REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

JOSEPH TYPINGCO,
Accused.

CTA CRIM. CASE NO. O-114

For: *Violation of Section 255 in relation to Sections 253 (d) and 256 of the NIRC*

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MINDARO-GRULLA, *JJ.*

Promulgated: MAY 16 2012
9:30 a.m.

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DECISION

CASTAÑEDA, JR., ***J.:***

STATEMENT OF THE CASE

Accused JOSEPH TYPINGCO is being charged, as the alleged PRESIDENT/AUTHORIZED OFFICER of FIESTA PACK, INC., for violation of Section 255, in relation to Sections 253(d) and 256 of the National Internal Revenue Code (NIRC) of 1997, as amended.

STATEMENT OF FACTS

Plaintiff People of the Philippines is represented by complainant, Bureau of Internal Revenue (BIR), the government agency primarily tasked to collect internal revenue taxes for the support of the government, with office at the BIR National Office Building, Diliman, Quezon City.[1]

Accused Joseph Typingco is the alleged President and authorized officer of Fiesta Pack, Inc. (hereafter referred to as "Fiestapack"), with business address at S-1517 State Ctr. Bldg., 333 Juan Luna St., Binondo, Manila.[2] He was charged before this Court for violation of Section 255, in relation to Sections 253(d) and 256 of the NIRC of 1997, as amended, under Information filed by the 4th Assistant City Prosecutor, John Erick R. Flordeliza, on March 3, 2009. The Information reads:

> "The undersigned accuses **JOSEPH TYPINGCO** of a Violation of Section 255 in rel. to Sec. 253(d) & 256 of the NIRC, committed as follows:
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> That on or about **June 28, 2004**, in the City of Manila, Philippines, the said accused, JOSEPH TYPINGCO as President/Authorized Officer of FIESTA PACK, INC. located at 1517 State Center Bldg., 333 Juan Luna St., Binondo, in this City, did then and there willfully and unlawfully fails, refuses and neglects, as they still fails, refuses and neglects to pay his deficiency internal revenue tax liabilities for the year 2000, to wit:

KIND OF TAX	ASSESSMENT NO.	DATE	AMOUNT
Def. Income	30-2000	06-28-04	P13,099,485.00
Def. VAT	30-2000	06-28-04	5,152,715.15
Def. EWT	30-2000	06-28-04	15,753.00

> or in the total amount of P18,267,953.15, despite notice and service of said assessment and Warrant of Distraint and/or Levy, without formally protesting against or appealing the same, and repeated demands made upon him to do so, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount of P18,267,953.15, Philippine currency.
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> Contrary to law."

A brief narration of the relevant facts as borne by the records are as follows: *Jc*

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[1] Memorandum, docket, p. 1054.
[2] Exhibits "A" and "1".

On September 6, 2001, a Letter of Authority[3] was issued by the Bureau of Internal Revenue for the examination of Fiestapack's books of accounts and other accounting records in relation to its internal revenue taxes for taxable year 2000. The investigation thereafter led to the issuance of a Pre-Assessment Notice (PAN)[4] dated June 2, 2004, where Fiestapack was assessed for alleged deficiency Income Tax, Expanded Withholding Tax (EWT) and Value-added Tax (VAT). Final Assessment Notices[5] and demand letters[6] were later issued against Fiestapack on June 28, 2004.

Fiestapack purportedly failed to pay despite the demand and until the above assessments became final. Hence, the instant case.

In a Resolution[7] dated March 10, 2009, this Court found the existence of probable cause for the issuance of a Warrant of Arrest against the accused and the issuance thereof was correspondingly ordered. Consequently, a Warrant of Arrest[8] was issued on March 11, 2009. By virtue of the said warrant, accused was arrested and detained on March 19, 2009 by the Philippine National Police, Manila Police District.[9] He posted a cash bond for his provisional liberty on March 20, 2009.[10]

Accused filed a Motion to Quash on May 20, 2009 on the ground that this Court has no jurisdiction over the offense charged because the Complaint-Affidavit did not contain an affidavit of Non-Forum Shopping as mandated by Rule 6, Section 1 of the Revised Rules of the Court of Tax Appeals and the Information was not signed by the Commissioner of Internal Revenue as mandated by Rule 9, Section 2 of the same Rules. The Motion to Quash was denied in a Resolution dated July 16, 2009. Thus, the Motion

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[3] Exhibit "C".
[4] Exhibits "V"and "3".
[5] Exhibits "W", "4", "Z", "7", "CC", and "10".
[6] Exhibits "X", "5", "Y", "6", "AA", "8", "BB", "9", "DD", "11", "EE", and "12".
[7] *Docket*, p. 27.
[8] *Id.*, p. 28.
[9] *Id.*, p. 32.
[10] *Id.*, p. 40.

for Reconsideration[11] of the said Resolution was filed on July 21, 2009, but was denied on August 12, 2009.[12] Unfazed, accused appealed to the Court *En Banc* on September 3, 2009, but was eventually denied on June 24, 2010.[13]

During his scheduled arraignment on August 27, 2009, accused refused to enter a plea so that the Court entered a plea of "not guilty" for him.[14]

Trial ensued and the prosecution formally offered in evidence Exhibits "A" to "OO-2" on April 15, 2011.[15] Exhibits "D", "D-1", "D-2", "L", "M", "M-1", "R", "JJ", "JJ-1" and "JJ-2" were denied admission, but the following pieces of evidence were admitted:[16]

Exhibit	Document
A to A-2	Fiestapack's Income Tax Return for taxable year 2000
B	Fiestapack's Financial Statements for taxable year 2000
C to C-3	Letter of Authority dated September 6, 2001
E to E-3	Bureau of Internal Revenue's Informal Conference Letter dated May 28, 2002
F to F-1	Revenue Audit Report on Expanded Withholding Taxes for taxable year 2000
G to G-1	Revenue Audit Report on Value-Added Tax for taxable year 2000
H to H-1	Revenue Audit Report on Income Tax for taxable year 2000
I to I-1	Memorandum dated January 31, 2003 of Revenue Officer Gelina G. Cacal of RDO No. 30, BIR-Manila
J to J-1	Memorandum Report dated February 27, 2003 of Revenue Officer Gelina G. Cacal of RDO No. 30, BIR-Manila
K to K-1	Indorsement dated February 28, 2003 of Revenue District Officer Lorna S. Tobias to the Regional Director of BIR, Manila
N to N-1	Referral Memorandum of Assistant Revenue District Officer of RDO No. 30, BIR-Manila to Revenue Officer Gelina Cacal and Group Supervisor Myrna Querubin of RDO No. 30, BIR-Manila
O	Waiver of Statute of Limitations dated March 9, 2004 executed by Joseph Typingco as President of Fiestapack
P to P-1	Memorandum Report dated December 15, 2003 of Revenue Officer Gelina G. Cacal of RDO No. 30, BIR-Manila
Q to Q-1	Indorsement dated March 9, 2004 of Revenue District Officer Lorna S. Tobias to the Assessment Division of BIR-Manila
S to S-1	Revenue Audit Report on VAT against Fiestapack for taxable year 2000

[11] *Id.*, p. 94.
[12] *Id.*, pp. 100-101.
[13] *Id.*, pp. 371-379, became final and executory on December 17, 2010, p. 930.
[14] *Id.*, p. 166; TSN, August 27, 2009.
[15] *Docket*, pp. 824-840.
[16] Resolutions dated May 12, 2011 and June 21, 2011.

T to T-1	Revenue Audit Report on EWT against Fiestapack for taxable year 2000
U to U-1	Revenue Audit Report on Income Tax against Fiestapack for taxable year 2000
V to V-1	Pre-Assessment Notice with attachment dated June 2, 2004 issued against Fiestapack for taxable year 2000
W to W-1	Final Assessment Notice dated June 28, 2004 on VAT for taxable year 2000 issued against Fiestapack amounting to P5,152,715.15
X to X-1	Demand Letter dated June 28, 2004 for VAT for taxable year 2000 issued against Fiestapack amounting to P5,152,715.15
Y to Y-1	Demand Letter dated June 28, 2004 for Compromise Penalty on VAT for taxable year 2000 issued against Fiestapack amounting to P25,000.00
Z	Final Assessment Notice dated June 28, 2004 on EWT for taxable year 2000 issued against Fiestapack amounting to P15,753.00
AA to AA-1	Demand Letter dated June 28, 2004 for EWT for taxable year 2000 issued against Fiestapack amounting to P15,753.00
BB to BB-1	Demand Letter dated June 28, 2004 for Compromise Penalty for EWT for taxable year 2000 issued against Fiestapack amounting to P2,000.00
CC to CC-1	Final Assessment Notice dated June 28, 2004 on Income Tax for taxable year 2000 issued against Fiestapack amounting to P13,099,485.00
DD to DD-1	Demand Letter dated June 28, 2004 for Income Tax for taxable year 2000 issued against Fiestapack amounting to P13,099,485.00
EE to EE-1	Demand Letter dated June 28, 2004 for Compromise Penalty for Income Tax for taxable year 2000 issued against Fiestapack amounting to P25,000.00
FF to FF-2	Transmittal of the Final Assessment and Demand Letter on Income Tax, VAT and EWT of Fiestapack for taxable year 2000 issued by Assessment Division to Administrative Division
GG to GG-1	Collection Letter dated September 29, 2004 of Collection Section, RDO No. 30, BIR Manila
HH to HH-1	BIR's Final Notice Before Seizure dated February 21, 2005 addressed to Fiestapack
II to II-1	Indorsement dated May 13, 2005 of RDO No. 30 to the Chief, Legal Division, BIR-Manila
KK	Letter of Rogelio Fermin dated April 8, 2005 with attached Deed of Assignment addressed to Lilia M. Macabenta, Chief Collection Section
LL	Securities and Exchange Commission Registration of Fiestapack dated January 24, 1992.
MM	Articles of Incorporation of Fiestapack
NN to NN-1	By-Laws of Fiestapack
OO to OO-2	General Information Sheet of Fiestapack for the year 2001

The prosecution also presented the testimony of Gelina G. Cacal, Myla Gulle, Edna Ortalla, Ma. Paz Arcilla, Teresita Maglunog, Teresita Gerasol, and Atty. Mary Ann V. Morales-Lagura. *gr*

For his part, accused's admitted pieces of evidence were Exhibits "1-4", "5-17", and "19-33", described as follows:[17]

Exhibit	Document
1 to 1-b	Income Tax Return of Fiestapack
2 to 2-a	Waiver of Statute of Limitations
3 to 3-b	Pre-Assessment Notice with attachment dated June 2, 2004
4	Final Assessment Notice dated June 28, 2004 on VAT for taxable year 2000 issued against Fiestapack amounting to P5,152,715.15
5 to 5-a	Demand Letter dated June 28, 2004 for VAT for taxable year 2000 issued against Fiestapack amounting to P5,152,715.15
6 to 6-a	Demand Letter for Compromise Penalty dated June 28, 2004 for VAT for taxable year 2000 issued against Fiestapack amounting to P25,000.00
7 to 7-a	Final Assessment Notice dated June 28, 2004 on EWT for taxable year 2000 issued against Fiestapack amounting to P15,753.00
8 to 8-a	Demand Letter dated June 28, 2004 for EWT for taxable year 2000 issued against Fiestapack amounting to P15,753.00
9 to 9-a	Demand Letter for Compromise Penalty dated June 28, 2004 for EWT for taxable year 2000 issued against Fiestapack amounting to P2,000.00
10 to 10-a	Final Assessment Notice dated June 28, 2004 on Income Tax for taxable year 2000 issued against Fiestapack amounting to P13,099,485.00
11 to 11-a	Demand Letter dated June 28, 2004 for Income Tax for taxable year 2000 issued against Fiestapack amounting to P13,099,485.00
12 to 12-a	Final Demand Letter for Compromise Penalty dated June 28, 2004 for Income Tax for taxable year 2000 issued against Fiestapack amounting to P25,000.00
13	Transmittal of the Final Assessment and Demand Letter of Income Tax, VAT and EWT of Fiestapack for taxable year 2000 issued by Assessment Division to Administrative Division BIR-Manila
14	Collection Letter dated September 29, 2004 of Collection Section RDO No. 30, BIR, Manila
15	BIR's Final Notice Before Seizure dated February 21, 2005
16	Indorsement Letter dated May 13, 2005 of RDO No. 30 to the Chief, Legal Division, BIR-Manila
17	BIR's Demand Letter dated June 21, 2005 of the Regional Director, through the Chief Legal Division of BIR Manila
19 to 19-b	Notice of Conference dated March 5, 2001, re: Labor Dispute docketed as NCMB-NCR-NS-02-033-01 addressed to Alvin Ty, President of Fiestapack
20 to 20-a	Notice of Conference by the National Conciliation and Mediation Board NCR dated February 12, 2001 re: Labor Dispute, docketed as NCMB-NCR-NS-02-033-01
21 to 21-a	Memorandum of Gacal dated January 31, 2003
22 to 22-a	BIR's Informal Conference letter dated May 28, 2002, together with the proposed preliminary assessments issued by RDO No. 30 to Fiestapack
23 to 23-d	General Information Sheet of Fiestapack for the year 2001
24	Notice of Conference dated February 26, 2001, In Re: Labor Dispute at Fiestapack, docketed as NCMB-NCR-NS-02-033-01 addresed to Mr. Alvin

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[17] Resolutions dated November 24, 2011 and January 16, 2012.

	Ty
25	Notice of Conference dated February 6, 2001 In Re: Labor Dispute at Fiestapack docketed as NCMB-NCR-NS-02-033-01 addressed to Mr. Alvin Ty, President of Fiestapack
26 to 26-d	Notice of Judgment/Decision in NLRC-NCR Case No. 00-03-1562-2000, entitled "RAUL BUELLA vs. FIESTA PACK/ALVIN TY", dated October 10, 2000
27 27-a	Notice of Order/Resolution dated January 25, 2000 issued in NLRC NCR (SOUTH) CASE NO. 00-06-06849-99, entitled RAUL B. BUELLA vs. FIESTA PACK INC. and/or ALVIN TY" where one of the addressee is Mr. Alvin Ty Order issued by Labor Arbiter Eduardo J. Carpio which reads: "Parties are hereby informed that the above-entitled case is submitted for decision. SO ORDERED"
28 28-a 28-b	Notice of Order/Resolution dated March 7, 2000 issued by Labor Arbiter Eduardo J. Carpio, docketed as NLRC-NCR (SOUTH) CASE NO. 00-06-06849-99, entitled "RAUL B. BUELLA vs. FIESTA PACK, INC and ALVIN TY" Order dated January 25, 2000 Envelope showing the name of the addressee Alvin Ty
29	Document issued by the Department of Labor and Employment, National Capital Region, Industrial Relations Division Manila dated November 12, 1999.
30	Memorandum to Mr. Alvin Ty, President, Fiestapack issed by Fiestapack Employees Union for the Implementation of W.O. No. NCR-07 and signed by the parties and their respective counsel
31 to 31-A	Non-Professional Driver's License No. N-09-76-002091 issued to Joseph Typingco
32 to 32-A	Senior Citizen's Identification Card bearing Serial No. 158394 issued on November 16, 2001 by Manila 589-58-VI in favor of Joseph Typingco of 3171 Reposo St., Sta. Mesa, Manila
33 to 33-f	By-Laws of Fiestapack

On February 13, 2012, accused filed his Memorandum interposing several arguments.

He contends that to prove the corporate liability of accused as President of Fiestapack, the prosecution relied on the purported signatures of accused appearing in the Income Tax Return and Waiver of Defense of Statute of Limitations. However, the prosecution failed to prove the said signatures were really that of the accused. Also, the handwritten word "for" preceded the signature in the Waiver of Defense of Statute of

Limitations, a clear indication that somebody signed for and in behalf of accused but the prosecution failed to prove "prior authority" from the accused.

Accused likewise avers that he was not the responsible officer in taxable year 2000. Mr. Alvin Ty was the President of Fiestapack at that time. Although the General Information Sheet for 2001 shows that it was signed by the accused, the incumbent President from 2000 up to April 18, 2001 was Alvin Ty for the reason that April 18, 2001 was the date of the regular meeting of the stockholders for the election of Fiestapack's directors.

The prosecution also allegedly failed to prove that accused received the notices and demand letters. It failed to comply with the method of proving that the notices and demand letters were sent through ordinary mail or registered mail.

Moreover, the action is time barred as the complaint was filed beyond the reglementary period considering that the Annual Income Tax Return of Fiestapack was filed on April 11, 2001 but the Pre-Assessment Notice was issued only on June 2, 2004, which is beyond the three-year reglementary period to complete an assessment.

The prosecution filed its Memorandum on February 20, 2012, contending that:

> "The criminal liability of accused as the prime statutory responsible officers of Fiestapack he being the President thereof is direct, distinct and separate from the said corporation, hence, the corporate act of non-payment of its corporate tax obligations despite repeated demand by the BIR would not alter the fact that accused is liable under Sections 255 in relation to 253(d) of the 1997 Tax Code. xxx
>
> Under Section 253(d), it is not required that the accused, being the responsible officer, has actually received those BIR notices, warrant of distraint/levy and/or demand letters for collection of its deficiency taxes. This is required only when the person liable to the violation is an employee or employees of the corporation. xxx
>
> Although accused was trying to convince the court that he took the presidency of Fiestapack only on 18 April, 2001, the documents show otherwise. Article 1, Section 1 of Fiestapack's by-laws, merely refers to election of directors and not election of officers. Besides, no evidence

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was adduced by the defense that election indeed took place and which they could have presented to give effect to their claim."

Further, it was established that accused was the prime signatory of Fiestapack as shown in the Annual Income Tax Return.

The prosecution claims that the testimonies of its witnesses are sufficient to establish the quantum of evidence required to prove the guilt of the accused. Moreover, all presumptions are in favor of the correctness of the assessment made by the BIR Commissioner and the taxpayer must prove the contrary.

After considering the parties' memoranda, the case was submitted for decision on February 23, 2012.

ISSUES

The parties stipulated on the following issues[18] for resolution:

"A. Factual Issues

1. Whether or not accused is the officer of FIESTA PACK, Inc. for the taxable year 2000.

    1.a Whether or not the signatures appearing in the documents submitted to the BIR are the signatures of the accused.

2. Whether or not FIESTA PACK, Inc. received the notices from the BIR.

B. Legal Issues:

1. Whether or not accused is criminally liable for the violation of Section 255 in relation to Section 253 (d) and 256 of the NIRC."

The above interrelated issues will be discussed and resolved together.

[18] Pre-Trial Order dated July 19, 2010, docket p. 399.

THIS COURT'S RULING

The relevant penal provisions of the NIRC of 1997, as amended, are Section 255, Section 253(d), and Section 256. Section 255 provides as follows:

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

On the other hand, Sections 253(d) and 256 read:

> "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 (P50,000) but not more than One hundred thousand pesos (P100,000)."

Apparently, to be liable for the alleged crime, the following elements have to be proven by the prosecution beyond reasonable doubt:

1. the corporate taxpayer is required to pay tax and it failed to pay such tax at the time required by law;
2. the accused is the president, general manager, branch manager, treasurer, officer-in-charge or employee responsible for the violation of the corporate taxpayer; and
3. the accused willfully fails to pay the corporate taxes.

We will first resolve the factual issues raised in this case before we determine whether the afore-mentioned elements for violation of Section 255 in relation to Section 253(d) and 256 of the NIRC have been established by the prosecution beyond reasonable doubt.

Prosecution failed to prove that the accused received the PAN

It is not disputed that Fiestapack is a duly registered corporation[19] engaged in the business of producing boxes and luggages for export to the United States of America.[20] For the year 2000, Fiestapack filed its Income Tax Return (ITR)[21] reflecting a net loss. On the basis of Fiestapack's ITR, the Bureau of Internal Revenue conducted an investigation of its internal revenue taxes. As a result of this investigation, the BIR disallowed Fiestapack's loans payable and interest expense for its failure to present documentation.[22] After the disallowance, it was initially found that Fiestapack should have an income of P50,242,000.00 and should pay an income tax of P19,293,000.00[23], Expanded Withholding Tax and deficiency Value-added Tax in the amount of P52,017.85 and P4,757,405.41, respectively.[24] Further investigations led to the issuance of the Assessment Notices[25] and Demand Letters[26] for the following:

Deficiency VAT	P5,152,715.15
Compromise Penalty	25,000.00
Deficiency EWT	15,753.00
Compromise Penalty	2,000.00
Deficiency Income Tax	13,099,485.00
Compromise Penalty	25,000.00

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[19] Exhibit "LL".
[20] TSN, July 18, 2011, p. 8.
[21] Exhibits "A" and "1".
[22] TSN, July 19, 2010, p. 26.
[23] Exhibit "E-2"; TSN, July 19, 2010, pp. 26-27.
[24] Exhibits "F" and "G".
[25] Exhibits "W", "4", "Z", "7", "CC" and "10".
[26] Exhibits "X", "5", "Y", "6", "AA", "8", "BB", "9", "DD", "11", "EE", and "12".

The above findings were never controverted by Fiestapack or by the accused. Records lay bare of any evidence disproving the BIR's findings. Instead, what was disputed by the accused was his purported receipt or knowledge of the assessment notices or, at least, receipt thereof by Fiestapack and the propriety of their issuance by invoking the ground of prescription.

In the case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*[27], the Supreme Court ruled on the importance of issuing a PAN *vis-à-vis* the validity of the assessments. Pertinent portion of the ruling reads:

> "xxx are the requirements of due process satisfied if only the FAN stating the computation of tax liabilities and a demand to pay within the prescribed period was sent to the taxpayer?
>
> The answers to these questions require an examination of Section 228 of the Tax Code which reads:
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> xxx xxx xxx
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> Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. 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.
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> This is confirmed under the provisions R.R. No. 12-99 of the BIR which pertinently provide:
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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

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[27] G.R. No. 185371, December 8, 2010, 637 SCRA 633.

> 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." *(Emphasis supplied;Citation Omitted)*

Based on the foregoing case, due process requires that the receipt of the PAN be proven by the prosecution.

After a scrutiny of the parties' allegations and pieces of evidence, this Court finds the prosecution cannot prove the actual sending of the PAN through ordinary mail. Aside from the testimony of its witness, Teresita Maglunog, no sufficient evidence was presented by the prosecution to prove the sending thereof. This was admitted by Teresita Maglunog during her cross-examination in this wise:

"JUSTICE CASTAÑEDA:

In this case, how do you (know) if the Pre-Assessment Notice has been sent by ordinary mail?

MS. MAGLUNOG:

A. We don't have a return card.

JUSTICE CASTAÑEDA:

Yes. But do you have any record in the sending of that ordinary mail?

MS. MAGLUNOG:

A. Yes, your Honor. Not at all times that I have a record.

JUSTICE CASTAÑEDA:

But in this particular case, do you have a record?

MS. MAGLUNOG:

A. I have a record but I don't know... I cannot find it because we moved from one place to another at that time. In 2009, our record was not that orderly."[28]

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[28] TSN, October 20, 2010, pp. 31-32.

Moreover, Teresita Maglunog admitted that there was no proof that the PAN was actually received by Fiestapack, or by the accused or duly authorized agent of the latter. The PAN was only presumed to have been received when it was not returned to the BIR's Administrative Office.[29] The testimony or at least the affidavit of the person who supposedly sent the PAN through ordinary mail was likewise never presented by the prosecution contrary to the proof of service required under the Rules of Court. It is a general rule that, when service of a notice is sought to be made by mail, it should appear that the conditions on which the validity of such service depends had existence, otherwise, the evidence is insufficient to establish the fact of service.[30]

It was not proven that Typingco was President or responsible officer of Fiestapack for taxable year 2000

The By-Laws[31] of Fiestapack shows that the President has a hand in the financial operation of Fiestapack or at least oversees such matters because among his functions are "To oversee the preparation of the budgets and the statements of accounts of the corporation" and "To prepare such statements and reports of the corporation as may be required of him by law". This means that the President is a responsible officer who can be criminally charged pursuant to Sections 253 and 256 of the NIRC of 1997, as amended.

The prosecution claims that the accused is the President of Fiestapack, rooting its theory on the fact that the name "Joseph Typingco" appears as the signatory in Fiestapack's Income Tax Return[32] filed with the BIR for taxable year 2000 with the

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[29] *Id.*, pp. 11-14, and 32.
[30] *Ting and Chan-Azajar vs. Court of Appeals, et. al.*, G.R. No. 140665, November 13, 2000, 344 SCRA 551.
[31] Exhibits "NN" and "33".
[32] Exhibits "A" and "1".

designation of "President".[33] Furthermore, the prosecution presented the General Information Sheet[34] of Fiestapack showing Joseph Typingco as its President.

Joseph Typingco alleged that he was elected as President of Fiestapack only on April 18, 2001 and it was his son, Alvin Ty, who was the President of Fiestapack in 2000.

The Income Tax Return of Fiestapack indeed shows that the name of Joseph Typingco appears above the caption "President/Vice President/Authorized Representative". However, the same is not conclusive evidence that Joseph Typingco is actually the President of Fiestapack, in the absence of other corroborating proofs, for taxable year 2000.

It is apparent that the signature appearing thereto was not the signature of Joseph Typingco. The name "Joseph Typingco" was only typewritten above the caption "President/Vice President/Authorized Representative" and the word "for" preceded the actual signature. This means that someone signed on behalf or in representation of Joseph Typingco. However, the prosecution failed to authenticate the said signature and to show that the person who signed the ITR was really authorized by the accused. Accused denied having authorized anyone to sign for him and such testimony remained unrebutted by the prosecution.

Moreover, even in the absence of the word "for" prior to the signature appearing in the ITR, the said signature cannot be mistaken as accused Typingco's signature because it is markedly different from the signatures appearing in his Driver's License[35] and Senior Citizen's Card[36], which were admitted by the accused as his actual signatures.

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[33] Exhibit "A-1".
[34] Exhibits "OO" and "23".
[35] Exhibit "31".
[36] Exhibit "32".

With respect to the General Information Sheet[37] (GIS) submitted by the prosecution, it is worth stressing that "corporations are required under Section 26 of the Corporation Code to submit to the SEC within thirty (30) days after the election the names, nationalities and residences of the elected directors, trustees and officers of the Corporation. In order to keep stockholders and the public transacting business with domestic corporations properly informed of their organizational operational status, the SEC issued the following rules:

> xxx xxx xxx
>
> 2. A **General Information Sheet** shall be filed with this Commission within thirty (30) days following the date of the annual stockholders' meeting. No extension of said period shall be allowed, except for very justifiable reasons stated in writing by the President, Secretary, Treasurer or other officers, upon which the Commission may grant an extension for not more than ten (10) days.
>
> 2.A. Should a director, trustee or officer die, resign or in any manner, cease to hold office, the corporation shall report such fact to the Commission with fifteen (15) days after such death, resignation or cessation of office.
>
> 3. If for any justifiable reason, the annual meeting has to be postponed, the company should notify the Commission in writing of such postponement.
>
> **The General Information Sheet shall state, among others, the names of the elected directors and officers, together with their corresponding position title**... (Emphasis supplied) "[38]

The said GIS was sworn, certified and signed by Joseph Typingco on April 20, 2001. This indicates that the said GIS pertains to the regular/special election of Fiestapack for taxable year 2001 and therefore, reflects the name of the elected officers of Fiestapack for 2001. This is strengthened by the fact that the indicated date of meeting therein was April 18, 2001. However, it bears stressing that the taxable year under scrutiny is taxable year 2000. Simply put, the GIS failed to confirm that Joseph

[37] Exhibits "OO" and "23".

[38] *Monfort Hermanos Agricultural Development Corporation vs. Monfort III, et al.*, G.R. Nos. 152542 and 155472, July 8, 2004, 434 SCRA 27.

Typingco was the president of Fiestapack for taxable year 2000. Nowhere can we find any indication in the said GIS or from the records and pieces of evidence submitted by both parties clearly showing that Joseph Typingco was the elected President of Fiestapack in 2000.

On the other hand, accused offered in evidence the various Notices of Conference issued by the National Conciliation and Mediation Board (NCMB)[39], Notice of Judgment/Decision and Decision issued by the National Labor Relations Commission (NLRC)[40], various Notices of Order/Resolution and Orders issued by the NLRC[41] and Memorandum from Fiestapack's Employees Union[42]. All of them were issued in relation to a labor dispute/relations involving Fiestapack prior to the alleged annual meeting on April 18, 2001 as stated in the GIS and all of them recognized Alvin Ty as the President of Fiestapack.

Taking into consideration the uncontroverted testimony of the accused that he was not the President of Fiestapack and the corroborating evidence he offered and considering further that no other evidence, except for the ITR and GIS, was presented by the prosecution to affirmatively show that Joseph Typingco was the President or at least a responsible corporate officer of Fiestapack in 2000, this Court gives credence to the accused's defense and finds the absence of the second element.

That the accused willfully failed to pay the tax was not proven

The term that is deemed relevant in qualifying as criminal the failure to pay tax is that the act must be "wilfull". "Willfully" generally connotes a voluntary, intentional

[39] Exhibits "19", "20", "24", and "25".
[40] Exhibits "26" and "27".
[41] Exhibits ""27" and "28".
[42] Exhibit "30".

violation of a known legal duty.[43] Willfulness involves the mental state of the offender and therefore the Court must examine all the facts of the case in order to determine whether willfulness exists.

An act or omission is "willfully" done if done voluntarily and intentionally and with specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done; that is, with bad purpose to either disobey or disregard the law. A willful act may be described as one done intentionally, knowingly, and purposely, without justifiable excuse.[44]

In other words, willfulness connotes the existence of "knowledge" and "voluntariness"; *viz.*, the taxpayer is aware or knows its tax liability but voluntarily and intentionally refuses to pay.

After a scrutiny of the parties' allegations and pieces evidence, this Court finds for the accused Joseph Typingco.

A taxpayer is informed that he is liable for deficiency taxes, the facts and the law from which the said assessment was made through the sending of a Preliminary Assessment Notice (PAN). This is clearly provided in Revenue Regulations (RR) No. 12-99, 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 (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.

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

3.1.3 *Exceptions to Prior Notice of the Assessment.* — The notice for informal conference and the preliminary assessment notice shall not be required in any of the following cases, in which case, issuance of the formal assessment notice for the payment of the taxpayer's deficiency tax liability shall be sufficient:

(i) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax appearing on the face of the tax return filed by the taxpayer; or

(ii) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(iii) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(iv) When the excise tax due on excisable articles has not been paid; or

(v) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

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* (see illustration in ANNEX B hereof). 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."

Undoubtedly, it becomes necessary for the prosecution to prove beyond reasonable doubt that accused, in representation of Fiestapack, received the assessment notices or was aware of Fiestapack's tax liabilities in order to impute upon him the required element of "willfulness" in the instant criminal prosecution.

The prosecution's witness, Teresita Maglunog, testified that the Preliminary Assessment Notice was sent through ordinary mail and the Final Assessment Notice was sent through registered mail. Accused denies the receipt of the PAN and FAN. In this case, the prosecution failed to show the receipt of the PAN and FAN.

It is a general rule that when service of notice is an issue, the person alleging that the notice was served must prove the fact of service. The burden of proving notice rests upon the party asserting its existence.[45]

Pertinently, in civil cases, if the service is by ordinary mail, proof of service shall consist of an affidavit of the person mailing of facts showing compliance with Section 7 of Rule 13 of the Revised Rules of Court. On the other hand, if service is made through registered mail, proof of service is the registry receipt issued by the mailing office and an affidavit of the person mailing of facts showing compliance with the same Section 7 of the same rules. There is no reason not to apply the same stringent rules in criminal action, if not, with more force in view of the fact that the accused's life, liberty and property are at stake.

With respect to the Final Assessment Notices and the demand letters, the prosecution contends that they were sent through registered mail. As evidence, the prosecution presented the testimony of Teresita Maglunog, the copies of the Assessment Notices and demand letters, the Transmittal List or BIR Document Locator[46] and registry receipt no. 828547[47].

As already mentioned, the Rules of Court requires the presentation of the registry receipt and affidavit of the person mailing as proof of service. However, the

[45] *Supra.*, Note 30.
[46] Exhibit "FF".
[47] Exhibit "FF-2".

prosecution made no effort to present the testimony or even an affidavit of the person who allegedly mailed them.

Jurisprudence likewise dictates that for notice by mail, it must appear that the same was served on the addressee or a duly authorized agent of the addressee. In fact, the registry return receipt itself provides that "[a] registered article must not be delivered to anyone but the addressee, or upon the addresee's written order, in which case the authorized agent must write the addressee's name on the proper space and then affix legibly his own signature below it."[48] Also, it is a rule that receipts for registered letters and return receipts do not prove themselves; they must be properly authenticated in order to serve as proof of receipt of the letters.[49]

Again, the prosecution failed to demonstrate that the registry receipt had been actually served upon the accused or upon his duly authorized agent. The bare testimony of Teresita Maglunog, the BIR document locator and the registry receipt are utterly insufficient to prove that the assessment notices and demand letters were received by the accused. Such failure of the prosecution is a fatal blow to its case.

In criminal cases, the burden is on the prosecution to prove, beyond reasonable doubt, the essential elements of the offense with which the accused is charged; and if the proof fails to establish any of the essential elements necessary to constitute a crime, the accused is entitled to an acquittal. Proof beyond reasonable doubt does not mean such degree of proof as, excluding the possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.[50]

Basic is the maxim too that the prosecution's evidence must stand or fall on its own merit and cannot be allowed to draw strength from the weakness of the evidence of

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[48] *Supra*, note 30.
[49] *Del Rosario vs. Cedillo*, A.M. No. MTJ-04-1557, October 21, 2004, 441 SCRA 70.
[50] *Darvin vs. Hon. Court of Appeals, et al.*, G.R. No. 125044, July 13, 1998, 292 SCRA 534.

the defense. When the prosecution's evidence fail to indubitably prove the accused's authorship of the crime of which he stands accused, then it is the Court's duty, and the accused's right, to proclaim his innocence. Acquittal, therefore, is in order.[51]

Finally, pursuant to Section 7(b) of Republic Act No. 1125, as amended, the civil action is simultaneously filed with the instant criminal case. Considering that the prosecution failed to prove that the PAN was sent and actually received by Fiestapack, the assessment made by the CIR is void. It is well-settled that a void assessment bears no fruit.[52] Thus, no civil liability arises in this case.

WHEREFORE, premises considered, accused Joseph Typingco is hereby ACQUITTED for failure of the prosecution to establish the guilt of the Accused beyond reasonable doubt and without civil liability.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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[51] *Id.*

[52] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, *supra*, citing the case of *Commissioner of Internal Revenue vs. Azucena T. Reyes*, G.R.No. 159694 & G.R. No. 163581, January 27, 2006, 480 SCRA 382.

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.
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.

ERNESTO D. ACOSTA
Presiding Justice