REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

NEIL S. BAUTISTA AND CECILIA V. AQUINO,
in their capacities as partners of CENIEL SUNSTAR TRADING CO.,
Accused.

CTA CRIM. CASE NO. O-394
For: *Violation of Section 255 in relation to Sections 253 (d) and 256 of the NIRC*

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, and
MANAHAN, *JJ.*

Promulgated:

JUN 2 8 2017

9:15 a.m.

x- x

DECISION

CASTAÑEDA, JR., *J.*:

Accused Neil S. Bautista and Cecilia V. Aquino are charged before this Court with "Violation of Section 255 in relation to Sections 253(d) and 256 of the National Internal Revenue Code (NIRC)" under the Information[1] dated December 16, 2013, the accusatory portion of which reads:

> "That on or about the 9th day of December 2009 up to the present, in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, in their capacities as Partners of CENIEL SUNSTAR TRADING COMPANY, a duly registered General

[1] Information filed May 22, 2014, docket, pp. 4 to 5.

Partnership, conspiring and mutually helping with one another, did, then and there willfully, unlawfully and feloniously fail and refused to pay the following basic tax deficiency amounting to Eight Million Two Hundred Forty Five Thousand Four Hundred Twenty Pesos and Thirty Six Centavos (₱8,245,420.36) itemized as follows:

Tax Type	Basic Tax Due
Deficiency on Income Tax	₱6,155,473.34
Deficiency on Value Added Tax (VAT)	₱2,982,705.13
Deficiency on Expanded Withholding Tax (EWT)	₱7,241.89
Total	₱8,245,420.36

for the taxable year of 2006, which already totaled to Twelve Million Six Hundred Sixty Nine Thousand Seven Hundred Twelve Pesos and Seventy Three Centavos (₱12,699,712.73) inclusive of interests and surcharges as of November 09, 2009, and still fails and refuses to do so until the present, despite the finality and incontestability of the Assessment Notices/Formal Letters of Demand dated November 09, 2009, from the Commissioner of Internal Revenue through BIR Regional Director Jaime B. Santiago.

Contrary to law."

The Court, after a careful evaluation of the Information and supporting documents,[2] found a probable cause to issue a warrant of arrest against both accused. Accordingly, the Court issued Warrant of Arrest[3] against both accused on June 6, 2014. Subsequently, the Court issued Alias Warrants of Arrest against the accused on July 29, 2015.[4]

Accused Neil S. Bautista ("accused Bautista" for brevity) and Cecilia V. Aquino ("accused Aquino") voluntarily appeared before this Court and posted the required bail bond for their provisional liberties by way of cash bond in the amount of ₱20,000.00 each, on August 18, 2015.[5]

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[2] Resolution dated June 5, 2014, docket, pp. 57 to 59.
[3] Docket, pp. 61 and 62.
[4] Resolution, docket, p. 64.
[5] Resolution, docket, p. 66; Alias Warrants of Arrest, docket, pp. 86 and 87.

Upon arraignment, accused Bautista and Aquino were assisted by defense counsel *de parte*, Atty. Reginal L. Jose, and entered their pleas of "NOT GUILTY" to the offense charged.[6]

The Preliminary Conference was held on September 30, 2015.[7] During the said conference, the parties stipulated the following facts:

> "1. That the accused are the same person charged in the Information.
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> 2. That this Honorable Court has jurisdiction over the case.
>
> 3. CENEIL SUNSTAR TRADING COMPANY filed its annual corporate income tax return for taxable year 2006 together with its financial statements before BIR, RDO No. 26 on April 16, 2007."

Thereafter, upon manifestation of the prosecution and the defense that they would adopt the Minutes of the Preliminary Conference, the Pre-Trial Conference was deemed terminated.[8] Consequently, the Court issued a Pre-Trial Order on January 18, 2016.[9]

As trial ensued, the prosecution presented the following witnesses: Ms. Alile S. Jipus, Ms. Agnes Lorca, and Mr. Ernesto S. Verano to prove the guilt of the accused.

Ms. Alile S. Jipus is a Revenue Office I of the Bureau of Internal Revenue (BIR), who is presently assigned at Revenue District Office No. 26, Malabon-Navotas Districts. She testified that she was authorized to examine the books of accounts and other accounting records of Ceniel Sunstar Trading Co. ("Ceniel" for brevity) for taxable year (TY) 2006, pursuant to the Letter of Authority LA No. 2007-00004718. Since Ceniel failed to present the requested accounting records, she assessed the former based on the best evidence obtainable. She stated that as a matter of procedure, she recommended the issuance of subpoena *duces tecum* to compel

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6 Resolution dated September 21, 2015, docket, p. 98.
7 Minutes of the Preliminary Conference, docket, pp. 108 to 113.
8 Minutes of the Hearing and Resolution both dated November 9, 2015, docket, pp. 121 and 123.
9 Docket, pp. 131 to 136.

taxpayer to submit the required accounting records. Then, she prepared a Post Reporting Notice but the accused did not refute the findings indicated in the said notice. As such, she proceeded with the assessments and submitted her findings for deficiency income tax, value-added tax (VAT), and expanded withholding tax (EWT) for TY 2006 through Revenue Audit Reports. She claimed that the said audit reports were approved by her Group Supervisor Carlito B. Bohol, Revenue District Officer Rosemarie Ramos-Ragasa, and Regional Director Jaime B. Santiago. She said that based on her Revenue Audit Reports, Assessment Notices were issued against Ceniel for deficiency income tax, VAT, and EWT for TY 2006.[10] She testified that she recommended the issuance of a subpoena but the function to issue such subpoena is lodged with the Legal Division of the Regional Office. She claimed that she had no personal participation in the preparation of the assessment notices.[11]

Ms. Agnes Lorca is a Revenue Officer I presently assigned at Regional District Office No. 25B, Sta. Maria, Bulacan. While she was previously assigned at Assessment Division, BIR, Revenue Region 5, Caloocan City in 2008 to 2015, she came across the tax case of Ceniel. Upon a review of the examinations/investigations of internal revenue taxes conducted by Ms. Jipus on Ceniel's tax docket, Ms. Lorca found that Ceniel was liable for deficiency income tax, VAT, and EWT for TY 200; thus, she prepared and issued the Preliminary Assessment Notices (PAN) with Details of Discrepancies, Then, she indorsed a copy of the PAN to the Billing Section, Assessment Division of Revenue Region 5 for the mailing of the PAN to the registered business of Ceniel at 299 Gen. Luna St., Concepcion, Malabon City. As far as she knew, the PAN was sent to Ceniel because the Assessment Division was furnished with a copy of the Registry Return Notice indicating the date of receipt as well as the signature of the addressee and then attached the same to the tax docket of Ceniel. When Ceniel did not respond to the PAN, she likewise prepared and issued the Final Assessment Notices (FANs) and the Formal Letters of Demand (FLD) for deficiency income tax, VAT, and EWT for TY 2006. She also indorsed the FAN and FLD to the Administrative Division for registered mailing. The Administrative Division furnished the Assessment Division with a copy of the Registry Return Notice indicating the date of receipt as well as the signature of the addressee which she then attached to Ceniel's tax docket. Since the Assessment Division did not receive any administrative protest to the FAN within the prescribed period, the FAN became final, executory and unappealable. Afterwards, the

[10] Exhibits "P-19", docket, pp. 141 to 146.
[11] Transcript of Stenographic Notes (TSN) dated February 10, 2016.

Assessment Division forwarded the tax docket case of Ceniel to the Collection Section of Revenue District Office No. 26 to initiate the collection proceedings.[12]

Mr. Ernesto S. Verano is a Seizure Agent of the BIR, presently assigned at Collection Division, Arrears Management Team (AMT) BIR Annex Bldg., Edsa, Caloocan City. He claimed that he tried to serve several times the Preliminary Collection Letter and Final Notice Before Seizure, but the accused cannot be found at that time. He likewise served in person the Warrant of Distraint and/or Levy to accused Bautista and the latter received the said warrant. Accused Bautista affixed his signature on the Warrant of Distraint and/or Levy on May 12, 2011. He subsequently tried to look for any properties registered under the name of Ceniel Sunstar Trading Company but found no properties. As such, he referred the case to the Legal Division for the filing of appropriate judicial action against accused Bautista and Aquino, in their capacities as partners of Ceniel. According to Mr. Verano, accused Bautista and Aquino are registered partners as indicated in the Securities and Exchange Commission (SEC) registration and Articles of Partnership, as well as their signatures.[13]

Thereafter, the prosecution formally offered the following documentary exhibits which the Court admitted the same on June 16, 2016, as well as testimonial evidence:[14]

Exhibit No.	*Description/Particulars*
"P-1" & "P-2"	Income Tax Return of Ceneil Sunstar Trading Company & its Financial Statements for taxable year 2016
"P-3"	Letter of Authority No. 2007-00004718 issued to Ceneil Sunstar Trading Company
"P-4"	BIR Post Reporting Notice dated March 20, 2009 issued by RDO No. 26 to Ceniel Sunstar Trading Company
"P-5", "P-6" & "P-7"	Revenue Audit Reports for Income Tax, VAT and EWT, all for the year 2006
"P-8" & "P-9"	Preliminary Assessment Notice No. 1746 dated September 30, 2009 and Registry Return Notice under Billing Registry Number 1329 dated October 1, 2009
"P-10", "P-11", "P-12", "P-13" & "P-14"	Final Assessment Notices for Income Tax, VAT and EWT for taxable year 2006 together with Formal Letter of Demands and Registry Return Receipt No. 242
"P-15", "P-16" & "P-17"	Preliminary Collection Letter, Final Notice Before Seizure and Warrant of Distraint and/or Levy served

[12] Exhibit "P-21", docket, pp. 257 to 265.
[13] Exhibit "P-21" but formally offered as Exhibit "P-22", docket, pp. 194 to 199.
[14] Resolution, docket, pp. 274 to 275.

	by personal service by Seizure Agent Ernesto S. Verano
"P-18"	Articles of Partnership of Ceniel Sunstar Trading Company
"P-19"	Judicial Affidavit of Revenue Officer Alile S. Jipus
"P-21"	Judicial Affidavit of Revenue Officer Agnes Lorca
"P-22"	Judicial Affidavit of Seizure Agent Ernesto S. Verano

On the other hand, the defense presented to the witness stand accused Mr. Neil S. Bautista.

Accused Bautista admitted that he is one of the accused in this case. He testified that he was not properly notified of the tax liabilities of Ceniel or the existence of the assessments. He disputed that they were not given opportunity to refute any findings of the BIR. According to accused Bautista, there was no proof that he or accused Aquino received the Post Reporting Notice dated March 20, 2009. He claimed that only registry receipt no. 5609 was attached in the tax docket but there was no corresponding return slip or card. When he came to know that there was a case filed against him before the Prosecutor's Office relative to the instant case, he inquired at the said office; but, a resolution was already made finding probable cause against him and accused Aquino.[15]

Accused Bautista and Aquino, however, failed to formally offer their documentary evidence. Thus, the accused were deemed to have waived their right to do so and were deemed to have rested their case.[16]

On March 15, 2017, the Court noted the Entry of Appearance filed by Atty. Donn Rico G. Kapunan as collaborating counsel for accused Bautista and Aquino.[17] The Court likewise noted and granted the Withdrawal of Appearance of Atty. Reginal L. Jose as counsel for both accused on March 24, 2017.[18]

After the Court considered the Memorandum for the Prosecution[19] filed on February 23, 2017 and the Memorandum for

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[15] Exhibit "A", docket, pp. 280 to 282.
[16] Resolution dated January 23, 2017, docket, p. 290.
[17] Resolution, docket, p. 306.
[18] Resolution, docket, p. 310.
[19] Docket, pp. 291 to 300.

the Defense[20] filed on March 28, 2017, this case was deemed submitted for decision on March 31, 2017.[21]

THE ISSUES TO BE RESOLVED[22]

1. Whether accused Bautista and accused Aquino are guilty beyond reasonable doubt of the offense charged;

2. Whether the deficiency income, value-added tax (VAT) and expanded withholding tax (EWT) assessment issued by the BIR to Ceneil Sunstar Trading Company became final, demandable and executory; and

3. Whether accused Bautista and accused Aquino as partners of Ceneil Sunstar Trading Company are liable to pay deficiency income, VAT, and EWT liability of ₱8,245,420.36 for taxable year 2006 due to their willful non-payment of taxes pursuant to Section 255 in relation to Sections 253 (d) and 256 of the 1997 Tax Code.

Arguments of the parties

The prosecution contends that the documentary and testimonial evidence it presented have adequately and sufficiently proven the guilt of the accused beyond reasonable doubt. The prosecution also insists that the elements for the crime charged are present in the instant case.

Accused are allegedly charged of a crime for the violation of Section 255, in relation to Sections 253 (d) and 256 of the National Internal Revenue Code (NIRC) of 1997, as amended. According to the prosecution, it has presented three vital witnesses to prove the guilt of the accused beyond reasonable doubt. Such testimonial evidence are unrebutted, thus, have weight and credibility. The prosecution alleges that the defense has presented only accused Bautista. The prosecution claims that aside from bare and empty

[20] Docket, pp. 311 to 316.
[21] Resolution, docket, p. 317.
[22] Par. II (C), Pre-Trial Order, docket, p. 132.

allegations of accused Bautista in his Judicial Affidavit, no documentary evidence were introduced or formally offered. As such, the accused's right to file formal offer of exhibits was allegedly deemed waived.

Accused Bautista and Aquino are being sued purportedly as business partners of Ceniel as evidenced by the Articles of Partnership, which was registered with the Bureau of Internal Revenue (BIR) as general partnership. The prosecution avers that the accused are liable for the acts and omission of the Ceniel under Section 256 of the NIRC of 1997, as amended.

The prosecution states that upon submission of the Income Tax Return (ITR) together with its Financial Statements for taxable year (TY) 2006 of Ceniel, the latter became the subject of audit investigation by the BIR. The prosecution likewise expresses that the accused were given opportunity to refute the findings of the BIR through the Post Reporting Notice, but the accused failed to present their books of accounts and other accounting records for TY 2006. When Revenue Officer Alile S. Jipus continued the Revenue Audit Reports for income tax, VAT, and EWT for TY 2006, the accused allegedly still ignored the same. Thus, the PAN was allegedly issued and duly received by the accused as evidenced by the Registry Return Notice. The prosecution asserts that since the accused did not reply to the PAN, the FANs were issued and duly received by the accused as evidenced by the Registry Return Notice. The prosecution firmly believes that the receipts of the PAN and FAN were not controverted by the accused. The prosecution likewise stands that for failure of the accused to file a valid protest, the FAN became final, executory and demandable on December 9, 2009.

The prosecution further claims that Revenue Officer/Seizure Agent Ernesto S. Verano initiated the collection by way of administrative summary remedies through Preliminary Collection Letter, Final Notice Before Seizure and Warrant of Distraint and/or Levy. The same were allegedly served in person to accused Bautista. However, the prosecution alleges that there were no distrainable and/or leviable properties found under the name of the accused or of Ceniel. Thus, the accused' case was allegedly referred to the Legal Division for collection enforcement through judicial action and filed the instant case.

On the other hand, the defense counter-argues that there was denial of due process as both accused did not receive any assessment notices coming from the BIR as the partnership Ceniel folded up after a few years of operations. Allegedly, they were completely unaware of the tax assessments until a criminal complaint was filed against them before the Office of the City Prosecutor of Caloocan City. Accused claims that they were never accorded the opportunity to contest the tax findings.

Likewise, the defense insists that the prosecution failed to establish receipt by accused of the notice of their tax deficiencies. As such, it is allegedly concluded that no assessment was issued; thus, the Formal Letter of Demand (FLD) as well as the Warrant of Distraint and/or Levy are void and of no force and effect. It is the stand of the accused that had they been informed of the said assessments, they could have exhausted administrative remedies available to them as they do not have any intention of evading payment of taxes due the government.

Accused posits that since the prosecution failed to establish the receipt of the assessment notices, the latter failed to prove the former's guilt beyond reasonable doubt. Accused alleges that there was no certification from the Post Office to prove the assessment notices were mailed to the address of the accused. The prosecution did not allegedly substantiate the fact of mailing.

THIS COURT'S RULING

Section 255 of the NIRC of 1997, as amended, provides:

> "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 (₱10,000) and suffer imprisonment

of not less than one (1) year but not more than ten (10) years."

Relative hereto are Sections 253(d) and 256 of the NIRC of 1997, as amended, which state:

"SEC. 253. **General Provisions. –**

xxx xxx xxx

(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 employees responsible for the violation."

"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 (₱50,000) but not more than One hundred thousand pesos (₱100,000)."

Based on the foregoing provisions, to be liable for the alleged crime, the following elements have to be proven by the prosecution beyond reasonable doubt:

1. the corporate[23] taxpayer is required to pay tax and it failed to pay such tax at the time required by law;

2. the accused is the partner, president, general manager, branch manager, treasurer, officer-in-

[23] Under Sec. 22 (B) of the 1997 NIRC, as amended, the "term 'corporation' shall include partnerships, no matter how created or organized, xxx but does not include general professional partnerships and a joint venture or consortium formed for the purpose of undertaking construction projects or engaging in petroleum, coal, geothermal and other energy operations pursuant to an operating or consortium agreement under a service contract with the Government. xxx"

charge or employee responsible for the violation of the corporate taxpayer; and

3. the accused willfully fails to pay the corporate taxes.

The term "willfully" generally connotes a voluntary, intentional violation of a known legal duty.[24]

An act or omission is "willfully" done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law. A willful act may be described as one done intentionally, knowingly, and purposely, without justifiable excuse.[25]

Prosecution failed to prove by competent evidence that accused actually received the PAN, FAN, and FLD, and the willful failure of the accused to pay the tax liabilities.

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 preassessment notice shall not be required in the following cases:

xxx xxx xxx

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

[24] Mertens Law of Federal Income Taxation, Volume 15, 1988 Ed., Chapter 55A, p. 76
[25] Black's Law Dictionary, 6th Ed., p. 1599.

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 the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." (*Emphasis supplied*)

Relative hereto are Sections 3.1.2 and 3.1.4 of Revenue Regulation No. 12-99 to implement the aforesaid provision, to wit:

"3.1.2 *Preliminary Assessment Notice (PAN).* — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based xxx. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties."

> "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* xxx. The same shall be 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."

It is clear from the foregoing that taxpayer must be informed of its tax liability through assessment notice.

An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer.[26]

Accused stand firmly that they did not receive any assessment notices.

Accordingly, since willfulness involves the mental state of the taxpayer, it is imperative for the Court to scrutinize carefully all the facts of this case in order to determine whether failure of the accused to pay the tax deficiency is willful or due to the non-receipt of the assessment notice.

To prove that the accused was duly informed of its tax deficiency, the prosecution has presented the PAN[27], FANs[28], FLD[29] and their respective registry return notices[30].

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[26] *Adamson vs. Court of Appeals*, G.R. Nos. 120935 and 124557, May 21, 2009, 588 SCRA 27, 38.

[27] Exhibit "P-8", docket, pp. 233 to 237.

Nevertheless, accused Bautista has denied any receipt of the assessment notices, to wit:

> "Q 3: You are being charged of a criminal case for non-payment of taxes in your capacity as partner of Ceniel Sunstar Trading Company, what can you say about this?
>
> A: I do not admit that sir, I was not properly notified of such liabilities or assessments if there are indeed one sir;"[31]

The Supreme Court held in the case of *Barcelon, Roxas Securities, Inc. vs. Commissioner of Internal Revenue*[32], that while a mailed letter is deemed received by the addressee in the ordinary course of mail, this is merely a disputable presumption subject to controversion and a direct denial of the receipt thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee, *viz*:

> "Jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The *onus probandi* was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail. The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee (*Republic vs. Court of Appeals, 149 SCRA 351*). Thus as held by the Supreme Court in *Gonzalo P. Nava vs. Commissioner of Internal Revenue,* 13 SCRA 104, January 30, 1965:

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[28] Exhibits "P-10", "P-11", and "P-12", docket, pp. 238, 239, and 240, respectively.
[29] Exhibit "P-13", docket, p. 241.
[30] Exhibits "P-9", and "P-14", docket, pp. 237 and 242, respectively.
[31] Judicial Affidavit of Accused Neil Bautista y Sioson dated September 2, 2016, which is considered as testimonial evidence pursuant to Section 6 of the Judicial Affidavit Rule.
[32] G.R. No. 157064, August 7, 2006, 498 SCRA 126.

> **'The facts to be proved to raise this presumption are (a) that the letter was properly addressed with postage prepaid, and (b) that it was mailed.** Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail. But if one of the said facts fails to appear, the presumption does not lie. (*VI, Moran, Comments on the Rules of Court, 1963 ed, 56-57 citing Enriquez vs. Sunlife Assurance of Canada, 41 Phil 269*).' (*Emphasis supplied*)

The Court has noticed that there were no prosecution's witnesses who testified as to the fact of mailing of the PAN, FANs, and FLD except Ms. Agnes Lorca who stated that she indorsed the copy of the aforesaid documents to the Billing Section for mailing.[33] Ms. Lorca likewise testified that she knew that the PAN, FANs, and FLD were sent because the Assessment Division, where she was previously assigned, was furnished a copy of Registry Return Notice with the date of receipt and the signature of the addressee.[34]

It is apparent from the foregoing that the prosecution was not able to authenticate the fact of mailing of the PAN, FANs, and FLD aside from the assumption of Ms. Lorca that it was mailed because of the Registry Return Notice.

Further scrutiny of the two Registry Return Notices would show that it could not verify whether the said notices actually referred to the mailing of the PAN, FANs, and FLD, because they only indicate "Billing Reg. # 1329 (10-01-09)" and "Billing # 242 11-17-09". Without any supporting documents to prove that Registry Return Notice bearing "Billing Reg. # 1329 (10-01-09)" referred to the mailing of the PAN, and Registry Return Notice bearing "Billing # 242 11-17-09" referred to the mailing of the FANs and FLD, aside from the testimony of Ms. Lorca which is self-serving, the disputable presumption that the mailed letter was indeed received by the addressee would not arise.

In the case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*[35], the Supreme Court pronounced that the sending of a PAN to taxpayer to inform him of the assessment made is part of

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[33] Exhibit "P-21", docket, pp. 260 and 263.
[34] *Ibid.*
[35] G.R. No. 185371, December 8, 2010, 637 SCRA 633.

the due process requirement in the issuance of a deficiency tax assessment. Also, if the taxpayer denies having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee, to wit:

> "On the matter of service of a tax assessment, a further perusal of our ruling in Barcelon is instructive, viz:
>
> Jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The onus probandi was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail. The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee (Republic vs. Court of Appeals, 149 SCRA 351). Thus as held by the Supreme Court in *Gonzalo P. Nava vs. Commissioner of Internal Revenue*, 13 SCRA 104, January 30, 1965:
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> 'The facts to be proved to raise this presumption are (a) that the letter was properly addressed with postage prepaid, and (b) that it was mailed. Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail. But if one of the said facts fails to appear, the presumption does not lie. (VI, Moran, Comments on the Rules of Court, 1963 ed, 56-57 citing Enriquez vs. Sunlife Assurance of Canada, 41 Phil 269).'
>
> x x x. What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized representative. And if said documents cannot be located, Respondent at the very least, should have submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts. This Court does not put much credence to the self serving documentations made by the BIR personnel especially if they are unsupported by substantial evidence establishing the fact of mailing. Thus:
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> 'While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration (Coll. of Int. Rev. vs. Bautista, L-12250 and L-12259, May 27, 1959), this ruling makes it the more imperative that the

> release, mailing or sending of the notice be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or control, without adequate supporting evidence cannot suffice; otherwise, the taxpayer would be at the mercy of the revenue offices, without adequate protection or defense.' (Nava vs. CIR, 13 SCRA 104, January 30, 1965).
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> xxx xxx xxx
>
> From the provision quoted above, it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the 'due process requirement in the issuance of a deficiency tax assessment,' the absence of which renders nugatory any assessment made by the tax authorities. The use of the word 'shall' in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process. Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void."

Further, the Supreme Court reiterated its ruling in the case of *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*[36] that if the taxpayer denies having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee, *viz*:

> "If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. Here, the *onus probandi* has shifted to the BIR to show by contrary evidence that GJM indeed received the assessment in the clue course of mail. It has been settled that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee.
>
> To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the taxpayer or its authorized representative. And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention. **The Court does not put much credence to the self-serving documentations**

[36] G.R. No. 202695, February 29, 2016.

> **made by the BIR personnel, especially if they are unsupported by substantial evidence establishing the fact of mailing.** While it is true that an assessment is made when the notice is sent within the prescribed period, the release, mailing, or sending of the same must still be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or control, and without adequate supporting evidence cannot suffice. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices." (*Emphasis supplied*)

For argument's sake, even if the PAN, FANs, and FLD were deemed mailed, the Registry Return Notices show that the one who received the same are neither accused Bautista nor accused Aquino.

The Registry Return Notice bearing "Billing Reg. # 1329 (10-01-09) indicates a signature which could visibly read as Bautista; while Registry Return Notice bearing "Billing # 242 11-17-09" has a signature and a printed name of one Roselle Bautista.

A careful evaluation of the records reveals that a certain Roselle Bautista was the one who actually received the two Registry Return Notices which were both addressed to Ceneil Sunstar Trading Co. – No. 299 Gen. Luna St. Concepcion, Malabon City.

Notwithstanding, the prosecution was not able to clearly state who is Roselle Bautista and her authority with respect to the partnership of Ceneil.

On the other hand, a further scrutiny of the records shows that the wife's maiden name of accused Bautista is Roselle Dela Peña Aquino[37]. It could sum up from the foregoing that a certain Roselle Bautista, who received the PAN, FANs, and FLD, is the wife of accused Bautista.

Nevertheless, despite the foregoing, it is upon the prosecution's burden to prove that Roselle Bautista has the authority to receive the said assessment notices on behalf of the Ceneil. Being the wife of accused Bautista cannot automatically consider her as the duly authorized agent/representative of Ceniel. The partnership has a juridical personality separate and distinct from that of each of the partners.[38] At this instance, the prosecution has failed to discharge such burden of proof.

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[37] Accused's Personal Information Sheet, docket, p. 68

[38] *Villareal vs. Ramirez*, G.R. No. 144214, July 14, 2003, 406 SCRA 145.

Without any proof of receipt of the tax assessment, the Court cannot determine whether the accused has the knowledge of the tax deficiency and has willfully failed to pay the same despite of such knowledge.

Accordingly, absence of any proof by competent evidence of the receipt of the PAN, FANs, and FLD, or the authority of Ms. Roselle Bautista in relation to the partnership of Ceneil, those assessment notices and FLD as well as the Preliminary Collection Letter, Final Notice Before Seizure, and Warrant of Distraint and/or Levy are void, pursuant to Section 7(b)(1) of Republic Act No. 1125, as amended.[39]

A void assessment bears no valid fruit. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence.[40]

In the case of *Commissioner of Internal Revenue vs. BASF Coating + Inks Phils., Inc.*[41], the Supreme Court held that the issuance of the First Notice Before Issuance of Warrant of Distraint and Levy violated taxpayer's right to due process when no valid notice of assessment was sent to it, *viz*:

> "It might not also be amiss to point out that petitioner's issuance of the First Notice Before Issuance of Warrant of Distraint and Levy violated respondent's right to due process because no valid notice of assessment was sent to it. An invalid assessment bears no valid fruit. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection

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[39] SEC. 7. Jurisdiction. – The CTA shall exercise:

xxx xxx xxx

(b) Jurisdiction over cases involving criminal offenses as herein provided:

(1) xxx. Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized.

[40] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

[41] G.R. No. 198677, November 26, 2014.

> without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence. In the instant case, respondent has not properly been informed of the basis of its tax liabilities. Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made."

Considering the foregoing, the element of willfulness has not been proven.

Thus, the guilt of the accused for the crime charged has not been proven beyond reasonable doubt for failure of the prosecution's to prove the element of willfulness of the accused not to pay the tax deficiency.

The High Tribunal held in the case of *People vs. Mendoza*[42] that 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, *viz*:

> "Thus, the accused was entitled to be acquitted and freed, for, as we pointed out in People v. Belocura:
>
> x x x 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, that 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."

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[42] G.R. No. 192432, June 23, 2014, 727 SCRA 113.

The burden lies on the prosecution to overcome the accused' presumption of innocence by presenting the quantum of evidence required. In so doing, the prosecution must rest on its own merits and must not rely on the weakness of the defense. And if the prosecution fails to meet the required amount of evidence, the defense may logically not even present evidence on its own behalf. Settled is the rule that the evidence for the prosecution must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense.[43]

WHEREFORE, premises considered, accused **NEIL S. BAUTISTA** and **CECILIA V. AQUINO** are hereby **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt.

Further, the Preliminary Assessment Notices No. 1746 dated September 30, 2009, Assessment Notices No. 004427 dated November 9, 2009, Formal Letter of Demand No. 30598 dated November 9, 2009, Preliminary Collection Letter dated January 25, 2010, Final Notice Before Seizure dated September 13, 2010, and Warrant of Distraint and/or Levy No. 026-006-12 are declared **VOID**.

SO ORDERED.

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

WE CONCUR:

(On leave)
CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

[43] *People vs. Dacuma*, G.R. No. 205889, February 4, 2015

ATTESTATION

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice