REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION
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PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIM. CASE NO. O-620** (NPS Docket No. XVI-INV-15H-00320) For: Violation of Section 255, in relation to Sections 253 (d) and 256, of the NIRC of 1997, as amended
- versus -	Members: **UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
CROSS COUNTRY OIL & PETROLEUM, CORP., ARTURO M. ZAPATA AND JACOB VALERIANO, JR. Accused.	Promulgated: MAY 19 2021 10:44 a.m.

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DECISION

Before this Court is the criminal case filed by the People of the Philippines, plaintiff, against Cross Country Oil & Petroleum Corp. (or accused-corporation), Arturo M. Zapata and Jacob Valeriano, Jr., accused, for violation of Section 255, in relation to Sections 253 (d) and 256 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Records show that on November 15, 2016, an *Information*[1] was filed before the CTA First Division[2], charging accused Cross Country Oil and Petroleum Corporation, as represented by its responsible

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[1] Docket, Vol. I, pp. 6 to 8.

[2] Composed of Presiding Justice Roman G. Del Rosario, Associate Justice Erlinda P. Uy, and Associate Justice Cielito N. Mindaro-Grulla (retired).

officers, Arturo M. Zapata, as president, and Jacob Valeriano, as treasurer, of the crime of "Willful Failure to pay taxes on Income Tax" for taxable year 2009 under Section 255, in relation to Sections 253(d) and 256, of the NIRC of 1997, as amended.

In the Resolution[3] dated December 13, 2016, the former First Division of this Court found the existence of probable cause for the issuance of warrants of arrest against accused Zapata and Valeriano. Thus, the former First Division issued *Warrants of Arrest*[4] against both accused on January 11, 2017.

On January 25, 2017, both accused voluntarily appeared and each posted the required bail bonds for their provisional liberty.[5] On the same day, the former First Division issued a Resolution, accepting and approving the cash bail bonds.[6]

On February 16, 2017, accused filed a *Motion to Defer Arraignment and Suspend Proceedings*[7], praying for the deferment of their arraignment and suspension of the proceedings until the final resolution of their *Motion for Reinvestigation/ Reconsideration*, which is pending before the Department of Justice.

In the Resolution[8] dated March 1, 2017, the Court directed the prosecution to file its comment on the accused's *Motion to Defer Arraignment and Suspend Proceedings.* On May 9, 2017, the Judicial Records Division of this Court issued a *Records Verification*[9] stating that plaintiff failed to file its comment on accused's *Motion to Defer Arraignment and Suspend Proceedings.*

In the Resolution[10] dated June 5, 2017, accused's *Motion to Defer Arraignment and Suspend Proceedings* was denied on the ground that the sixty (60) day period of suspension under Section 11(c), Rule 116 of the Revised Rules of Criminal Procedure has already lapsed.

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[3] Docket, Vol. I, pp. 101 to 103.
[4] Docket, Vol. I, pp. 104 to 105 and 107 to 108.
[5] Docket, Vol. I, pp. 110 to 128.
[6] Docket, Vol. I, pp. 133 to 134.
[7] Docket, Vol. I, pp. 142 to 146.
[8] Docket, Vol. I, pp. 295 to 296.
[9] Docket, Vol. I, p. 309.

On June 20, 2017, plaintiff filed a *Motion to Admit Attached First (1st) Amended Information with Entry of Appearance*[11], with attached *Amended Information*[12] dated June 13, 2017, praying that the *First (1st) Amended Information* be admitted in order to reflect the correct identity of accused Valeriano as **Jacob Valeriano, Jr.**, and not Jacob Valeriano. The former First Division granted the said motion and admitted the First (1st) *Amended Information.*[13]

On June 21, 2017, upon arraignment, accused Zapata[14] and accused Valeriano, Jr.[15], entered their pleas of "NOT GUILTY" to the crime charged with the assistance of defense counsel *de parte*, Atty. Kristine Jane R. Liu.[16]

On August 4, 2017, plaintiff filed a *Motion with Leave of Court and To Admit Attached Second Amended Information*[17], with attached *Second Amended Information*[18] dated July 31, 2017, to correct the date of commission from "July 2014" to "August 2013", and the amount of income tax deficiency for taxable year 2009 from "₱141,819,462.87" to "₱184,852,206.94". In the Resolution[19] dated August 14, 2017, the former First Division directed the accused to file their comment or opposition thereto.

On August 15, 2017, accused, through counsel, filed a *Waiver of Appearance*[20] alleging their waiver of their right to be present at the trial of the case. This was noted in the Order[21] dated August 25, 2017.

On August 31, 2017, accused filed a *Manifestation and Motion*[22], stating that they have not yet received a copy of the prosecution's *Motion with Leave of Court and To Admit Attached Second Amended Information;* and praying that the prosecution be directed to furnish them with a copy of the said *Motion*, and that they be granted a ten-day period to comment thereon.

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[11] Docket, Vol. I, pp. 317 to 319.
[12] Docket, Vol. I, pp. 322 to 325.
[13] Order dated June 21, 2017, Docket, Vol. I, pp. 337 to 338.
[14] Docket, Vol. I, p. 326.
[15] Docket, Vol. I, p. 327.
[16] Minutes of the Hearing dated June 21, 2017, Docket, Vol. I, pp. 333 to 334.
[17] Docket, Vol. I, pp. 450 to 452.
[18] Docket, Vol. I, pp. 453 to 455.
[19] Docket, Vol. I, p. 459.
[20] Docket, Vol. II, pp. 460 to 462.
[21] Docket, Vol. II, p. 604.

Meanwhile on September 7, 2017, plaintiff filed its *Pre-Trial Brief* while accused filed their *Pre-Trial Brief* on September 8, 2017.[23]

During the hearing held on September 13, 2017, plaintiff's counsel moved to withdraw the *Motion with Leave of Court and To Admit Attached Second Amended Information* filed on August 4, 2017, in view of the need to make some corrections on the *Second Amended Information.* Defense counsel interposed no objection thereto. Hence, the First Division granted the said oral motion and ordered that plaintiff's *Motion with Leave of Court and To Admit Attached Second Amended Information,* and the *Second Amended Information* dated July 31, 2017, be expunged from the records of the case. As a result, plaintiff's counsel was given until September 18, 2017 to file the appropriate motion attaching thereto the Second Amended Information, while defense counsel was given five days from receipt of said motion to file its comment thereto.[24]

In compliance, plaintiff filed a *Motion with Leave of Court and To Admit Attached Second Amended Information*[25] on September 18, 2017. On October 5, 2017, the Judicial Records Division of this Court issued a *Records Verification*[26] stating that accused failed to file comment on plaintiff's *Motion with Leave of Court and To Admit Attached Second Amended Information.*

In the Resolution dated November 16, 2017, the First Division: (1) granted plaintiff's motion; (2) admitted the *Second Amended Information*[27] dated September 14, 2017; and (3) set the re-arraignment of accused and Pre-Trial Conference on January 31, 2018.[28] The *Second Amended Information*[29] reads as follows:

> "The undersigned Prosecution Attorney of the Department of Justice hereby accuses, CROSS COUNTRY OIL AND PETROLEUM CORPORATION and its responsible officers ARTURO M. ZAPATA, as President and JACOB VALERIANO JR., as Treasurer, respectively with TIN No. 007-120-826, of the crime of "Willful Failure to Pay Taxes on Income Tax" for taxable year 2009 under Section 255, in relation to Sections 253

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[23] Docket, Vol. II, pp. 612 to 616; and pp. 748 to 752, respectively
[24] Minutes of the Hearing dated September 13, 2017, Docket, Vol. III, pp. 1043 to 1044.
[25] Docket, Vol. III, pp. 1048 to 1050.
[26] Docket, Vol. III, p. 1054.
[27] Docket, Vol. III, pp. 1051 to 1053.
[28] Docket - Vol. III, pp. 1063 to 1066.

(d) and 256 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

> "That on August 2013 and thereafter, in Metro Manila, and within the jurisdiction of this Honorable Court, accused *CROSS COUNTRY OIL AND PETROLEUM CORPORATION, ARTURO M. ZAPATA and JACOB VALERIANO JR.*, respectively conspiring and confederating with one another, did then and there, willfully, unlawfully and feloniously fail to pay the corporation's basic deficiency income tax for the taxable year 2009 in the amount of *One Hundred Eighty Four Million Eight Hundred Fifty Two Thousand Two Hundred Six Pesos and Ninety Four Centavos (₱184,852,206.94)* exclusive of penalties, surcharges, and interest, despite final assessment, including prior and post notices and demands to pay, the latest of which was issued by the BIR on 23 August 2013, to the damage and prejudice of the government"
>
> CONTRARY TO LAW."

Upon re-arraignment on the *Second Amended Information* on January 31, 2018, both accused Zapata and Valeriano, Jr., entered their pleas of "NOT GUILTY" to the crime charged, with the assistance of defense counsel *de parte,* Atty. Robin Bryan Concepcion. Subsequently, pre-trial proceeded and both counsels agreed to submit their Joint Stipulation of Facts and Issues not later than February 12, 2018.[30]

On February 12, 2018, the parties filed their *Joint Stipulation (of the Facts and Issues)* (or JSFI)[31], which was approved by the First Division in the Resolution dated February 15, 2018[32].

As stated in the *Pre-Trial Order* dated February 23, 2018,[33] the parties stipulated on the following facts and issues, *to wit*:

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[30] Order dated January 31, 2018, Docket, Vol. III, pp. 1068 to 1070.
[31] Docket - Vol. III, pp. 1072 to 1078.
[32] Docket - Vol. III, p. 1081.

"A. Stipulated Facts:

The parties admitted the following:

1. The identity of the accused as the same persons charged in the Seconded Amended Information.

2. The jurisdiction of the Honorable Court over the case.

3. For taxable year 2009, accused Arturo M. Zapata and Jacob Valeriano, Jr. were the President and Treasurer, respectively, of Cross Country Oil and Petroleum Corporation.

4. For taxable year 2009, the registered business address of Cross Country Oil and Petroleum Corporation was at Rm. 3105 31st Floor, World Trade Exchange Bldg., 215 Juan Luna Street, Binondo, Manila.

5. That the Bureau of Internal Revenue ("BIR") issued a Preliminary Assessment Notice ("PAN") dated 7 May 2012, which assessed accused Cross Country Oil and Petroleum Corporation ("Cross Country") the following deficiency taxes:

	Income Tax (IT)	Value Added Tax (VAT)	Expanded Withholding Tax (EWT)	Documentary Stamp Tax (DST)
Tax Due	₱184,852,206.94	₱293,130,954.96	₱5,663,222.76	₱15,625.00
Surcharge (50%)	92,426,103.47	146,565,477.48	2,831,611.38	7,812.50
Interest	81,638,837.70	142,309,055.39	2,749,378.28	7,756.85
Total Amount Due	**₱358,917,148.11**	**₱582,005,487.84**	**₱11,244,212.43**	**₱31,194.35**

6. Accused Cross Country filed its Comment to the PAN, refuting and taking issue with the IT and VAT deficiency assessments.

7. Complainant BIR issued two (2) Final Assessment Notices ("FANs") dated 24 September 2012 accompanied by a Formal Letter of Demand ("FLD"), which required Cross Country to pay deficiency IT and VAT for the taxable tear 2009, in the following amounts:

	IT	VAT
Tax Due	₱184,852,206.94	₱293,130,954.96
Surcharge (50%)	92,426,103.47	146,565,477.48
Interest	90,269,340.34	156,334,945.95
Total Amount Due	**₱367,547,650.75**	**₱596,031,378.39**

8. Cross Country protested the FANs/FLD with the BIR and submitted documents in support of its Protest on 29 October 2012.

B. Issues:

1. Whether or not the FANs and FLD became final and executory; and

2. Whether or not accused Zapata and Valeriano committed a violation of Section 255, in relation to Sections 253 (d) and 256 of the NIRC"

To establish the culpability of accused, the prosecution presented four (4) witnesses, namely: (1) Vilma V. Caronan; (2) Ma. Paz Arcilla; (3) Maricol O. Domingo; and (4) Marlon Josue B. Garong. They respectively testified as follows:

Testimony of Vilma V. Caronan

Vilma V. Caronan, testified on *direct examination* by way of *Judicial Affidavit*[34], which she identified during the hearing held on February 21, 2018[35], that from 2010 to 2013, she was assigned at Revenue District Office No. 30, Revenue Region (RR) No. 6, BIR Manila, as a Revenue Officer (RO)-Group Supervisor (GS); tasked, among others, to examine the books of accounts and other accounting records of taxpayers pursuant to a *Letter Notice* (LN) and/ or *Letter of Authority* (LOA) duly issued by the Commissioner of Internal Revenue (CIR) and Regional Director (RD), respectively; that she was also tasked to conduct reinvestigation in case a taxpayer files a protest to the assessment and to prepare the corresponding audit reports reflecting the deficiency internal revenue taxes still due against the taxpayer.

Together with ROs Cassandra Anonuevo and Rodolfo Hans Roldan, they were assigned to investigate accused-corporation's books of accounts and other accounting records for taxable year 2009 by virtue of LOA No. SN: eLA201000011951 (LOA-030-2010-

[34] Exhibit "P-47", Docket – Vol. II, pp. 638 to 648

00000227) dated September 2, 2010 issued by RD Alfredo S. Misajon of RR No. 6- BIR- Manila and Letter Notice No. 030-RLF-09-00-00032 dated May 10, 2011 issued by then Commissioner Kim S. Jacinto-Henares.

On September 6, 2010, their group personally served the original copy of the LOA together with the Checklist of Requirements to accused at its registered address at Rm. 3105 WTE Bldg., 215 Juan Luna St., Binondo, Manila, and it was received by a certain Jessa Ranido, accounting clerk of accused corporation. Despite receipt thereof, accused-corporation failed to present and submit its books. Thus, they prepared and personally served to accused the *Second Request for Presentation of Records* dated September 23, 2010 at its registered address on September 24, 2010, reiterating therein the request embodied in the *First Request for Presentation of Records*. The said notice was allegedly received by Jessa Ranido, accounting clerk of accused corporation.

In view of the failure of accused-corporation to present and submit its books of accounts and documents listed in the Checklist of Requirements, they prepared and personally served to accused-corporation the *Final Notice* dated November 18, 2010 at the accused-corporation's registered address, reiterating therein the request embodied in the *First Request for Presentation of Records*; and the said Final Notice was received by Jessa Ranido, accused's accounting clerk.

Thereafter, pursuant to LN No. 030-RLF-09-00032 dated May 10, 2011 issued by then Commissioner Kim S. Jacinto-Henares, she was authorized, together with ROs Cassandra Anonuevo and Rodolfo Hans Roldan, Jr. to examine accused corporation relative to its discrepancies as a result of the matching conducted by the BIR on information/data provided by third party sources against its declarations per VAT returns for taxable year 2009. On May 12, 2011, she personally served the original copy of the LN to accused at its registered address, and it was allegedly received by Jessa Ronido, accused's accounting clerk.

For failure of accused to make the necessary reconciliation relative to its discrepancies, a Follow-Up Letter dated September 13, 2011 was issued and served to accused at its registered address, giving the accused the last chance to submit its books of accounts and documents listed in the Checklist of Requirements.

They were able to compute accused corporation's tax deficiencies after it submitted its accounting records. On September 30, 2011, the *Notice of Informal Conference* with Computation of Deficiency Taxes was served to accused at its registered address. An informal conference was scheduled, giving accused corporation the opportunity to present its objections on their findings and to submit supporting evidence thereto.

After submission by accused's accountant of the Teminalling Agreement – Asphalt, she revised the computation of accused deficiency taxes for taxable year 2009; and issued a Letter with Revised Computation of Deficiency Taxes and served to accused at its registered addressed, which was received by a certain Eleanor Vispo.

After conducting the audit, she found out that accused had the following deficiency taxes:

	Basic deficiency tax	**Surcharge**	**Interest**
Deficiency Income Tax	₱184,852,206.94	₱92,426,103.47	₱70,853,850.92
Deficiency Value-Added Tax (VAT)	293,130,954.95	146,565,477.48	127,042,955.88
Deficiency Expanded Withholding Tax (EWT)	5,663,222.76	2.831,611.38	2,491,818.02
Deficiency Documentary Stamp Tax (DST)	23,437.50	11,718.75	12,812.50

The deficiency income tax was computed pursuant to Section 6(B) and 32 of the NIRC of 1997, as amended; the surcharge was imposed pursuant to Section 248(B) of the of the NIRC of 1997, as amended; while the interest was computed until March 15, 2011 pursuant to Section 249 of the NIRC of 1997, as amended.

For failure of the accused to controvert the Revised Deficiency Taxes, all internal tax docket of accused for taxable year 2009 together with the Revised Computation of Deficiency Taxes were indorsed and forwarded by the Revenue District Officer of RDO No. 30 to the Assessment Division of RR No. 6, BIR Manila for review.

On May 7, 2012, the *Preliminary Assessment Notice* (PAN) with Details of Discrepancies was issued and served to the accused at its registered address.

On May 25, 2012, accused filed a Protest to the PAN requesting for the cancellation and/or withdrawal of the PAN for Income Tax and VAT. The said Protest was referred to their group for reinvestigation. After reinvestigation, the findings/assessment per PAN were reiterated and on July 20, 2012, accused was informed of the result of the reinvestigation through a *Notice to Taxpayer* served to the accused at its registered address. The said letter was received by a certain Gheia Gamit.

On September 24, 2012, *Assessment Notices and Formal Letter of Demand* (FAN/FLD) with *Details of Discrepancies* both dated Septembers 24, 2012 were issued and served to accused corporation at its registered address.

On October 29, 2012, accused filed a Protest to the FAN/FLD requesting for the cancellation and/or withdrawal of the FLD for Income Tax and VAT. The said Protest was referred to their group for reinvestigation. After reinvestigation, the findings/ assessment was reiterated and on January 18, 2013, accused was informed of the result of the reinvestigation through Letter dated January 18, 2013 and served to the accused at its registered address. The said letter was received by a certain Queenie P. Santos.

Thereafter, all internal revenue tax docket of accused for taxable year 2009 was returned to the Assessment Division, RR No. 6, BIR-Manila for reiteration of the assessment.

On *cross-examination*, RO/GS Caronan testified that she personally served the original copy of the LOA to the taxpayer which was received by a certain Jessa Ranito, accused's accounting clerk; while the *Notice to Taxpayer* marked as Exhibit "P-17" was served to a certain Gia Gamit, an employee of Asia Cargo, who was authorized by accused corporation. She likewise testified that the Letter dated January 18, 2013 marked as Exhibit "P-19", which contained the result of the reinvestigation of accused corporation, was served to a certain Queenie Santos, who is not related to accused corporation; and that the telephone number appearing on Exhibit P-19, below the signature and name of Queenie Santos connects to the trunk line of a certain Asia Cargo Corporation.[36]

On *re-direct examination*, she testified that Exhibits "P-17" (Notice to Taxpayer) and "P-19" (Letter dated January 18, 2013), were served at the registered address of accused corporation; and that accused corporation and Asia cargo share the same room office space. [37]

On *re-cross examination*, she confirmed that Asia Cargo is a different corporation from accused corporation.[38]

Testimony of Ma. Paz Arcilla

Ma. Paz Arcilla, testified on *direct examination* by way of *Judicial Affidavit*[39]*,* which she identified during the hearing held on March 21, 2018[40], that she is the Revenue Officer-IV- Chief, Billing Section of RR No. 6 BIR, Manila since June 15, 2001. She is tasked to personally supervise the service and monitoring of PAN with Details of Discrepancies, FAN/FLD with Details of Discrepancies, *Final Decision on Disputed Assessment* (FDDA), demand letters and transcript of assessments of tax cases.

The tax docket of accused for taxable year 2009 was forwarded to her office for the service of the PAN with Details of Discrepancies dated May 7, 2012; issuance and service of the FAN/FLD with Details of Discrepancies dated September 24, 2012; and service of the FDDA dated February 21, 2013 to the accused at its registered address.

The original copies of the PAN with details of Discrepancies dated May 7, 2012, FAN/FLD with Details of Discrepancies, dated September 24, 2012, and FDDA dated February 21, 2013, were transmitted to the Administrative Division, BIR, Manila for service to the accused at its registered address.

On *cross-examination*, RO Arcilla testified that she does not have any personal knowledge on the contents of the FDDA, and the service thereof to accused corporation.[41]

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[36] TSN dated February 21, 2018, pp. 9 to 25.
[37] TSN dated February 21, 2018, pp. 25 to 26.
[38] TSN dated February 21, 2018, pp. 26 to 27.
[39] Exhibit "P-48", Docket – Vol. II, pp. 620 to 624.
[40] TSN dated March 21, 2018, pp. 5 to 8.

Testimony of Maricol O. Domingo

Maricol O. Domingo, testified on *direct examination* by way of *Judicial Affidavit*[42], which she identified during the hearing held on March 21, 2018[43], that she is a Revenue Officer -Seizure Agent of the BIR and currently assigned at Collection Section, Revenue District Office No. 34, RR No. 6, BIR, Manila. She is tasked, among others, to enforce collection of final and demandable internal revenue taxes and to submit reports thereon.

Sometime in 2013, the docket of accused for taxable year 2009 was assigned to her for enforcement of collection proceedings through summary remedies. She conducted the review of the whole records of the tax docket of accused and she prepared the *Preliminary Collection Letter* (PCL) dated August 2, 2013. She personally served the PCL to the accused's registered address. However, accused was no longer occupying and operating at the said address.

Thereafter, she secured from the Securities and Exchange Commission a copy of the General Information Sheet of accused to determine the names of the incorporators and officers and their addresses. She then prepared the *Final Notice Before Seizure* (FNBS) dated August 23, 2013 and served to accused Valeriano and Zapata at their residential address through registered mail.

After serving the FNBS, she prepared the *Warrant of Distraint and/or Levy* (WDL) dated September 11, 2013 and served the same to the accused at its registered address. However, since accused is no longer occupying and operating at its registered address, she then tried to serve the WDL to the Administrator of World Trade Exchange Building but the latter refused to accept the same and instead issued a certification that the accused has ceased occupancy of the said address.

On various dates, she prepared and issued to several banks *Warrants of Garnishment* informing the said banks that the BIR is seizing, distraining, and garnishing so much of the deposits of the accused and such other property in their possession or under their control sufficient to cover the accused's tax obligation, and ordering the said banks to transfer, surrender, transmit and/or remit to the BIR such property/cash in their possession owned by the accused.

[42] Exhibit "P-49", Docket – Vol. II, pp. 723 to 728

She recommended to the Chief, Collection Division, RR No. 6, BIR, Manila, that the tax docket of the accused be forwarded to the Legal Division, RR No. 6, BIR, Manila for inclusion to the RATE Program of the BIR.

Thereafter, the Chief, Collection Division, RR No. 6, BIR, Manila, through the RD, indorsed and forwarded the tax docket of the accused to the Legal Division, RR No. 6, BIR, Manila for legal action.

On *cross-examination*, RO Domingo testified that she does not have any proof that she actually went to the registered address and attempted to serve the PCL. Further, she confirmed that in the FNBS, which is marked as Exhibit "P-29", accused Valeriano and Zapata were identified as the incorporators of accused corporation and that their residential addresses were likewise indicated therein. She likewise testified that she sent a copy of the FNBS to the registered address of accused corporation.[44]

On *re-direct examination*, she testified that prior to the service of the PCL to accused corporation, she verified the BIR Integrated Tax System (ITS) and that the result of her verification shows that the registered address of the corporation in the docket is the same with the ITS. She also testified that she did not serve a copy of the FNBS to the accused corporation at its registered address since the accused is no longer occupying its registered address.[45]

<u>Testimony of Marlon Josue B. Garong</u>

Marlon Josue B. Garong, testified on *direct examination* by way of *Judicial Affidavit*[46], which he identified during the hearing held on April 4, 2018[47] that he is an Administrative Officer III of the BIR and currently assigned at the Records Section, Administrative Division, RR No. 6, BIR-Manila, as OIC-Section Chief. He is tasked among others, to supervise and control the movements of regional communications, tax returns, tax dockets and official records, maintain a detailed record of all reports, communications and various correspondence received and released by the region, and perform other functions as may be assigned.

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[44] TSN dated March 21, 2018, pp. 16 to 20.
[45] TSN dated March 21, 2018, pp. 20 to 22.
[46] Exhibit "P-50", Docket – Vol. II, pp. 698 to 703.

He is familiar with the case because as per records of his office, the subject deficiency tax assessments under PAN with Details of Discrepancies dated May 7, 2012, FAN/FLD with Details of Discrepancies both dated September 24, 2012, and FDDA dated February 21, 2013 were transmitted to the Administrative Division, RR No. 6, BIR, Manila for mailing to the accused at its registered address.

Based on the records of his office, the PAN and FAN/FLD were served to the accused on May 7, 2012 and September 24, 2012, respectively, through registered mail; and that the said notices were received by accused on May 9, 2012 and September 26, 2012, respectively, as shown in the corresponding Registry Return Receipt of the mail matter which was returned by the Postmaster of the Manila Central Post Office to the BIR.

Further, based on the records of his office, the FDDA was served to accused on February 21, 2013, through registered mail; and that the same was received by accused as shown in the Registry Return Receipt of the mail matter containing the FDDA which was returned by the Postmaster of the Manila Central Post Office to the BIR.

On *cross-examination,* he testified that he did not personally mail the FDDA and that his knowledge on the mailing of the said FDDA was based solely on records. He further said that as per their records, Registry Receipt No. 904559 marked as Exhibit "P-21" is for accused corporation. He confirmed that the Registry Return Receipt marked as Exhibit "P-22" does not indicate the Registry Receipt No. 904559.[48]

On *re-direct examination*, he testified that relative to the mailing of the PAN and FAN/FLD, the registry return receipt number is not indicated in the corresponding registry return card.[49]

Upon completion of the testimonies of the foregoing witnesses, the prosecution filed its *Plaintiff's Formal Offer of Evidence*[50] on April 13, 2018, to which accused filed their *Comment/Opposition to Plaintiff's Formal Offer of Evidence*[51] on May 3, 2018.

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[48] TSN dated April 4, 2018, pp. 8 to 14.
[49] TSN dated April 4, 2018, pp. 14 to 15.
[50] Docket – Vol. III, pp. 1113 to 1131.

In the Resolution dated May 25, 2018[52], the First Division admitted all of plaintiff's evidence.

Thereafter, accused filed on June 7, 2018 their *Demurrer to Evidence (Filed with Leave of the Honorable Court)*[53], arguing that plaintiff's evidence is insufficient and fails to establish their guilt of the crime of willfully, intentionally, deliberately and voluntarily refusing to pay the income tax deficiency. Accused contend that the evidence presented by plaintiff is bereft of any showing that there was a final and executory assessment from the BIR; and that plaintiff failed to present evidence that accused willfully, intentionally, deliberately and voluntarily refused to pay the income tax.

On June 27, 2018, plaintiff filed a *Motion to Admit Attached Opposition (To Accused Demurrer to Evidence)*[54], with attached *Opposition (To Accused Demurrer to Evidence)*[55], which the First Division granted in the Resolution[56] dated July 4, 2018 thereby admitting said opposition.

In its *Opposition*, plaintiff argued that there are competent and sufficient evidence, both oral and documentary, to establish a *prima facie* case against the accused for violation of Section 255 in relation to Sections 253(d) and 256 of the NIRC of 1997, as amended, for their willful, deliberate, intentional and unjustified refusal to pay the deficiency income tax for taxable year 2009; that all the elements to support a criminal conviction for violation of Section 255 of the NIRC of 1997, as amended, are present: (1) accused is a person required to pay tax; (2) the accused failed to pay such tax at the time required by law; and (3) the failure to pay such tax is willful.

In the Resolution[57] dated August 20, 2018, the First Division denied accused's *Demurrer to Evidence*; and ruled that the pieces of evidence presented by plaintiff are sufficient to support a *prima facie* case against the accused for willful failure to pay income tax under Section 255 in relation to Section 253(d) and 256 of the NIRC of 1997, as amended; and that it is necessary on the part of accused to prove their defense/s in this criminal case to refute the evidence presented by the prosecution against them. Thus, the First Division deemed it proper to have a full-blown trial to give the accused the

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[52] Docket – Vol. III, pp. 1146 to 1147.
[53] Docket – Vol. III, pp. 1148 to 1159.
[54] Docket – Vol. III, pp. 1188 to 1192.
[55] Docket – Vol. III, pp. 1193 to 1203.
[56] Docket – Vol. III, p. 1206.

opportunity to present evidence in their defense and to allow the Court to resolve the case based on the evidence adduced by both parties.

On September 14, 2018, accused filed a *Motion for Reconsideration (Of the Resolution dated 20 August 2018)*[58].

In the Order[59] dated September 25, 2018, the instant case was transferred to the Third Division of this Court pursuant to CTA Administrative Circular No. 02-2018 dated September 18, 2018, reorganizing the three (3) Divisions of the CTA.

On September 27, 2018, plaintiff filed its *Opposition (To Accused Motion for Reconsideration)*[60]. On October 22, 2018, accused filed their *Reply (Re: Opposition dated September 26, 2018)*[61].

In the Resolution[62] dated January 29, 2019, the Court denied the accused's *Motion for Reconsideration (Of the Resolution dated 20 August 2018*), for lack of merit.

On April 29, 2019, this Court received a copy of the *Petition for Certiorari (With Urgent Prayer for Issuance of a TRO and/or Writ of Preliminary Injunction)*[63] filed by accused before the Supreme Court, docketed as G.R. No. 245882.

On July 19, 2019, accused filed a *Motion to Reset Presentation of Accused's Evidence*[64], praying that scheduled hearing on July 24, 2019 be reset to September 18, 2019 or to some other date convenient to the Court in order not to render moot their Petition before the Supreme Court; that their main witness, accused Zapata suffered a stroke which led to a series of health complications; and that the accused's counsel will secure the necessary medical certificate which will be submitted to the Court. The Court granted said motion in the Order[65] dated July 22, 2019.

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[58] Docket – Vol. IV, pp. 1251 to 1265.
[59] Docket – Vol. IV, p. 1268.
[60] Docket – Vol. IV, pp. 1269 to 1273.
[61] Docket – Vol. IV, pp. 1277 to 1283.
[62] Docket – Vol. IV, pp. 1287 to 1294.
[63] Docket – Vol. IV, pp. 1537 to 1563.
[64] Docket – Vol. IV, pp. 1769 to 1772.

Subsequently on September 27, 2019, accused again filed a *Motion to Reset Presentation of Accused's Evidence*[66] and the same was granted in the Resolution[67] dated October 2, 2019 and the presentation of evidence, was reset not on the date requested but on January 29, 2020.

On January 10, 2020, defense counsel filed a *Notice of Death*[68] that accused Zapata passed away on November 18, 2019, with attached copy of the *Certificate of Death* issued by the Office of Local Civil Registrar of General Trias, Cavite.

During the hearing[69] held on January 29, 2020, defense counsel moved to reset hearing and prayed for additional time to submit a Supplemental Judicial Affidavit of accused Valeriano. Without objection from plaintiff's counsel, the Court granted the motion and reset the presentation of defense evidence to February 19, 2020. However, in the Resolution[70] dated February 19, 2020, the presentation of defense evidence was again reset to March 11, 2020.

On March 3, 2020, the Court received a *Notice*[71] from the Supreme Court Third Division stating that it issued a Resolution dated October 16, 2019 in G.R. No 245882. In the said Resolution, the Supreme Court Third Division (1) noted accused's *Manifestation* dated April 30, 2019 and their *Motion for Early Resolution of the Petition with urgent prayer for the issuance of TRO and/or WPI*; and (2) dismissed accused's petition for *Certiorari* with urgent prayer for the issuance of TRO and/or WPI, for being a wrong mode of appeal.

On March 6, 2020, defense counsel filed a *Compliance*[72], submitting the certified true copy of the *Certificate of Death*[73] issued by the PSA, indicating that accused Zapata died on November 18, 2019. The said *Compliance* was noted on March 10, 2020.[74]

Thereafter, defense presented its sole witness, accused Valeriano, Jr.

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[66] Docket – Vol. V, pp. 1783 to 1789.
[67] Docket – Vol. V, p. 1820.
[68] Docket – Vol. V, pp. 1855 to 1857.
[69] Minutes of Hearing held on January 29, 2020, Docket – Vol. V, p. 1860.
[70] Docket – Vol. V, p. 2134.
[71] Docket – Vol. V, p. 2135.
[72] Docket – Vol. V, pp. 2137 to 2138.
[73] Docket – Vol. V, pp. 2139 to 2140.

Testimony of Jacob Valeriano, Jr.

Accused Valeriano Jr. testified on *direct examination* by way of his *Judicial Affidavit*[75], and *Supplemental Judicial Affidavit*[76], which he identified during the hearing held on March 11, 2020.[77]

In his *Judicial Affidavit* dated September 8, 2017, he testified that he was the Treasurer of accused corporation and that he is accused of conspiring and confederating with accused corporation in not paying the latter's basic deficiency income tax.

After receiving the PAN, they referred the matter to their lawyer for appropriate action. Their lawyer then filed a Letter-Protest to the PAN with the BIR. They disagreed with the imposition of the deficiency income tax and VAT but agreed with the deficiency EWT and DST, subject to the decrease in the surcharge from 50% to 25% and a re-computation of interest. They asked for the decrease in surcharge since there was no willful neglect to file the required return or any false or fraudulent return but merely a failure to pay the full amount of the EWT and DST due.

He disagreed with the imposition of the deficiency income tax and VAT because allegedly, the BIR erroneously adopted the wrong methodology in computing the said deficiency taxes. The computation used by the BIR in its PAN did not take into consideration the additional storage fee of ₱0.07 per week per liter of accused corporation's importation stored with Oilink International Corp. in excess of thirty (30) days from the date of the arrival in the storage tanks pursuant to their Terminalling Agreement with Oilink; and that the BIR's computation failed to consider the subsequent amendment to the Terminalling Agreement, which deleted the basic storage fee (₱0.30 per liter per month) and the additional storage fee (₱0.07 per week) and instead applied the flat rate of ₱0.30 per liter to the actual inventory stored at the beginning of each month.

As regards the deficiency EWT and DST, since they have no issue with the said assessments, they paid ₱27,039.87 for DST and ₱9,769,039.44 for EWT, as shown in the corresponding copies of BIR Forms No. 0605 and Landbank BIR tax Deposit Slips.

Thereafter, they received the FAN/FLD dated September 24, 2012, assessing accused corporation of deficiency VAT amounting to

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[75] Exhibit "A-8", Docket – Vol. III, pp. 898 to 906.
[76] Exhibit "A-9", Docket – Vol. V, pp. 1868 to 1877.

₱596,031,378.39, and deficiency income tax amounting to ₱367,547,650.75. They then referred the matter to their lawyer for appropriate action. Their lawyer filed a *Protest* dated October 29, 2012 against the FAN/FLD.

After filing the Protest to the FAN/FLD, they did not hear anything from the BIR nor did they receive a decision on their protest. Subsequently, they learned that the BIR had already filed a case against them, allegedly for willfully not paying the income tax and VAT. He further testified that he did not receive the FNBS.

In his *Supplemental Judicial Affidavit*, accused Valeriano testified that there are two (2) cases for taxable year 2009, filed against him in the CTA: (1) CTA Crim. Case No. O-619 for alleged deficiency VAT, which has already been resolved by the Second Division; and (2) the instant case, CTA Crim. Case No. O-620, for alleged deficiency income tax pending in this Court. He stated that these two (2) cases, CTA Crim. Case Nos. O-619 and O-620, are substantially similar in all aspects considering that both cases have the same parties, taxpayer, and evidence, although they pertain to different tax types.

He testified that *Plaintiff's Formal Offer of Evidence* and the Judicial Affidavits of witnesses Vilma Caronan, Ma. Paz. Arcilla, Maricor Domingo and Marlon Jusue B. Garong submitted in CTA Crim. Case O-619 are essentially the same as the documents submitted in this case; and that in CTA Crim. Case No. O-619, the Second Division, granted their Demurrer to Evidence and dismissed the case. From what he can remember, the Second Division ruled that the FDDA is void because it did not contain the facts and the law on which the assessment was based and that there was no proof that the FDDA was served to and received by accused corporation; and that these violated due process and resulted to a void assessment.

He further narrated that CTA Crim. Case No. O-619 was elevated by plaintiff to the CTA *En Banc* and that the case was dismissed.

On *cross-examination*, accused Valeriano Jr. testified that accused corporation closed down office in May 2012; and that at the time they filed their Protest, accused corporation was not doing business and has ceased operation. Further, he confirmed that he does not have any knowledge on whether the BIR was informed of any forwarding address and that insofar as the BIR is concerned, the registered address of accused corporation is at the Binondo, Manila office.[78]

On *re-direct examination*, he testified that the registered address of accused corporation is the address stated in its Articles of Incorporation and that accused corporation has no other address aside from the address stated in its Articles of Incorporation.[79]

On June 2, 2020, accused filed their *Accused's Formal Offer of Evidence*[80], to which plaintiff filed its *Comment (To Accused Formal Offer of Evidence)*[81] thereto on July 21, 2020.

In the Resolution[82] dated September 29, 2020, the Court admitted Exhibits "A-1", "A-7", "A-8 and A-8-1", "A-9 and A-9-1", "A-10", "A-11", "A-12", "A-13", "A-14", "A-15", "A-16", "A-16-1", "A-17" and "A-17-1"; but denied Exhibits "A-2", "A-3", "A-4 and A-4a", "A-5 and A-5a", and "A-6", for failure to lay the basis for the admission of secondary evidence.

Meanwhile, the Court received, on September 21, 2020, a *Notice*[83] from the Supreme Court (Second Division) stating that it issued a Resolution dated March 2, 2020 in G.R. No 245882. In the said Resolution, the Supreme Court (Second Division) denied with finality accused's motion for reconsideration and supplemental motion for reconsideration.

On October 20, 2020, the Court received an *Entry of Judgment*[84] issued by Pagwadan S. Fonacier, SC Assistant Chief, Judicial Records Office of the Supreme Court, certifying that on March 2, 2020, the Resolution dated October 16, 2019, rendered in the case docketed as G.R. No. 245882, has become final and executory and was recorded in the Book of Entries of Judgments.

On December 17, 2020, accused filed their *Memorandum*[85], while the prosecution filed its *Plaintiff's Memorandum*[86] on January 5,

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[78] TSN dated March 11, 2020, pp. 13 to 20, Docket – Vol. V, pp. 2190 to 2197.
[79] TSN dated March 11, 2020, pp. 21 to 22, Docket – Vol. V, pp. 2198 to 2199.
[80] Docket – Vol. V, pp. 2148 to 2156.
[81] Docket – Vol. V, pp. 2159 to 2161.
[82] Docket – Vol. V, pp. 2174 to 2177.
[83] Docket – Vol. V, p. 2170.
[84] Docket – Vol. V, p. 2203.
[85] Docket – Vol. V, pp. 2205 to 2331.

2021. Thereafter, this case was submitted for decision on January 8, 2021.[87] Hence, this Decision.

THE ISSUES

As stated in the *Pre-Trial Order* dated February 23, 2018,[88] the parties raised the following issues for resolution, to wit:

"B. Issues:

1. Whether or not the FANs and FLD became final and executory; and

2. Whether or not accused Zapata and Valeriano committed a violation of Section 255, in relation to Sections 253 (d) and 256 of the NIRC"[89]

Prosecution's arguments:

The prosecution argues that accused corporation is required to pay income tax on its sale of goods or properties to customers pursuant to Section 27 of the NIRC of 1997, as amended. Likewise, the income tax return must be filed by accused Zapata and Valeriano, as the President and Treasurer, respectively, of accused corporation following the requirements under Section 52 of the NIRC of 1997, as amended.

Further, the prosecution contends that from the pieces of evidence presented, it had proven beyond reasonable doubt that accused corporation knew of its deficiency income tax, but willfully failed to pay the same despite receipt and knowledge.

To prove that the FDDA dated February 21, 2013 was issued and served to accused corporation, plaintiff presented Registry Receipt No. 904559. The prosecution also pointed out that it presented the Registry Return Receipt to prove that accused actually received the FDDA through its alleged authorized representative, Randy Raniedo.

In addition, the prosecution argues that the deliberate failure of the accused to pay the deficiency income tax liability of accused corporation despite receipt of the PAN, FAN/FLD and FDDA is a clear case of voluntary and intentional violation of a known legal duty.

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[87] Docket – Vol. V, p. 2247.
[88] Docket - Vol. III, pp. 1090 to 1101.

Considering the failure of the accused to appeal to the CTA or to file a request for reconsideration to the CIR within thirty (30) days from receipt of the FDDA, the subject tax assessment has allegedly become final, executory and demandable.

<u>Accused's counter-arguments</u>:

In their *Memorandum*, accused argue that CTA *En Banc* case docketed as CTA EB Crim. Case No. 50 (CTA Crim. Case No. O-619) is binding in this case. According to the accused, the said case and the instant case involve the same parties, taxable year, prosecution witnesses, documentary evidence, and issues; and that the only difference are the tax type and amount of deficiency tax involved.

Accused further posit that the prosecution failed to prove beyond reasonable doubt that the FDDA was served to and received by accused corporation. Allegedly, the pieces of evidence presented by the prosecution are inconclusive to prove that the FDDA was in fact mailed and that accused corporation received the same.

Additionally, accused claim that the prosecution failed to prove beyond reasonable doubt that there exists a valid assessment that has become final and executory. In the instant case, accused deny receipt of the FDDA or any decision on its Protest; and claim that the assessment cannot be considered final and executory since accused corporation still has the right to question the legality or validity of the subject assessment before the CTA, once it receives the CIR's decision on its protest

Moreover, accused argue that without receipt of the FDDA, the assessment could not have given rise to the obligation to pay the subject deficiency income tax. Consequently, since the obligation pay the deficiency tax has not arisen, accused cannot be held liable for willful failure to pay the said tax.

THE COURT'S RULING

In the instant case, accused are charged with willful failure to pay deficiency income tax, in violation of Section 255, in relation to Sections 253 (d) and 256, of the NIRC of 1997, as amended, the pertinent provisions of which state:

"**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.

xxx xxx xxx"

"**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 (₱50,000.00) but not more than One hundred thousand pesos (₱100,000.00)." (*Emphasis supplied.*)

Based on the foregoing, to sustain a conviction for willfully failing to pay the correct tax under Section 255 of the NIRC, the following elements must be established beyond reasonable doubt:

1. the taxpayer is required under the NIRC or its rules and regulations to pay any tax;

2. the taxpayer failed to pay the required tax at the time required by law or rules and regulations; and

3. the taxpayer willfully fails to pay the tax.

Further, as to accused Zapata and Valeriano, Jr., to be held liable for the crime charged in this case, it must be shown that they are the president, general manager, branch manager, treasurer, officer-in-charge or employee responsible for the act/s of omission or commission penalized under the NIRC of 1997.

A careful reading of the foregoing elements would reveal that the *second* and *third* elements are dependent on the *first element*. Specifically, the showing of the failure to pay the pertinent tax and the willfulness of such failure rest on whether the accused corporation is required to pay the said tax in the first place. Thus, it is only when the first element is established that the remaining elements must be determined to exist. In other words, there can be no willful failure to pay a tax if there is no requirement to pay the same at all.

<u>First element</u>

For purposes of the *first element*, We are guided by the provisions of Section 56 of the NIRC of 1997, as amended. Said provision reads:

> "**SEC. 56.** ***Payment and Assessment of Income Tax for Individuals and Corporations. —***
>
> (A) *Payment of Tax. —*
>
> (1) *In General.* — The total amount of tax imposed by this Title shall be paid by the person subject thereto at the time the return is filed.
>
> xxx xxx xxx.
>
> (B) *Assessment and Payment of Deficiency Tax.*
>
> — After the return is filed, the Commissioner shall examine it and assess the correct amount of the tax. The tax or deficiency income tax so discovered shall be paid **upon <u>notice and demand</u> from the**

> **Commissioner**." (*Emphasis and underscoring supplied.*)

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

The first instance, involves a self-assessment of tax obligations as outlined by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Fitness by Design, Inc.* [90] (or *Fitness by Design case*), *to wit:*

> "The assessment process starts with the filing of the tax return and payment of tax by the taxpayer. **The initial assessment evidenced by the tax return is a <u>self-assessment</u> of the taxpayer**. The tax is primarily computed and voluntarily paid by the taxpayer without need of any demand from government. If tax obligations are properly paid, the Bureau of Internal Revenue may dispense with its own assessment." (*Emphasis and underscoring supplied.*)

A self-assessment approach, in essence, starts and ends with the initial assessment by the taxpayer of the tax due, corresponding with the filing of the requisite return and payment of the said tax. Thereafter, assuming the tax obligations were properly computed and paid, the process is rendered complete without the participation or intervention of the BIR.

The second instance, on the other hand, involves the issuance by the BIR of a tax assessment, when the tax obligation was not properly computed or paid. The deficiency tax assessment, shall then be paid by the taxpayer upon notice and demand. These notice and demand are predicated upon a valid assessment issued in full compliance with the requirements on procedural due process.

In this case, under the *Second Amended Information*[91] dated September 14, 2017, the alleged legal obligation of accused to pay taxes under the NIRC of 1997, as amended, pertains to the second instance of being required to pay deficiency income tax, which the

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[90] G.R. No. 215957, November 9, 2016.

prosecution must prove to be based upon a valid assessment, notice and demand from the BIR. Thus, it becomes necessary to examine the validity of the subject assessment.

Section 228 of the NIRC of 1997, as amended, lays down the procedure in the issuance of tax deficiency assessment, *to wit:*

> "**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 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 (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."

To implement the foregoing provisions, Revenue Regulation (RR) No. 12-99[92], was issued which specify the due process requirement to be observed in the issuance and service of deficiency tax assessments notices, *to wit*:

> "**SECTION 3.** ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —***
>
> > 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
> >
> > xxx xxx xxx
> >
> > **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 (see illustration in **ANNEX A** hereof). 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.
> >
> > xxx xxx xxx
> >
> > **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,

[92] SUBJECT: *Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal*

or jurisprudence on which the assessment is based, ***otherwise, the formal letter of demand and assessment notice shall be void*** (see illustration in **ANNEX B** hereof). xxx.

3.1.5 ***Disputed Assessment.*** — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. xxx

xxx xxx xxx

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from the date of receipt thereof, the assessment shall become final, executory and demandable.

If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.

xxx xxx xxx

If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable.

3.1.6 ***Administrative Decision on a Disputed Assessment.***— The decision of the Commissioner or his duly authorized representative shall (a) state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, ***otherwise, the decision shall be void*** (see illustration in **ANNEX C** hereof), in which case, the same shall not be considered a

> decision on a disputed assessment; and (b) that the same is his ***final decision***.
>
> xxx xxx xxx." (*Emphasis supplied.*)

From the foregoing provisions, when there exists sufficient basis to assess the taxpayer, the CIR or his authorized representative is mandated to issue a PAN. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, and thereafter, a FAN/FLD shall be issued by the CIR or his duly authorized representative calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

The taxpayer or his duly authorized representative may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof, otherwise the assessment shall become final, executory and demandable. In case of *Protest,* the CIR or his duly authorized representative shall issue an Administrative Decision on a Disputed Assessment or FDDA, which shall (a) state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise, the decision shall be void.

The use of the word "shall" in these legal provisions indicates the mandatory nature of the requirements laid down therein. Thus, the prosecution must establish and prove that the requirements in the issuance of the assessment notices – PAN, FLD and FDDA, were complied with. In fact, failure to strictly comply with the requirements under Section 228 of the NIRC of 1997, as amended, and RR No. 12-99 is considered equivalent to a denial of due process.[93]

The FLD/FAN is void for failure to definitely set and fix the amount of income tax liability.

The term "assessment"' refers to the determination of amounts due from a person obligated to make payments.[94] In the context in which it is used in the NIRC, an assessment is a written notice and

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[93] See *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,* G.R. No. G.R. No. 185371, December 8, 2010.
[94] *SMI-ED Phil. Technology, Inc. vs. Commissioner of Internal Revenue,* G.R. No.

demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.[95]

In the case of *Fitness by Design*, the Supreme Court held that a FAN that lacks the definite amount of tax liability for which the taxpayer is accountable, is not a valid assessment, *to wit:*

> "**The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes**. Neither the National Internal Revenue Code nor the revenue regulations provide for a 'specific definition or form of an assessment.' However, the National Internal Revenue Code defines its explicit functions and effects. An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay.
>
> xxx xxx xxx
>
> A final assessment is a notice 'to the effect that the amount therein stated is due as tax and a demand for payment thereof.' This demand for payment signals the time 'when the penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]' Thus, it must be 'sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period.'
>
> The disputed Final Assessment Notice is not a valid assessment.
>
> **First, it <u>lacks the definite amount of tax liability</u> for which respondent is accountable**. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. **An assessment, in the context of the National Internal Revenue Code, is a 'written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there <u>definitely set</u> and <u>fixed</u>.'** Although the disputed notice provides for the computations of respondent's tax liability, the **<u>amount remains indefinite</u>**. **It only provides that**

[95] *Adamson, et al. vs. Court Appeals, et al.*, G.R. Nos. 120935 and 124557, May 21

the tax due is still subject to modification, depending on the date of payment. Thus:

> 'The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. **<u>Please note, however, that the interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004.'</u>**
>
> xxx xxx xxx"
>
> (*Emphasis and underscoring supplied.*)

From the foregoing, it is clear that an FLD, which contains the statement that the *"<u>interest and total amount due will have to be adjusted xxx</u>,"* will not be considered as a valid assessment, as the amount of tax due therein remains indefinite, as it is subject to modification, depending on the date of payment.

In the instant case, analogous to the *Fitness by Design case*, the subject FLD[96] dated September 24, 2012, states that the interest and total amount due shall be adjusted up to the actual date of payment, as appearing on the bottom of page 1 thereof, *to wit*:

> "***<u>NOTE: Interest and total amount due shall be adjusted up to actual date of payment</u>***." (Underscoring supplied.)

Evidently, while the subject FLD presented computations of the supposed tax liabilities of accused corporation, the amount stated therein remains indefinite, since the tax due is still subject to modification. The foregoing uncertainty cannot be countenanced as it falls short of the requirement that the written notice contains a demand from the taxpayer for the "settlement of a due tax liability that is there definitely set and fixed."[97]

Applying the *Fitness by Design case*, considering that the amount of tax liability due from the accused corporation remains

[96] Exhibits "P-2", Docket – Vol. I, p. 379.

indefinite in the subject FLD, the subject tax assessment is thus void and of no effect.

FDDA is void for failure to state the facts and applicable law, rules and regulations, or jurisprudence on which the final decision is based.

Under the afore-quoted Section 3.1.6 of RR No. 12-99, as part of the due process requirement in the issuance of a deficiency tax assessment, the final decision of CIR or its duly authorized representative must state the facts, the applicable law, rules and regulations, or jurisprudence, on which such decision is based; otherwise, the said decision shall be deemed void and of no effect.

In the instant case, pertinent portions of the subject FDDA[98] dated February 21, 2013, issued by OIC-Regional Director Simplicio A. Madulara, reads as follows:

> "Sir:
>
> This is in connection with your 2009 internal revenue tax liabilities under SN: eLA201000011951/LOA No. 00000227 dated September 2, 2010 conducted by Revenue Officers Cassandra Anonuevo and Rodolfo Roldan, Jr., which resulted to deficiency income tax of ₱367,547,650.75 and VAT pf ₱596,031,378.39, as stated in the issued Final Assessment Notice No. 30-09-IT-3654 and 30-09-VT-3655, respectively, both dated September 24, 2012.
>
> Please be informed that your case was forwarded to the Chief, Collection Division, of this region for enforcement of collection thru summary remedies as provided for under the law in order to protect the interest of the government since you failed to settle the aforesaid tax liabilities per our letter dated January 25, 2013. This is our Final Decision on the Disputed Assessment."

A perusal of the foregoing FDDA shows that it does not contain any statement of facts, law or jurisprudence, on which the decision is based, in contravention of Section 3.1.6 of RR No. 12-99. Thus, the subject FDDA is likewise void and of no effect.

The prosecution failed to prove that the FDDA was actually received by the accused.

In this case, accused denies having received the final decision from the CIR or its duly authorized representative relative to its Protest to the FLD/FAN. On the other hand, the prosecution argues that the FDDA was received by accused corporation.

To prove the service of the FDDA, the prosecution presented the following:

1. Registry Receipt No. 904559 dated February 21, 2013.

2. Registry Return Receipt.

3. Judicial Affidavit of Ma. Paz Arcilla,[99] Revenue Officer-IV-Chief, Billing Section of RR No. 6 BIR, Manila. She is tasked to personally supervise the service and monitoring of PAN with Details of Discrepancies, FAN/FLD with Details of Discrepancies, FDDA, demand letters and transcript of assessments of tax cases.

4. Judicial Affidavit of Marlon Josue B. Garong[100], Administrative Officer III of the BIR and currently assigned at the Records Section, Administrative Division, RR No. 6, BIR-Manila, as OIC-Section Chief. He is allegedly tasked among others, to supervise and control the movements of regional communications, tax returns, tax dockets and official records, maintain a detailed record of all reports, communications and various correspondence received and released by the region, and perform other functions as may be assigned.

However, the Court finds that the above pieces of evidence failed to satisfactorily prove that the FDDA was actually received by the accused.

While the registry receipt may prove the fact of mailing, the prosecution fell short in establishing actual receipt of the FDDA. As regards, the Registry Return Receipt, the same is inconclusive to prove that the FDDA was in fact mailed to accused corporation since it does not indicate the corresponding registry receipt number. Thus, the Court cannot confirm whether the said registry receipt actually

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[99] Exhibit "P-48", Docket – Vol. II, pp. 620 to 624.

pertains to the subject FDDA. More importantly, the prosecution failed to prove that the signature of the recipient of the registry return receipt belong to accused corporation's authorized representative.

Further, the Court cannot give credence to the testimonies of Ma. Paz Arcilla and Marlon Josue B. Garong since they were not the ones who actually mailed the FDDA. Pertinent portions of their testimonies are as follows:

Judicial Affidavit of Ma. Paz Arcilla[101]

"Q12: How about the Final Decision on Disputed Assessment dated February 21, 2013?

A: **The original copy of the Final Decision on Disputed Assessment dated February 21, 2013 addressed to the accused at its registered address at Rm. 3105 WTE Bldg., 215 Juan Luna St., Binondo, Manila, was transmitted to the Administrative Division, BIR, Manila, for service to the accused at the said address**." *(Emphasis and underscoring supplied.)*

Cross-examination of Ma. Paz Arcilla[102]

"ATTY. CONCEPCION
Q. Now in your Judicial Affidavit particularly in Question and Answer No. 12 page 6 of your Judicial Affidavit, you stated that you transmitted this FDDA Exhibit "P-20" to the Administrative Division of the BIR Manila for the service to the Accused, am I correct?

MS. ARCILLA
A. Yes, Sir.

ATTY. CONCEPCION
Q. **So, you do not have any personal knowledge to the service of this FDDA upon the Accused corporation**.

MS. ARCILLA
A. **Yes, Sir"** *(Emphasis and underscoring supplied.)*

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[101] Exhibit "P-48", Docket – Vol. II, p. 622

Judicial Affidavit of Marlon Josue B. Garong[103]

"Q13: When and in what manner was the Final Decision on Disputed Assessment dated February 21, 2013 served to the accused?

A: **As per records of our office**, the Final Decision on Disputed Assessment dated February 21, 2013 was served to the accused on February 21, 2013 through registered mail under Registry Receipt No. 904559, by depositing a copy of the said Final Decision on Disputed Assessment dated February 21, 2013 at the Manila Central Post Office, in a sealed envelope, addressed to the accused registered address at Rm. 3105 WTE Bldg., 215 Juan Luna St., Binondo, Manila, and with the instruction to the postmaster to return the mail to the sender after ten days if undelivered.

Q14: Did the accused receive the Final decision on Disputed Assessment dated February 21, 2013?

A: **As per records of our office**, the Final Decision on Disputed Assessment dated February 21, 2013 was received by the accused as shown in the Registry Return Receipt of the mail matter containing the Final Decision on Disputed Assessment dated February 21, 2013 which was returned by the postmaster of the Manila Central Post Office to the BIR." *(Emphasis and underscoring supplied.)*

Cross-examination of Marlon Josue B. Garong[104]

"ATTY. SAN MIGUEL
Q. But your statement in saying that the Final Decision was indeed mailed and received were based on these documents?

MR. GARONG
A. **In our record, per record**, we received the return card, as received by the taxpayer.

[103] Exhibit "P-50", Docket – Vol. II, p. 701

ATTY. SAN MIGUEL
Q. **So, am I correct to say, Mr. Witness, that you have <u>no personal knowledge</u> if indeed the Final Decision was indeed mailed and received?**

MR. GARONG
A. **<u>As per records</u>**, Sir.

ATTY. SAN MIGUEL
Q. **Mr. Witness, did you personally mail the FDDA?**

MR. GARONG
A. **<u>Not me, Sir. As per our record</u>**, it stated that we have mailed the letter and we received the return card, sir." *(Emphasis and underscoring supplied.)*

Based from the foregoing testimonies, it appears that Ma. Paz Arcilla merely transmitted the FDDA to the Administrative Division for service to the accused; while Marlon Josue B. Garong admitted that he was not the one who mailed the subject FDDA and that he merely based his answers on the records of his office. Clearly, both Ma. Paz Arcilla and Marlon Josue B. Garong have no personal knowledge on the actual mailing and receipt of the FDDA.

The Court therefore finds that no competent evidence was presented by the prosecution to prove that accused corporation actually received the FDDA.

Taking all the foregoing into consideration, the Court finds that the subject FLD/FAN and FDDA are void. It bears emphasis that an invalid assessment bears no valid fruit.[105]

Likewise, the issuance of the PCL, FNBS and WDL is void and ineffectual. It must be noted that 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[106]

Correspondingly, as the subject FLD/FAN and FDDA are void, it therefore follows that the legal obligation on the part of the accused to pay the subject deficiency tax assessments did not arise. Thus, in

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[105] *Commissioner of Internal Revenue vs. BASF Coating + Inks Phil.*, Inc., G.R. No. 198677, November 26, 2014.

the absence of a valid assessment for deficiency tax, the *first element* of the crime charged is not present.

<u>Second and third elements.</u>

Considering that the subject FLD/FAN and FDDA are void, accused cannot be said to have failed to pay the deficiency income tax (*second* element) much more to have done so willfully (*third* element) – as required under the afore-quoted Section 255 of the NIRC of 1997, as amended.

The term "willfully" generally connotes a voluntary, intentional violation of a known legal duty.[107]

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.[108]

Having failed to establish the validity of the assessment as well as the receipt of the final decision on disputed assessment, accused cannot be deemed to have willfully failed to pay the alleged deficiency income tax liability.

It bears noting that 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 **<u>each and every element</u>** of the crime charged in the information to warrant a finding of guilt for that crime or for any other crime necessarily included therein.[109]

In view thereof, considering that the prosecution failed to prove that the elements of the crime charged were attendant in this case, accused are therefore entitled to acquittal.

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[107] Mertens Law of Federal Income Taxation, Volume 15, 1988 Ed., Chapter 55A, p. 76.
[108] Black's Law Dictionary, 6th Ed., p. 1599.
[109] *Anna Lerima Patula vs People of the Philippines*, G.R. No. 164457, April 11, 2012, citing *Andaya v. People*, G.R. No. 168486, June 27, 2006.

N̈B

Civil liability

In *Macario Lim Gaw, Jr. v. CIR*[110], the Supreme Court clarified the nature of the civil action that is deemed instituted with the criminal action, *to wit:*

> "*The civil action filed by the petitioner to question the FDDA is not deemed instituted with the criminal case for tax evasion*
>
> Rule 9, Section 11 of A.M. No. 05-11-07-CTA, otherwise known as the Revised Rules of the Court of Tax Appeals (RRCTA), states that:
>
> > **SEC. 11.** *Inclusion of civil action in criminal action.* – In cases within the jurisdiction of the Court, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall be deemed jointly instituted in the same proceeding. The filing of the criminal action shall necessarily carry with it the filing of the civil action. No right to reserve the filing of such civil action separately from the criminal action shall be allowed or recognized.
>
> Petitioner claimed that by virtue of the above provision, the civil aspect of the criminal case, which is the Petition for Review *Ad Cautelam,* is deemed instituted upon the filing of the criminal action. Thus, the CTA had long acquired jurisdiction over the civil aspect of the consolidated criminal cases. Therefore, the CTA erred in dismissing the case.
>
> We do not agree.
>
> Rule 111, Section 1(a) of the Rules of Court provides that what is deemed instituted with the criminal action is only the action to recover civil liability arising from the crime. Civil liability arising from a different source of obligation, such as when the obligation is created by law, such civil liability is not deemed instituted with the criminal action.

It 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, as such, the same is <u>not deemed instituted</u> in the criminal case**.

In the case of Republic of the Philippines v. Patanao, We held that:

> **Civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him.** The criminal liability arises upon failure of the debtor to satisfy his civil obligation. The incongruity of the factual premises and foundation principles of the two cases is one of the reasons for not imposing civil indemnity on the criminal infractor of the income tax law. x x x Considering that the Government cannot seek satisfaction of the taxpayer's civil liability in a criminal proceeding under the tax law or, otherwise stated, since the said civil liability is not deemed included in the criminal action, acquittal of the taxpayer in the criminal proceeding does not necessarily entail exoneration from his liability to pay the taxes. It is error to hold, as the lower court has held that the judgment in the criminal cases Nos. 2089 and 2090 bars the action in the present case. **The acquittal in the said criminal cases cannot operate to discharge defendant appellee from the duty of paying the taxes which the law requires to be paid, since that duty is imposed by statute prior to and independently of any attempts by the taxpayer to evade payment. Said obligation is not a consequence of the felonious acts charged in the criminal proceeding nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of non existence of the criminal acts charged.** x x x.(Citations omitted and emphasis ours)

Further, in a more recent case of Proton Pilipinas

> While it is true that according to the aforesaid Section 4, of Republic Act No. 8249, the institution of the criminal action automatically carries with it the institution of the civil action for the recovery of civil liability, however, in the case at bar, the civil case for the collection of unpaid customs duties and taxes cannot be simultaneously instituted and determined in the same proceedings as the criminal cases before the Sandiganbayan, as it cannot be made the civil aspect of the criminal cases filed before it. It should be borne in mind that the tax and the obligation to pay the same are all created by statute; so are its collection and payment governed by statute. The payment of taxes is a duty which the law requires to be paid. Said obligation is not a consequence of the felonious acts charged in the criminal proceeding nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of non-existence of the criminal acts charged. Hence, the payment and collection of customs duties and taxes in itself creates civil liability on the part of the taxpayer. Such civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him. (Citations omitted and emphasis ours)
>
> xxx xxx xxx"
>
> (*Citations omitted and emphasis supplied*)

Based on the foregoing, what is deemed instituted with the criminal action is only the recovery of the taxes and penalties arising from the criminal violation or the civil liability *ex delicto*. It does not include the civil liability arising from a different source of obligation, such as the obligation to pay the tax, which is created by law.

Accordingly, with respect to the civil liability arising from the subject assessments, the same cannot validly prosper in this case considering that the subject FAN/FLD and FDDA are null and void.

On the other hand, the civil liability *ex delicto* is extinguished if there is a finding in a final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist,[111] or where the accused did not commit the acts or omission imputed to him.[112]

In the instant case, considering the Court's finding that the elements of the crime charged were not proven by the prosecution, the act or omission from which the civil liability *ex delicto* may arise is therefore wanting. Accordingly, no civil liability *ex delicto* may be adjudged against accused.

Effect of death of accused Arturo M. Zapata.

Records show that on January 10, 2020, accused's counsel filed a *Notice of Death*[113] that accused Arturo M. Zapata passed away on November 18, 2019, with attached copy of the *Certificate of Death* issued by the Office of Local Civil Registrar of General Trias, Cavite. Further, on March 6, 2020, accused's counsel filed a *Compliance*[114], submitting the certified true copy of the *Certificate of Death*[115] issued by the PSA, indicating that accused Zapata died on November 18, 2019

Article 89 (1) of the Revised Penal Code, provides that death of accused prior to final judgment shall extinguish the criminal liability, *to wit*:

> "Art. 89. *How criminal liability is totally extinguished. — Criminal liability is totally extinguished*:
>
> 1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment. xxx"

Further, Section 4, Rule 111 of the Revised Rules on Criminal Procedure provides for the effect of death of accused on the civil liability *ex delicto*, *to wit*:

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[111] Rule 111, Section 2, Revised Rules on Criminal Procedure.
[112] *Dayap vs Sendiong*, G.R. No. 177960, January 29, 2009, citing *Salazar v. People*, 458 Phil. 504 (2003).
[113] Docket – Vol. V, pp. 1855 to 1857.
[114] Docket – Vol. V, pp. 2137 to 2138.

> "*SEC. 4. Effect of death on civil actions.*- The death of the accused, after arraignment and during the pendency of the criminal action shall extinguish the civil liability arising from the delict. xxx"

Accordingly, since it was established that accused Arturo M. Zapata died while his criminal case was pending in this Court and before final judgment, his criminal liability is therefore extinguished. Further, his civil liability *ex delicto* is *ipso facto* extinguished, grounded as it is on the criminal case.[116]

WHEREFORE, in light of the foregoing considerations, insofar as accused Arturo M. Zapata is concerned, the case is **DISMISSED** and deemed **CLOSED** by reason of his death. Accordingly, his cash bail bond is hereby **CANCELLED** and ordered **RELEASED** to his legal heir/s or duly authorized representative, upon presentation of pertinent documents, in accordance with usual accounting rules and regulations.

On the other hand, accused Jacob Valeriano, Jr. is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt, without civil liability *ex delicto*. Further, the cash bail bond of accused is hereby **CANCELLED** and **ORDERED RELEASED** to him, upon presentation of pertinent documents, in accordance with usual accounting rules and regulations.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[116] See *People of the Philippines vs. Martin L. Romero, et al.*, G.R. No. 112985, [illegible]

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.

ERLINDA P. UY
Associate Justice
Chairperson, 3rd Division

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