emphasis supplied.

weakness of the evidence of the accused. As reiterated by the Supreme Court in *People of the Philippines v. Ariel Quiñones y Loveria:*[143]

> ...
>
> In all criminal prosecutions, the prosecution bears the burden to establish the guilt of the accused beyond reasonable doubt. In discharging this burden, the prosecution's duty is to prove each and every element of the crime charged in the information to warrant a finding of guilt for that crime or for any other crime necessarily included therein. The prosecution must further prove the participation of the accused in the commission of the offense. In doing all these, **the prosecution must rely on the strength of its own evidence and not anchor its success upon the weakness of the evidence of the accused**. The burden of proof placed on the prosecution arises from the presumption of innocence in favor of the accused that no less than the Constitution has guaranteed. Conversely, as to his innocence, the accused has no burden of proof, hence, he must then be acquitted and set free should the prosecution not overcome the presumption of innocence in his favor. In other words, **the weakness of the defense put up by the accused is inconsequential in the proceedings for as long as the prosecution has not discharged its burden of proof** in establishing the commission of the crime charged and in identifying the accused as the malefactor responsible for it.
>
> ...

Lastly, while there appears inconsistencies in the declaration of both accused Aglugub and his witness as to his connection or position in accused IGSSI, it remains true that, in the prosecution of crimes, the accused has no duty to prove his innocence as the same is already presumed by no less than the Constitution. Indeed, as stated above, the burden lies in the prosecution (plaintiff) to prove his guilt beyond reasonable doubt. Here, plaintiff failed.

WHEREFORE, premises considered, accused **IRA GENERAL SECURITY SERVICES, INC.** and **TRANQUILINO R. AGLUGUB, JR.** are hereby **ACQUITTED** of the offenses charged in CTA Crim. Case Nos. O-776, O-777 and O-778 for failure of plaintiff to prove their guilt beyond reasonable doubt. Accordingly, the cash bail bonds of accused Tranquilino R. Aglugub, Jr. in CTA Crim. Case Nos. O-776 and O-777 are hereby **DISCHARGED** and are to be **RELEASED** to him upon

---

143 G.R. No. 250908, 23 November 2020; Citation omitted and emphasis supplied.

presentation of proper documents, in accordance with usual accounting rules and regulations.

No pronouncement as to civil liability *ex delicto*.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

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

LANEE S. CUI-DAVID
Associate Justice

<u>A T T E S T A T I O N</u>

I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2^{nd} Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII 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 cases were assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice