REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

KJET ENTERPRISES and **JULIE GRACE MAGAHIS y RAFON,**
Accused.

CTA CRIM. CASE NOS. **O-768** and **O-769**

For: Violation of Section 255 of the NIRC of 1997, as amended

Members:

UY, *Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:
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DECISION

BACORRO-VILLENA, J.

At bar are consolidated criminal cases filed by plaintiff People of the Philippines (**plaintiff**) against the accused KJET Enterprises (**accused entity/KJET**) and its sole proprietor Julie Grace Magahis *y* Rafon (**accused Magahis**).

In an Information[1] dated 10 April 2019, plaintiff charges the accused for a violation of Section 255 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, for their failure to pay deficiency Value-Added Tax (**VAT**) for taxable year (**TY**) 2012. The Information reads:

[1] Division Docket (Crim. Case No. O-768), p. 8.

> ...
>
> "That on or about January 26, 2018 in Quezon City, Philippines, accused JULIE GRACE MAGAHIS y RAFON, being the sole proprietor of accused KJET Enterprises, an entity engaged in the business of retail snack and grocery items and registered at BIR Revenue District Office No. 40-Cubao, Quezon City, with Tax Identification No. 213-284-815 and whose tax liability as of the said period is within the jurisdictional amount of this Honorable Court, did then and there willfully, unlawfully and feloniously fail to pay her Value[-]Added Tax deficiency liability in the amount of Two Million Two Hundred Sixty-Nine Thousand One Hundred Ninety-Three Pesos and 28/100 (Php2,269,193.28), exclusive of additional surcharge and interest, for taxable year 2012 despite receipt of several notices and demands from the Bureau of Internal Revenues, the latest being in the nature of Demand Before Suit dated January 26, 2018, to the damage and prejudice of the Philippine Government."
>
> **CONTRARY TO LAW.**
>
> ...

The above charge has been docketed as <u>CTA Crim. Case No. O-768</u> and raffled to the Second Division of this Court.

In the evenly dated 10 April 2019 Information[2], later on amended on 28 August 2019, the accused has again been charged with violation of Section 255 of the NIRC of 1997, as amended, for their failure to pay deficiency Income Tax (**IT**) for TY 2012. The Amended Information[3] reads:

> ...
>
> "That on or about January 26, 2018 in Quezon City, Philippines, accused JULIE GRACE MAGAHIS y RAFON, being the sole proprietor of accused KJET Enterprises, an entity engaged in the business of retail snack and grocery items and registered at BIR Revenue District Office No. 40-Cubao, Quezon City, with Tax Identification No. 213-284-815 and whose tax liability as of the said period is within the jurisdictional amount of this Honorable Court, did then and there willfully, unlawfully and feloniously fail to pay her Income Tax deficiency liability in the amount of Six Million One Hundred Seventy-Four Thousand Seven Hundred Fifty-Four Pesos and 87/100 (Php6,174,754.87), exclusive of additional surcharge and interest, for taxable year 2012 despite receipt of several notices and demands from the Bureau of Internal Revenues, the latest being in

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2 Division Docket (Crim. Case No. O-769), p. 8.

3 Id., p. 77.

> the nature of Demand Before Suit dated January 26, 2018, to the damage and prejudice of the Philippine Government."
>
> **CONTRARY TO LAW.**
>
> ...

The aforementioned case has been docketed as <u>CTA Crim. Case No. O-769</u> and was raffled to the Third Division.

<u>FACTS OF THE CASE</u>

Accused Magahis is the sole proprietor of KJET which is engaged in the business of retailing snacks and grocery items. KJET is registered at the Bureau of Internal Revenue (**BIR**) Revenue District Office (**RDO**) No. 40-Cubao, Quezon City with Taxpayer's Identification Number (**TIN**) 213-284-815, and <u>business address</u> at Intrepid Plaza E. Rodriguez Jr. Avenue, Bagumbayan, D3, Quezon City. It maintained a Ministop Store at the same address.

On 18 August 2014, an Electronic Letter of Authority (**eLOA**) eLA201100090545/Letter of Authority (**LOA**) No. 040-2014-00000541[4] was issued and served against accused Magahis for the investigation of all internal revenue taxes for TY 2012. On 27 August 2014, a certain JR Jackson received a physical copy of the LOA[5] on behalf of the accused.

Later, the BIR issued a Checklist of Requirements[6] dated 20 August 2014. A Second & Final Request for Presentation of Records Before the Issuance of Subpoena Duces Tecum[7] dated 12 September 2014 followed and was served on accused Magahis on 16 September 2014.

On 20 April 2015, due to accused Magahis' failure to submit the required documents, the BIR issued a Subpoena Duces Tecum[8] (**SDT**) against her.

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4 Exhibit "P-1", Division Docket (Crim. Case No. O-768), p. 283.
5 Id.
6 Exhibit "P-2", id., p. 284.
7 Exhibit "P-3", id., p. 285.
8 Exhibit "P-5", id., p. 287.

On the same day, a Preliminary Assessment Notice[9] (**PAN**) dated 06 January 2016 was served on accused Magahis. Without any protest to the PAN, a Final Assessment Notice[10] (**FAN**) and a Formal Letter of Demand[11] (**FLD**) were also issued and served on accused Magahis on 22 January 2016. The FLD found accused Magahis liable for deficiency IT amounting to ₱12,791,0417.00 and deficiency VAT amounting to ₱3,665,524.27, inclusive of surcharge and interest as of 22 February 2016 for a total of ₱16,456,571.27.

The PAN, FAN, and FLD were all allegedly served on accused Magahis *via* substituted service, through her father Esmeraldo Magahis (**Esmeraldo**). Based on the records, accused Magahis did not file any protest to the FAN nor an appeal to this Court to challenge the assessment. Thus, on 22 June 2016, a Preliminary Collection Letter[12] (**PCL**) was issued against her through registered mail.

On 05 July 2016, a Final Notice Before Seizure[13] (**FNBS**) was yet again issued against accused Magahis through registered mail.

On 09 September 2016, the BIR issued Warrant of Distraint and/or Levy[14] (**WDL**). Several Warrants of Garnishment (**WGs**) were likewise issued covering accused Magahis' bank accounts, the details of which are as follows:

Bank	Branch	Date Recieved
Bank of the Philippine Islands	Intramuros, Manila	21 September 2016[15]
Metropolitan Bank & Trust Company	Gil Puyat, Makati City	21 September 2016[16]
Philippine National Bank/Allied Banking Corporation	Roxas Blvd., Pasay City	21 September 2016[17]
BPI -Family Bank	Intramuros, Manila	21 September 2016[18]

9 Exhibits "P-7" to "P-7-B", id., pp. 290-294.
10 Exhibits "P-8" to "P-8-A", id., pp. 296-297.
11 Exhibit "P-8-B', id., pp. 298-299.
12 Exhibit "P-9", id., p. 304.
13 Exhibit "P-10", id., p. 305.
14 Exhibit "P-11", id., p. 306.
15 Exhibit "P-12", id., p. 307.
16 Exhibit "P-12-A", id., p. 308.
17 Exhibit "P-12-B", id., p. 309.
18 Exhibit "P-12-C", id., p. 310.

United Coconut Planters Bank	Makati Ave., Makati City	21 September 2016[19]
Banco De Oro Universal Bank	Makati Ave., Makati City	21 September 2016[20]
China Banking Corporation	Villar St., Makati City	21 September 2016[21]
Unionbank of the Philippines	Meralco Ave., Pasig City	19 December 2016[22]
Asia United Bank	ADB Ave., Pasig City	19 December 2016[23]
Landbank of the Philippines	Malate, Manila	19 December 2016[24]

On 26 January 2018, the BIR issued a Final Demand Before Suit[25] **(FDBS)**.

Subsequently, on 13 December 2018, a criminal complaint was filed against the accused with the Department of Justice (**DOJ**). In a Resolution dated 10 April 2019[26], the DOJ resolved to file the criminal Informations at bar.

In **Criminal Case O-768,** finding probable cause for the issuance of a warrant of arrest against accused, the Court' Second Division (**the Court/Second Division**) issued a Warrant of Arrest[27] against accused Magahis on 09 September 2019. The warrant having been returned unserved, an Alias Warrant of Arrest[28] was issued on 18 October 2019. The same was likewise returned unserved for the reason that the accused had already ceased operations at its registered address at Intrepid Plaza, E. Rodriguez Jr. Avenue, Bagumbayan, D3, Quezon City.

19 Exhibit "P-12-D", id., p. 311.
20 Exhibit "P-12-E", id., p. 312.
21 Exhibit "P-12-F", id., p. 313.
22 Exhibit "P-12-G", id., p. 314.
23 Exhibit "P-12-H", id., p. 315.
24 Exhibit "P-12-I", id., p. 316.
25 Exhibit "P-13", id., p. 317.
26 Id., pp. 11-16.
27 Id., p. 92.
28 Id., p. 99.

Thereafter, accused Magahis surrendered voluntarily and her bail bond in the amount of ₱20,000.00 was posted. Accordingly, the Warrant of Arrest and Alias Warrant of Arrest were set aside in a Resolution dated 28 January 2020.[29]

At the arraignment, the Information against accused Magahis was read, and a plea of not guilty was entered.[30]

As for **Crim. Case O-769,** the Court's Third Division (**Third Division**) issued a Warrant of Arrest[31] against accused Magahis on 08 October 2019. The warrant was also returned unserved. Thus, an Alias Warrant of Arrest[32] was issued by the Third Division on 10 December 2019. The same was likewise returned unserved for similar reasons such as those in Crim. Case No. O-768.

Similarly, accused Magahis surrendered voluntarily and posted her bail bond in the amount of ₱20,000.00. Accordingly, the Third Division set aside the Warrant of Arrest and Alias Warrant of Arrest in a Resolution dated 28 January 2020.[33]

Upon arraignment for the aforementioned case, accused Magahis also pleaded "not guilty" to the offense charged.[34]

On 02 March 2020, the parties filed their "Joint Motion to Consolidate Crim. Case Nos. O-768 and O-769".[35] In a Resolution dated 09 March 2020[36], the Third Division granted the parties' motion and ordered the consolidation of Crim. Case No. O-769, with Crim. Case No. O-768 (pending with the Second Division). Hence, both cases were tried before the Second Division.

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29 Id., p. 107.
30 Certificate of Arraignment dated 26 February 2020, id., p. 120.
31 Division Docket (Crim. Case No. O-769), p. 84.
32 Id., pp. 92-93.
33 Id., pp. 102-103.
34 Certificate of Arraignment dated 26 February 2020, id., p. 120.
35 Id., pp. 124-125.
36 Id., pp. 128-129.

CONSOLIDATED PROCEEDINGS BEFORE THE SECOND DIVISION

On 28 September 2020, plaintiff filed its Pre-Trial Brief[37] (**PTB**) while accused Magahis filed her PTB[38] on 27 October 2020.

Thereafter, Preliminary Conference[39] was held on 16 November 2020. A Pre-Trial Order[40] was later issued on 04 December 2020.

EVIDENCE FOR THE PLAINTIFF

During the trial proper, plaintiff presented the testimonies of the following witnesses, all of whom testified *via* their respective judicial affidavits, namely: (1) Revenue Officer (**RO**) Gemma C. Abejuela (**Abejuela**); (2) RO Jonathan F. Genova (**Genova**); and, (3) Group Supervisor (**GS**) Ma. Teresita B. Alava (**Alava**).

In her direct testimony, RO Abejuela stated that she was the same agent assigned in the eLOA and LOA to conduct the audit of accused KJET. She attested to issuing requests against accused Magahis for the production of pertinent documents. After accused KJET's continuous failure to comply with the BIR's requests, she recommended the issuance of the SDT, PAN, and FAN against it. She also testified to the fact that the PAN, FAN, and FLD were served *via* substituted service through accused Magahis' father (Esmeraldo) at the former's other known address[41] (her residence) and that despite service of said demands for payment of tax deficiencies, accused Magahis did not make any payment. Neither did she file any protest thereto.

RO Genova corroborated RO Abejuela's testimony as regards the lack of any protest to FAN and FLD resulting thus in the assessment's finality. He further testified that due to accused Magahis' failure to pay, he prepared and issued the PCL and FNBS. Thereafter, he

37 Division Docket (Crim. Case No. O-768), pp. 138-143.
38 Id., pp. 165-170.
39 See Order dated 16 November 2020, id., p. 172.
40 Id., pp. 174-180.
41 Exhibit "P-14", Judicial Affidavit of RO Gemma C. Abejuela, id., pp. 184-191.

forwarded accused Magahis' case to the BIR's Arrears Management Section for the issuance of the WDL and WGs.[42]

Lastly, GS Alava testified to supervising the issuance and service of the WDL and the WGs on certain banks where accused Magahis had known bank accounts.[43]

With no other witnesses to present, the Second Division, in an Order dated 08 March 2021[44], directed plaintiff to file its Formal Offer of Documentary Evidence (**FOE**) within twenty (20) days from such order. Both accused were also given an equal period within which to file a comment/opposition to the FOE.

On 29 March 2021, plaintiff filed its FOE[45] through electronic filing while the Comment[46] to plaintiff's FOE was filed on 17 May 2021.

In a Resolution dated 08 June 2021[47], the Court resolved to admit all of plaintiff's documentary exhibits for being either originals or stipulated by parties to be originals and faithful reproductions of the documents they purported to be.[48]

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42 Exhibit "P-15", Judicial Affidavit of RO Jonathan F. Genova, id., pp. 218-221.

43 Exhibit "P-16". Judicial Affidavit of GS Ma. Teresita B. Alava, id., pp. 227-231.

44 Id., p. 246.

45 Id., pp. 265-282.

46 Id., pp. 247-258.

47 Id., pp. 355-356.

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Exhibit	Description
"P-1"	Letter of Authority No. LOA-040-2014-00000541 dated August 18, 2014.
"P-2"	Checklist of Requirements dated August 20, 2014.
"P-3"	Second & Final Request for Presentation of Records Before the Issuance of Subpoena Duces Tecum dated September 12, 2014.
"P-4"	Recommendation for Issuance of Subpoena Duces Tecum dated March 31, 2015.
"P-5"	Subpoena Duces Tecum No. ORD00999 dated April 20, 2015.
"P-6"	Memorandum Report of Revenue Officer Gemma C. Abejuela dated August 25, 2015.
"P-7"	Preliminary Assessment Notice with Details of Discrepancies dated January 06, 2015.
"P-7-A"	Affidavit of Service of Preliminary Assessment Notice/Final Assessment Notice dated January 07, 2016.
"P-7-B"	Registry Receipt No. 200.
"P-7-C"	Photocopy of the Identification Card of Mr. Esmeraldo L. Magahis.
"P-8"	Assessment Notice Demand No. 040-B254-12 dated January 22, 2016 for Income Tax.
"P-8-A"	Assessment Notice Demand No. 040-B254-12 dated January 22, 2016 for Value-Added Tax.

On 18 June 2021, accused Magahis filed a "Motion for Leave of Court to File Attached Demurrer to Evidence"[49] (**Motion to Leave**), claiming that plaintiff failed to prove her guilt beyond reasonable doubt. In her attached "Demurrer to Evidence"[50] (**Demurrer**), accused Magahis argued that the LOA, PAN and FAN were not validly served on her. She further contends that she did not willfully fail to pay tax.

On 25 June 2021[51], the Second Division granted accused Magahis' Motion for Leave and admitted her Demurrer. Plaintiff, in its "Comment/Opposition (To Accused's Demurrer to Evidence)"[52] filed

"P-8-B"	Formal Letter of Demand No. 040-B254-12 with Details of Discrepancies dated January 22, 2016.
"P-8-C"	Affidavit of Service of Preliminary Assessment Notice/Final Assessment Notice dated January 25, 2016.
"P-8-D"	Registry Receipt No. 1072.
"P-8-E"	Photocopy of the Identification Card of Mr. Esmeraldo L. Magahis.
"P-9"	Preliminary Collection Letter dated June 22, 2016.
"P-9-A"	Registry Receipt No. RD 637 458 453 ZZ.
"P-10"	Final Notice Before Seizure dated July 05, 2016.
"P-10-A"	Registry Receipt No. RD 637 479 396 ZZ.
"P-11"	Warrant of Distraint and/or Levy dated September 05, 2016.
"P-12"	Warrant of Garnishment to Bank of Philippines Islands dated September 21, 2016.
"P-12-A"	Warrant of Garnishment to Metropolitan Bank & Trust Company dated September 21, 2016.
"P-12-B"	Warrant of Garnishment to Philippine National Bank/Allied Banking Corporation dated September 21, 2016.
"P-12-C"	Warrant of Garnishment to BPI – Family Bank dated September 21, 2016.
"P-12-D"	Warrant of Garnishment to United Coconut Planters Bank dated September 21, 2016.
"P-12-E"	Warrant of Garnishment to Banco de Oro Universal Bank dated September 21, 2016.
"P-12-F"	Warrant of Garnishment to China Banking Corporation dated September 21, 2016.
"P-12-G"	Warrant of Garnishment to Unionbank of the Philippines dated September 21, 2016.
"P-12-H"	Warrant of Garnishment to Asia United Bank dated September 21, 2016.
"P-12-I"	Warrant of Garnishment to Landbank of the Philippines dated September 21, 2016.
"P-13"	Demand Before Suit dated January 27, 2018.
"P-13-A"	Registry Receipt No. RD 875 434 991 ZZ.
"P-14"	Judicial Affidavit of Gemma C. Abejuela.
"P-14-A"	Signature over Printed Name of Gemma C. Abejuela.
"P-15"	Judicial Affidavit od Jonathan F. Genova.
"P-15-A"	Signature over Printed Name of Jonathan F. Genova.
"P-16"	Judicial Affidavit of Ma. Teresita B. Alava.
"P-16-A"	Signature over Printed Name of Ma. Teresita B. Alava.

49 Division Docket (Crim. Case No. O-768), pp. 357-359.
50 Id., pp. 363-375.
51 See Resolution dated 25 June 2021, id., p. 379.
52 Id., pp. 380-385.

on 08 July 2021, counters that the assessment of accused Magahis was valid on every step and that the prosecution was able to prove non-payment of taxes despite adequate notice.

In yet another Resolution dated 01 October 2021[53], the Second Division denied the Demurrer essentially stating that plaintiff's evidence is not insufficient to sustain the charges.

On 03 November 2021, accused Magahis then filed a Motion for Reconsideration[54] (**MR**) of the above Resolution with plaintiff's Comment[55] thereto on 01 December 2021. In a Resolution dated 09 February 2021[56], the Second Division resolved to deny accused Magahis' MR.

EVIDENCE FOR THE ACCUSED

Subsequently, the trial of the case continued with the accused's presentation of evidence. As the sole witness for herself, accused offered her direct testimony *via* her judicial affidavit where she testified that she only came to know of the assessment against her and her business upon learning that warrants of arrest were issued against her. There, she also stated that the Ministop Convenience Store franchise (operated by accused KJET) had already ceased operations as early as 23 December 2014. Lastly, she also contended that the person who received the LOA (a certain JR Jackson) was unknown to her and that she did not authorize her father to receive the PAN, FAN, and FLD on her behalf.[57]

With the completion of accused Magahis' testimony, the Second Division, in an Order dated 30 March 2022[58], directed the accused to file their FOE within thirty (30) days from such order. Plaintiff was given a similar period within which to file its comment/opposition thereto.

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[53] Id., pp. 390-395.
[54] Id., pp. 396-404.
[55] Id., pp. 407-411.
[56] Id., pp. 413-415.
[57] Judicial Affidavit of Julie Grace Magahis *y* Rafon, id., pp. 420-426.
[58] Id., p. 435.

On 08 April 2022, accused Magahis filed her FOE[59] while plaintiff filed the Comment/Opposition[60] on 18 April 2021.

In a Resolution dated 21 June 2022[61], the Second Division admitted all of the accused's exhibits and ordered the parties to file their respective memoranda within 30 days from notice thereof. Both accused filed their Memorandum[62] on 20 July 2022, while plaintiff filed its Memorandum[63] on 26 July 2022. In a Resolution dated 02 August 2022[64], the Second Division submitted the consolidated cases for decision.

ISSUES

Per the Second Division's Pre-Trial Order[65], the parties have stipulated the following issues for this Court's resolution:

I.
WHETHER THE ACCUSED IS LIABLE FOR VIOLATION OF SECTION 255 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED;

II.
WHETHER THE ACCUSED IS LIABLE FOR DEFICIENCY INCOME TAX (IT) AND VALUE-ADDED TAX (VAT) FOR TAXABLE YEAR 2012 AS CHARGED IN THE INFORMATIONS SUBJECT OF THE CASES; AND,

III.
WHETHER THE PRELIMINARY ASSESSMENT NOTICE (PAN) AND FORMAL LETTER OF DEMAND (FLD) WERE PROPERLY SERVED.

Plaintiff maintains that due process was observed in the assessment of the accused. It argues that the LOA, PAN, FAN, and FLD were validly served through substituted service while all other issuances were properly served *via* registered mail. Also, since the

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59 Id., pp. 441-444.
60 Id., pp. 445-448.
61 Id., pp. 450-451.
62 Id., pp. 452-470.
63 Id., pp. 471-492.
64 Id., p. 494.
65 Id., pp. 174-180.

accused failed to file any protest to dispute the assessment, the same had become final and executory.

Plaintiff further contends that despite finality and adequate notice and demand for payment of deficiency IT and VAT, the accused failed willfully to pay the deficiency taxes claimed.

On the other hand, both accused maintain that they did not receive any notice of the assessment. They argue that the service of said notices on accused Magahis, through her father, was invalid. They further contend that they did not receive a LOA authorizing the assessment resulting thus in the violation of their due process rights. They, therefore, claim that the assessment against them is void or invalid.

Both accused added that since there was no valid service of the PAN, FAN, and FLD, the essential elements to sustain a conviction for violation of Section 255 of the NIRC of 1997, as amended, are not present.

THE RULING OF THE COURT

For an orderly discussion of the issues at bar, We shall first determine whether the PAN, FAN, and FLD were properly and validly served on accused Magahis. Only after this matter is settled that the Court can proceed to resolve accused's criminal and civil liability *ex delicto*.

To be clear, the Court in determining the validity of service of the aforementioned notices does not seek to re-open or question the validity of the BIR's assessment of the accused. However, since the offenses charges are grounded on the accused's alleged failure to pay despite demand of payment of deficiency tax, it is vital to first establish whether she received the notice of demand.

THE PRELIMINARY ASSESSMENT NOTICE (PAN), FINAL ASSESSMENT NOTICE (FAN), AND FORMAL LETTER OF DEMAND (FLD) WERE PROPERLY AND VALIDLY SERVED.

Revenue Regulations (**RR**) No. 12-99[66], as amended by RR No. 18-2013[67], provides the following rules on service of assessment notices, to wit:

> ...
>
> *3.1.6* ***Modes of Service***. — The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:
>
> (i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A *known address* shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.
>
> In case personal service is not practicable, the notice shall be served by substituted service or by mail.
>
> **(ii) Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:**
>
> The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.
>
> If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.
>
> **If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.**

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66 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.

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

If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

Should the party be found at his registered or known address or any other place but refuse to receive the notice, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

"*Disinterested witnesses*" refers to persons of legal age other than employees of the Bureau of Internal Revenue.

(iii) Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.

The server shall accomplish the bottom portion of the notice. He shall 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 shall be attached to the case docket.

> Service to the tax agent/practitioner, who is appointed by the taxpayer under circumstances prescribed in the pertinent regulations on accreditation of tax agents, shall be deemed service to the taxpayer.[68]
>
> ...

Pursuant to the foregoing rules, substituted service may be made at the taxpayer's residential address by leaving a copy of the notice with a person of legal age residing therein. The records reveal that the PAN and FAN were both received by her father, Esmeraldo at accused Magahis' <u>residential address</u> at No. 1 Osmeña Street corner JP Rizal, Doña Faustina Village, San Bartolome Novaliches, Quezon City. However, before substituted service can be resorted to, it is required that personal service be first proved to be impracticable.

On cross-examination, RO Abejuela testified that the reason for resort to substituted service was due to accused Magahis' absence at the said address. Her declaration on the stand tells, thusly:

> ...
>
> Q: And when you served this Preliminary Assessment Notice and was received by Mr. Esmeraldo C. Magahis, was accused with Mr. Magahis at that time?
>
> A: The accused was not present at her known registered address.[69]
>
> ...

The same line of questioning recurs as regards the subsequent service of the FAN.[70]

The receipt of the assessment notices by accused Magahis' own father, Esmeraldo is undisputed. During accused Magahis' cross-examination, she herself had declared:

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[68] Emphasis supplied and italics in the original text.
[69] TSN dated 07 December 2020, p. 10.
[70] Id., p. 13.

...

[PROSECUTOR] LABUCAY:
It was your father who (*sic*) Mr. Esmeraldo Magahis who received the assessment notices?

WITNESS:
Yes, Attorney.[71]

...

On this note, accused Magahis' only defense is that she did not authorize her father Esmeraldo to receive the BIR's notices. To recall, attempt to serve the BIR notices at accused Magahis was made at another known address which happens to be her place of residence. In such a case, RR No. 12-99, as amended by RR No. 18-2013, on substituted service only requires that "[i]f the known address is the place of residence, substituted service can be made by **leaving the copy with a person of legal age residing therein**."[72] The Court sees no issue on the service of the "notices to Esmeraldo considering that he is a person of legal age residing therein".

At this juncture, it must be noted that at the time the notices were first served at accused KJET's business address, KJET had already ceased operations. **Accused Magahis admitted the same in her judicial affidavit.[73] On re-cross examination, she further admitted that she did *not* notify the BIR of any change in accused entity's registered business address.[74] There is also no evidence on record that the BIR was even notified that KJET had already closed its Ministop franchise at the said location.**

With the above circumstances, it is not a surprise for BIR to have been forced to attempt personal service of the subject notices at accused Magahis' other known address - her residential address. Unfortunately, even attempts to serve the notices on accused Magahis herself had been futile as she could not be found at her own residence. Thus, the BIR was justified in resorting to substituted service pursuant to its assessment of the accused. Accordingly, the PAN, FAN, and FLD were deemed served on accused Magahis through her father.

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71 TSN dated 30 March 2022, p. 9.
72 Supra at notes 66 and 67.
73 Supra at note 57, p. 422.
74 TSN dated 30 March 2022, p. 11.

THE ACCUSED ARE LIABLE FOR INCOME TAX (IT) AND VALUE-ADDED TAX (VAT) DEFICIENCIES FOR TAXABLE YEAR (TY) 2012.

Section 228 of the NIRC of 1997, as amended, provides:

> ...
> **SEC. 228.** *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:
> ...
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.
> ...

In relation thereto, Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-13 states, thusly:

> ...
>
> 3.1.4 ***Disputed Assessment.*** — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
>
> ...
>
> If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable.
>
> ...

The records reveal that accused Magahis received the FAN and FLD on 22 January 2016. Applying the abovementioned provisions, accused Magahis had 30 days or until 21 February 2016 to file a protest thereto in the form of either a request for reconsideration or reinvestigation; otherwise, the assessment shall become final and executory.

Since both accused did *not* dispute the BIR's assessment, the same had already lapsed into finality. Consequently, the court can no longer question the veracity of the BIR's findings at this point as the same is no longer within the Court's jurisdiction as such matter is already barred by administrative *res judicata.*

In *Francisco Salazar v. Reynaldo De Leon*[75] (**Salazar**), the Supreme Court explains the concept of administrative *res judicata* in this wise:

> ...
>
> *Res judicata* is a concept applied in the review of lower court decisions in accordance with the hierarchy of courts. *But jurisprudence has also recognized the rule of administrative* res *judicata*: "**The rule which forbids the reopening of a matter once judicially determined by competent authority applies as well to the judicial and quasi-judicial facts of public, executive or**

[75] G.R. No. 127965, 20 January 2009; Citation omitted, emphasis and italics supplied.

> **administrative officers and boards acting within their jurisdiction as to the judgments of courts having general judicial powers . . . It has been declared that whenever final adjudication of persons invested with power to decide on the property and rights of the citizen is examinable by the Supreme Court, upon a writ of error or a *certiorari*, such final adjudication may be pleaded as *res judicata*."** *To be sure, early jurisprudence was already mindful that the doctrine of res judicata cannot be said to apply exclusively to decisions rendered by what are usually understood as courts without unreasonably circumscribing the scope thereof; and that the more equitable attitude is to allow extension of the defense to decisions of bodies upon whom judicial powers have been conferred.*
>
> ...

In *Carlito C. Encinas v. PO1 Alfredo Agustin, Jr., et al.,*[76] (**Encinas**) the Supreme Court explains that the doctrine of *res judicata* applies to administrative proceedings, to wit:

> ...
> The CA was correct in ruling that the doctrine of *res judicata* applies only to judicial or quasi-judicial proceedings, and not to the exercise of administrative powers. Administrative powers here refer to those purely administrative in nature, as opposed to administrative proceedings that take on a quasi-judicial character.
>
> In administrative law, a quasi-judicial proceeding involves (a) taking and evaluating evidence; (b) determining facts based upon the evidence presented; and (c) rendering an order or decision supported by the facts proved. The exercise of quasi-judicial functions involves a determination, with respect to the matter in controversy, of what the law is; what the legal rights and obligations of the contending parties are; and based thereon and the facts obtaining, the adjudication of the respective rights and obligations of the parties. ...
>
> ...

Applying *Encinas*, it becomes clear that the conduct of a tax assessment is an administrative proceeding done in the exercise of the CIR's quasi-judicial functions.[77] *First,* in the conduct of an assessment, the BIR evaluates pertinent documents submitted by the taxpayer. *Second,* the assessment issued is based on the evidence available to the

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[76] G.R. No. 187317, 11 April 2013; Citations omitted.
[77] *See Commission of Internal Revenue v. Court of Tax Appeals (Second Division) and Petron Corporation,* G.R. No. 207843, 15 July 2015.

BIR. *Third*, the assessment and demand for payment of tax liabilities are based on the facts established so much so that Section 228 of the NIRC of 1997, as amended, requires that, "taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void".[78]

With the above disquisitions, it becomes undeniable that the assessment has attained final and the correctness of the calculations therein as regards the amount of the accused's tax liabilities are already foreclosed to judicial review.

Furthermore, even assuming for the sake of argument that the assessment of the accused is still up for dispute, the same is not a proper subject of a criminal case for tax evasion. It is elementary that a case for tax evasion may be instituted *without* need of an assessment. Any irregularity in the conduct thereof therefore, does not constitute a bar to the filing of a criminal case for tax evasion. Rule 111, Section 1(a) of the Rules of Court provides that "[w]hen a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action." Based on this principle, it is well-established that, what is deemed instituted with the criminal action is only the action to recover civil liability arising from the crime.[79]

On this note, the Court cites again the Supreme Court's ruling in *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation, et al.*[80] (**Pascor**), as We did previously in this Court's Resolution dated 01 October 2021:

> ...
> The issuance of an assessment must be distinguished from the filing of a complaint. Before an assessment is issued, there is, by practice, a pre-assessment notice sent to the taxpayer. The taxpayer is then given a chance to submit position papers and documents to prove that the assessment is unwarranted. If the commissioner is unsatisfied, an assessment signed by him or her is then sent to the

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78 Supra at p. 17.
79 *Avelino Casupanan, et al. v. Mario Llavore Laroya*, G.R. No. 145391, 26 August 2002.
80 G.R. No. 128315, 29 June 1999.

> taxpayer informing the latter specifically and clearly that an assessment has been made against him or her. In contrast, the criminal charge need not go through all these. The criminal charge is filed directly with the DOJ. Thereafter, the taxpayer is notified that a criminal case had been filed against him, not that the [C]ommissioner has issued an assessment. It must be stressed that a criminal complaint is instituted not to demand payment, but to penalize the taxpayer for violation of the Tax Code.
>
> ...

Following *Pascor*, the Supreme Court in the more recent case of *Macario Lim Gaw, Jr. v. Commissioner of Internal Revenue* (**Gaw**)[81] further stated that, "[i]t is well-settled that the taxpayer's obligation to pay the tax is an obligation that is created by law and does not arise from the offense of tax evasion." Considering the above doctrines, the Court finds no reason to disturb the findings contained in the assessment against the accused.

Furthermore, this Court is not convinced with accused's argument that the obligation to pay taxes could not arise without a valid assessment. On the contrary, taxes should be paid even without demand.

THE ELEMENTS OF TAX EVASION ARE
PRESENT IN THE CASE AT BAR.

In the Informations filed against both accused, it has been alleged that they have evaded payment of IT and VAT in violation of Section 255 of the NIRC of 1997, as amended, which reads, thus:

> ...
>
> **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 the accurate information, who willfully fails to pay such tax, make such return, keep such 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 shall, in addition to other penalties provided by law,

81 G.R. No. 222837, 23 July 2018.

> 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 therefore, 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.
>
> ...

In *Commissioner of Internal Revenue v. The Estate of Benigno P. Toda Jr., et al.*[82] (**Toda**), the Supreme Court explained the elements that must coincide to sustain a conviction for tax evasion, to wit:

> ...
>
> Tax evasion connotes the integration of three factors: (1) **the end to be achieved, *i.e.*, the payment of less than that known by the taxpayer to be legally due, or the non-payment of tax when it is shown that a tax is due**; (2) an accompanying state of mind which is described as being "evil," in "bad faith," "willfull," or "deliberate and not accidental"; and (3) a course of action or failure of action which is unlawful.
>
> ...

As regards the *first* factor, evidence on record shows that as of date, the accused have not paid the deficiency taxes claimed despite having been notified thereof. The failure to pay said deficiency taxes despite demand is an unlawful omission punishable under Section 255 of the NIRC of 1997, as amended, which satisfies the *third* factor enumerated in *Toda*. The only factor left to the Court's determination is the *second, i.e.*, whether such non-payment was willful or tainted by bad faith.

To recap, the following admissions were made by accused Magahis: (1) she did not notify the BIR of her change of registered business address nor of the closure of her operations

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[82] G.R. No. 147188, 14 September 2004; Emphasis supplied.

at the same location; and, (2) the PAN, FAN, and FLD were served through substituted service on her father at her residential address.

On the other hand, plaintiff's witnesses were able to establish the following: (1) that BIR agents tried to personally serve accused Magahis at her residential address but she was not found therein; (2) that accused Magahis' father was present at her residence, and copies of the PAN, FAN, and FLD were left with him; and, (3) that after service thereof and the FLD's finality, accused Magahis still failed to pay the tax deficiencies indicated therein.

Taking the above circumstances into account, there appears to be a conscious effort on accused Magahis to evade the payment of taxes. *First*, by failing to inform the BIR of the closure of KJET's operations at its registered business address or any change thereto, accused Magahis already thwarted attempts of the BIR to serve her assessment notices. This becomes more glaring when *prior* to ceasing operations, a LOA was already served at accused Magahis' registered business address on 27 August 2014. According to accused Magahis, KJET's operations at its business address was terminated only on 23 December 2014. On cross-examination, RO Abejuela testified that a copy of the LOA was left with a certain employee of the accused, JR Jackson.

***Second*, despite valid substituted service of the PAN, FAN, and FLD, accused Magahis never protested nor paid any of tax deficiencies assessed. It must be stressed that accused Magahis was served at her correct residential address which she admitted during her cross-examination.**

In her defense, accused Magahis merely denies that JR Jackson was KJET's employee. She further denied her own father's authority to accept the PAN, FAN, and FLD on her behalf. She also posits that despite admitting receipt of the said notices by her father, the latter never relayed any of the said notices to her.

To the Court's mind, such blanket denials and alibis, without any supporting independent evidence (other than accused Magahis' bare testimony) are self-serving and deserve scant consideration in light of the evidence against her. In *People of the Philippines v. Edgardo Ogarte y Ocob*[83] (**Ogarte**), the Supreme Court explains:

> ...
> ... This Court has uniformly held, time and again, that both "denial and alibi are among the weakest, if not the weakest, defenses in criminal prosecution." It is well-settled that denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law. ...
> ...
>
> We have also declared that in case of alibi, the accused must show that he had strictly complied with the requirements of time and place:
>
>> In the case of alibi, it is elementary case law that the requirements of time and place be strictly complied with by the defense, meaning that the accused must not only show that he was somewhere else but that it was also physically impossible for him to have been at the scene of the crime at the time it was committed. ...
>
> ...

Moreover, in *People of the Philippines v. Dione Palomar, et al.*[84] (**Palomar**), the Supreme Court discussed the infirmity of alibis as a defense. It declared:

> ...
> Alibi is one of the weakest defenses not only because it is inherently frail and unreliable, but also because it is easy to fabricate and difficult to check or rebut. It cannot prevail over the positive identification of the accused by eyewitnesses who had no improper motive to testify falsely. ...
> ...

Whether Esmeraldo failed to actually relay the PAN, FAN, and FLD to accused Magahis is a factual matter and must be supported by clear and convincing evidence. Unfortunately, accused Magahis failed to substantiate her claim. As it stands, plaintiff was able to prove satisfactorily the valid substituted

[83] G.R. No. 182690, 30 May 2011; Citations omitted.
[84] G.R. Nos. 108183-85, 21 August 1997.

service of the BIR notices on accused Magahis (thourgh her own father).

Moreover, accused Magahis' insistence that she only came to know of the assessment during the case pendency is highly improbable. Even disregarding the substituted service of the subject notices, plaintiff's evidence reveals that ten (10) of accused Magahis' bank accounts with 10 different banks have already been garnished as early as <u>2016</u>. Therefore, it is unbelievable that accused Magahis is ignorant of these garnishments against her own bank accounts all this time. Such attempt at a summary collection by the BIR would logically place any sound person on guard and at the very least urge such person to inquire as to the reasons therefor.

All of the elements of tax evasion having been proved, accused Magahis' feigned ignorance of the assessment against her cannot exempt her from criminal liability.

Now, as regards accused Magahis' civil liability *ex delicto*, Section 205 of the NIRC of 1997, as amended, provides:

> ...
>
> SEC. 205. *Remedies for the Collection of Delinquent Taxes.* - The civil remedies for the collection of internal revenue taxes, fees or charges, and any increment thereto resulting from delinquency shall be:
>
> ...
>
> (b) By civil or criminal action.
>
> ...
>
> The judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case as finally decided by the Commissioner.
>
> ...

The civil liability *ex delicto* in this case would be in the amount of deficiency tax proven to have been evaded by accused Magahis. However, considering that the assessment of accused Magahis is already final and executory, the Court is bound to order the payment of the amount of taxes subject of the criminal action as determined in the FLD. To recall, the FLD found accused Magahis liable for deficiency IT in the amount of ₱12,791,047.00 and deficiency VAT amounting to ₱3,665,524.27 inclusive of surcharge and interest as of 22 February 2016 for a total of ₱16,456,571.27.

WHEREFORE, the forgoing premises considered, the Court finds the accused **KJET ENTERPRISES** and **JULIE GRACE MAGAHIS y RAFON:**

1) In Criminal Case No. O-768, **GUILTY** beyond reasonable doubt of violation of Section 255 of the National Internal Revenue Code of 1997, as amended, charged in the Information dated 10 April 2019 for willful failure to pay deficiency income tax. Accordingly, accused **JULIE GRACE MAGAHIS y RAFON** is sentenced to **IMPRISONMENT** for period of **ONE (1) YEAR** and to pay a **FINE** in the amount of **TEN THOUSAND PESOS (₱10,000.00)**. The accused are further ordered to pay the Bureau of Internal Revenue the amount of ₱12,791,047.00, representing income tax deficiencies for taxable year 2012, with legal interest of 6% *per annum* from 22 February 2016.

2) In Criminal Case No. O-769, **GUILTY** beyond reasonable doubt of violation of Section 255 of the National Internal Revenue Code of 1997, as amended, charged in the Information dated 10 April 2019 for willful failure to pay deficiency value-added tax. Accordingly, accused **JULIE GRACE MAGAHIS y RAFON** is sentenced to **IMPRISONMENT** for period of **ONE (1) YEAR** and to pay a **FINE** in the amount of **TEN THOUSAND PESOS (₱10,000.00)**. The accused are further ordered to pay the Bureau of Internal Revenue the amount of ₱3,665,524.27, representing value-added tax deficiencies for taxable year 2012, with legal interest of 6% *per annum* from 22 February 2016.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

ATTESTATION

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.

ERLINDA P. UY
Associate Justice
2nd 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