REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff, - versus - EDWIN T. SO, RAYMOND R. LEE, TECHPOINT COMPUTER CORPORATION, Accused.	C.T.A. CRIM. CASE NOS. O-188, O-189, O-190, O-191, O-192 and O-193 Members: UY, *Acting Chairperson,* and FABON-VICTORINO, JJ Promulgated: MAR 14 2013 ; 4:13 p.m.

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R E S O L U T I O N

Fabon-Victorino, J.:

For the Court's determination is the Demurrer to Evidence filed by accused-movant Raymond Lee on November 29, 2012, praying for the dismissal of the six (6) criminal cases filed against him for alleged violations of the provisions of the NIRC, as amended, to wit:

Criminal Case No. O-188
- Violation of Sections 105, 106, 114 and 255 of the NIRC, for failure to file VAT return and pay VAT in the amount of P1,908,996.36 for taxable year 2005

Criminal Case No. O-189
- Violation of Sections 105, 106, 114 and 255 of the NIRC for failure to file VAT return and pay VAT in the amount of P6,521,569.11 for taxable year 2004

Criminal Case No. O-190
- Violation of Sections 105, 106, 114 and 255 of the NIRC, for failure to file VAT return and pay VAT in the amount of P2,007,460.07 for taxable year 2003;

Criminal Case No. O-191
- Violation of Sections 52(A), 75, and 255 of the NIRC, for failure to file income tax return and pay income tax in the amount of P6,423,872.24 for taxable year 2003;

Criminal Case No. O-192
- Violation of Sections 52(A), 75, and 255 of the NIRC, for failure to file income tax return and pay income tax in the amount of P20,869,021.15 for taxable year 2004;

Criminal Case No. O-193
- Violation of Sections 52(A), 75, and 255 of the NIRC, for failure to file income tax return and pay income tax in the amount of P6,108,788.36 for taxable year 2005.

Accused-movant claims that the evidence presented by the prosecution failed to establish his guilt beyond reasonable doubt justifying the dismissal of the instant criminal cases.

Allegedly, the prosecution was unable to establish beyond moral certainty the allegation that he is the treasurer of Techpoint, much more his connection to the said corporation to be criminally liable under the six Informations filed against him.

No evidence was presented to show that he is the Treasurer of Techpoint liable under Section 253 (d) of the NIRC, as amended. In fact, the evidence of the prosecution show that he is not the Treasurer nor the president, general manager, branch manager, a partner, officer-in-charge, nor employee responsible for the criminal act of corporate taxpayer Techpoint. As confirmed by Revenue Officer Marita Panteriori and as indicated in the Amended Articles of

Incorporation[1]of Techpoint, the Treasurer of the corporation is a certain Paul Tan. The information of Panteriori that he is the Treasurer of Techpoint is hearsay because it was based on what she heard from employees in the premises and not from her own perception. Being in the premises of Techpoint does not also automatically make him a responsible officer of the corporation under Section 253 (d) of the NIRC.

Revenue Officer Angela Simpit also testified that he was not the president, general manager, officer-in-charge, or the treasurer of Techpoint. Likewise none of the prosecution witnesses testify on his connection with Techpoint. Even assuming that he is a director of Techpoint, still he cannot be held liable for the offenses charged as the members of the Board of Directors are not included in the enumeration in Section 253 of the Tax Code. Under the legal maxim *expressio unius est exclusio alterius,* if a statute enumerates the thing upon which it is to operate, everything else must necessarily and by implication be excluded from its operation and effect.

He does not also fall under the catch-all phrase "employees responsible for violation" in Section 253. The allegation that he received payments for Techpiont as the name Raymond Lee appears in the Disbursement Vouchers[2] could not also hold water since the signatures at the middle lower portion of the said documents were not identified by a competent witness.

Further, the element of wilfulness in non-filing of the return and non-payment of the corresponding tax due on his part as required under Section 255 of the NIRC, as amended, is also lacking. To establish this element, the prosecution must prove that he had knowledge of the tax liability coupled with the intentional evasion of such liability.

There was as well no evidence that Techpoint was duly notified therefore, has knowledge about the alleged assessment. All the prosecution witnesses from the BIR were not certain if the person who allegedly received or

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[1] Exhibits GG to GG-13.
[2] Exhibits Q-2, R-2, S-2, T-2, U-2, V-2, W-2, X-2, Y-2, Z-2, AA-2, BB-2, CC-2, DD-2 and EE-2.

refused to receive the letter notices was authorized by Techpoint, bearing in mind that only specific persons could officially receive correspondences for the corporate taxpayer. Without such proof, there would be no proper service of notices. More importantly, no proof was presented to show that he personally received any of the notices.

In its attempt to show compliance with the requirement of due notice, the prosecution capitalized on the letter dated September 4, 2006[3] sent by counsel of Techpoint which cited the Final Notice of July 26, 2006. However, the due execution and authenticity of the said letter was never established. As a private document, the signatures in the said letter should first be identified and authenticated by a competent witness, which the prosecution failed to do.

Even assuming that notices were validly received by the corporation, it was not shown that he received them to be criminally liable. A notice to the corporation is not notice to him.

As to the civil aspect of the case which is deemed instituted with the criminal action, suffice it to say that on account of the inability of the prosecution to prove receipt of any notice from the BIR, any assessment is deemed void.

By way of opposition, the prosecution counters that it was able to establish all the elements of the crimes charged namely; (1) that accused-movant is required by law to make or file a return, (2) that he failed to make or file return at the time required by law, and (3) such failure was wilful.

As to the first element, the prosecution proved that Techpoint earned income from 2003 to 2005 from its sales of computers to the DOTC. This income was subject to VAT since Techpoint is habitually engaged in business under Sections 105 and 106 of the NIRC, and subject to income tax pursuant to Sections 52(A) and 75 of the NIRC. The Disbursement Vouchers show the payment made by the DOTC to Techpoint as represented by accused-movant

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[3] Exhibit OO.

whose signatures appear in the receiving portion of the Disbursement Vouchers.

The same is true with the second element of the crimes charged. The Certification issued by Shirley Calapatia, Assistant Revenue District Officer of the BIR shows that Techpoint did not file VAT and Income Tax Returns (ITRs) for taxable years 2003 to 2005.

Finally, the element of wilfulness was established based on the presumption that an unlawful act was done with an unlawful intent. Since accused-movant failed to file returns and pay tax, it is assumed that such omission was done with knowledge and intent.

Contrary to the refutation of accused-movant, the letter notices were duly served. Melodiya Falla, an employee of Techpoint, received the PAN and the FLD only that she refused to sign it, resulting in constructive service of the letter notices. Falla also received the Letter of Authority No. 2001-00026005 dated June 6, 2006, Letter-Request for presentation of records dated June 6, 2006, Second Request for presentation of records dated July 7, 2006, Final Notice for presentation of records dated July 24, 2006, and the Subpoena *Duces Tecum* with attached list of required documents dated November 13, 2006. Further, the Letter dated September 4, 2006, signed by Atty. Jeffrey P. Juanengo, counsel for Techpoint, in reply to the BIR Final Notice dated July 24, 2006 indicates that Falla is authorized to receive communications for the corporation.

Lastly, since the prosecution presented sufficient and competent evidence to support the charges against accused-movant beyond reasonable doubt, the burden of proof has shifted to him to prove the contrary.

During the hearing, the prosecution presented four witnesses from the Bureau of Internal Revenue (BIR), namely, Marita P. Panteriori, Atty. Elmer F. Carolino, Angela Marie Simpit, and Erlinda A. Simple, and one from the Department of Transportation and Communication (DOTC), namely, Edna C. Tapar.

Marita P. Panteriori, a BIR Revenue Officer II, testified that she was formerly assigned at the National Investigation (NID) of the BIR and worked under the supervision of Hermenegildo Dimaculangan in the conduct of investigation against corporate taxpayer Techpoint by virtue of a Memorandum dated November 29, 2005,[4] signed by Arnel SD Guballa, Chief of the NID.

Initial investigation revealed that Techpoint committed violations of the Tax Code requiring further investigation. In a Memorandum dated April 19, 2006, [5] they requested and was issued Letter of Authority No. LOA 2001 00026005,[6] authorizing them to examine the books of account and other accounting records of Techpoint for taxable year 2005 and prior years. She served this LOA, together with a First Request for Presentation of Records dated June 6, 2006,[7] upon Techpoint through Melodiya Falla. The same person received the Second Request for Presentation of Records dated July 7, 2006,[8] as well as the Final Notice dated July 24, 2006.[9]

In a Letter dated September 4, 2006, [10] Techpoint, through Atty. Jeffrey P. Juanengo, with the conformity of Melodiya Falla, requested and was granted an extension of time to comply with the request for presentation of accounting records. This notwithstanding, Techpoint did not present the required accounting records as promised.

On November 13, 2006,[11] a Subpoena *Duces Tecum* was issued with a List of Requirements [12] addressed to accused Edwin T. So, as President, and accused-movant Raymond R. Lee, as Treasurer. On November 20, 2006, she and Revenue Officer Loida Medina served the said subpoena upon Techpoint through Melodiya Falla. Notwithstanding receipt, Techpoint failed to comply. In view of this development and upon advise of the BIR Legal Service

4 Exhibit E.
5 Exhibits F to F-4.
6 Exhibit G
7 Exhibits H to H-2.
8 Exhibit I.
9 Exhibit J.
10 Exhibit OO.
11 Exhibit K
12 Exhibits K-1 to K-3.

Division, she prepared an assessment based on the best evidence obtainable.

In response to her Access To Records Letter dated January 26, 2006, [13] then DOTC Secretary Leandro R. Mendoza, issued a letter dated February 27, 2006,[14] and furnished her with a Report of Checks Issued[15] listing its payments to Techpoint for the years 2002 to 2005.

She also secured from the BIR a summary list of the sales of Techpoint to other clients as reflected in a Memorandum dated September 11, 2006 with attached listing.[16] On the other hand, the SEC provided her with copies of the Certificate of Filing[17] and the Amended Articles of Incorporation,[18] with attached Treasurer's Affidavit[19] and Director's Certificate[20] of Techpoint.

On April 8, 2008, she prepared and served upon Techpoint a Notice of Informal Conference[21] with the initial assessment. When ignored, she prepared a Preliminary Assessment Notice (PAN) dated May 23, 2008[22] assessing Tehcpoint deficiency income taxes, vat and withholding taxes for the years 2003 to 2005. In the absence of any protest against the PAN, the BIR issued a Formal Letter of Demand (FLD) dated October 16, 2008[23] with attached Audit Results/Assessment Notices.[24]

On cross-examination, Panteriori iterated that the letter notices addressed to Techpoint were received by Melodiya Falla in her presence. Falla is a sales staff, not an officer, director, or manager of Techpoint. She did not inquire and merely assumed that Falla was duly authorized to receive the letter notices for Techpoint for this was the information

[13] Exhibit L.
[14] Exhibit M.
[15] Exhibits M-1 to M-4.
[16] Exhibits FF to FF-5; Exhibits FF to FF-1 denied admission see Resolution dated August 13, 2012, docket pp. 637-639.
[17] Exhibit GG.
[18] Exhibits GG-2 to GG-11.
[19] Exhibit GG-12.
[20] Exhibit GG-13.
[21] Exhibits II to II-2.
[22] Exhibits JJ to JJ-3.
[23] Exhibits KK to KK-2.
[24] Exhibits KK-3 to KK-14.

she gathered from some persons at the premises. Besides, per BIR policy, they serve letter notices to any person connected with or in the premises of the corporate taxpayer.

Per Techpoint's Articles of Incorporation secured from the SEC, accused-movant is neither the President, the general manager, branch manager nor officer of Techpoint. The Treasurer's Affidavit attached to the Articles of Incorporation shows that Paul Tan is the Treasurer while the Director's Certificate shows that accused-movant Raymond Lee is a director of Techpoint. She does not know if accused-movant is the officer-in-charge or an employee of Techpoint responsible for filing tax returns and payment of tax liabilities. She never referred to him as the Treasurer of Techpoint although several of the documents she identified referred to him as such. She never served letter notices upon accused-movant whom she claimed refused to talk to her when she once visited the company premises.

Atty. Elmer F. Carolino, Chief of the Special Investigation Division of the BIR, testified that he was priorly the Section Chief of the NID. As such, he supervised the investigation conducted against Techpoint. For lack of available personnel, he served the Preliminary Assessment Notice (PAN) dated May 23, 2008[25] upon Techpoint on September 23, 2008, at 1:45 p.m. When the corporation refused to receive the PAN and being alone, he went to the nearest barangay office having jurisdiction over the establishment and sought its assistance. With Barangay Officials Rodolfo C. Robles and Leon M. Saracanlao, Jr of Barangay Immaculate Concepcion, Area 20 District 4, Quezon City, he returned to Techpoint and constructively served the PAN by leaving a copy thereof with notation on the duplicate that the corporate taxpayer refused to receive the said document duly signed by the two assisting Barangay officials.

On cross-examination, Atty. Carolino admitted that he was not present when the LOA was served upon Techpoint.

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[25] Exhibits JJ to JJ-3.

Revenue Officer **Angela Marie Simpit** testified that as part of the NID investigating team headed by Atty. Elmer Carolino, she constructively served the Collection Letter dated April 28, 2009[26] upon Techpoint on May 5, 2009, as evidenced by her Memorandum[27] bearing her signature and those of the two other witnesses since the representative of Techpoint refused to receive it.

On cross-examination, Simpit however clarified that she does not know if the person who refused to receive the Collection Letter was the authorized representative of Techpoint as it was Atty. Elmer Carolino who spoke to that person. She merely assumed that the said person to whom she served the Collection Letter was an employee of Techpoint since he was inside its premises and wearing the company's ID. Neither does she know the officers of the corporation.

When she serves a letter notice she does not inquire about the authority of the person receiving it. It is sufficient that he or she appears to be an employee of the corporate taxpayer either because he or she is wearing an identification card or inside the premises. That person could be a receptionist or a security guard.

Erlinda A. Simple declared that as Assistant Commissioner of Assessment Service of the BIR since April of 2005, she provides policy guidance and operational direction to all divisions under her office. She manages the Third Party Information Program of the BIR which gathers data from the internal and external sources as well as from the summary list of sales and purchases of the customers or suppliers of VAT-registered taxpayers. In 2006, she issued a Memorandum dated September 11, 2006[28] upon the request of the NID for use in the investigation of this case. Together with the said Memorandum was the list of sales and purchases of Techpoint sourced from the Quarterly List of Sales and Purchases of customers/suppliers. The list of sales and purchases is submitted by third party taxpayer in electronic form to the Revenue District Office where the

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[26] Exhibits LL to LL-3.
[27] Exhibit MM.
[28] Exhibits FF to FF-1 (provisionally marked and not admitted).

taxpayer is registered. Sometimes, it contains typographical errors or even erroneous information deliberately supplied by the taxpayers to protect their clients or suppliers.

She did not verify the information in the Quarterly List on Sales and Purchases since it is assumed that before it reaches her office it has already been subjected to verification. Besides, the data came from the taxpayers themselves and manually uploaded to the computer system of the BIR.

Edna C. Tapar, the Chief Accountant of the Department of Transportation and Communication (DOTC) testified that she received the BIR's Access to Records Letter dated January 26, 2006[29] addressed to then DOTC Secretary Leandro Mendoza requesting for information about the purchases of DOTC from Techpoint. It was forwarded to her being the custodian of the books on the purchases and payments made by the agency to its supplier or contractor. Acting on the said letter, she sent a Letter dated February 27, 2006 [30] to the BIR with attached Report of Check Issued[31] for the period of January 1, 2002 to December 31, 2005. The Report of Check Issued listed the DOTC's payments to Techpoint for its purchases of computers from the years 2002 to 2005. The Report of Check Issued were prepared based on the approved amount and disbursement vouchers processed by her office. All of the check payments in the Report were received by Techpoint.

The testimony of Atty. Mary Anne Lagura of the SEC, was dispensed with on stipulation that the Certificate of Filing of Amended Articles of Incorporation,[32] the Amended Articles of Incorporation of Techpoint Computer Corporation [33] with attached Treasurer's Affidavit [34] and Director's Certificate,[35] are true and certified copies of such documents in the custody of the SEC.

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[29] Exhibit L.
[30] Exhibit M.
[31] Exhibits M-1 to M-4.
[32] Exhibit GG.
[33] Exhibits GG-2 to GG-11.
[34] Exhibit GG-12.
[35] Exhibit GG-13.

The parties also stipulated that the Certification dated October 4, 2011 [36] issued by Atty. Calapatia states that AsiaCom Technologies Incorporated (now Techpoint Computer Corporation) did not file any tax return for calendar years 2002 to 2004 and only filed Documentary Stamp return (Form 2000) in the year 2005. In view thereof, the testimony of Atty. Shirley A. Calapatia, Revenue Officer of Revenue District Office No. 39, Quezon City was as well dispensed with.

In the Resolution of August 13, 2012, [37] the Court admitted the exhibits formally offered in evidence by the prosecution on June 8, 2012,[38] except Exhibits A to A-2, B to B-5, HH to HH-4, G-3 to G-5, FF, FF-1, and HH-1 to HH-4.

THE RULING OF THE COURT

A demurrer to evidence is defined as "an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue". The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. In passing upon the sufficiency of the evidence raised in a demurrer, the court is merely required to ascertain whether there is competent or sufficient proof to sustain the indictment or to support a verdict of guilt.[39]

In criminal cases, a demurrer to evidence partakes of the nature of a motion to dismiss the case for failure of the prosecution to prove his guilt beyond reasonable doubt.[40] Under Section 23, Rule 119 of the Revised Rules of Criminal Procedure, as amended, the trial court may dismiss the action on the ground of insufficiency of evidence upon a demurrer to evidence filed by the accused with or without leave of court.[41]

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[36] Exhibit HH.
[37] Docket pp. 635-639.
[38] Docket pp. 545-592.
[39] Rivera vs. People, G.R. NO. 163996, June 09, 2005.
[40] Salazar vs. People, G.R. No. 151931, September 23, 2003.
[41] People vs. Sandiganbayan, G.R. No. 140633, February 04, 2002.

The record shows that during the pre-trial conference, the parties agreed to limit their issues as follows: (1) Whether or not accused Raymond R. Lee is the Treasurer or a responsible corporate officer of Techpoint; and (2) Whether accused Raymond R. Lee is guilty of willful failure to file Income Tax Return and Value-Added Tax Return for taxable years 2003, 2004, and 2005 and pay the taxes due for the same taxable years.[42]

Section 255 of the National Internal Revenue Code (NIRC), as amended, pertinently provides:

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

Therefore to sustain conviction, the prosecution must prove that accused-movant is (1) the person required under the law, rules and regulations to make or file the returns and pay the corresponding taxes; (2) but wilfully failed to do so (3) at the time required by law, rules and regulations.

There is no question that accused-movant is being indicted not in his personal capacity but on the allegation that he is the Treasurer of Techpoint, the juridical entity

[42] See Pre-Trial Order dated January 11, 2012, Stipulated Issues, docket pp. 476-477.

created by legal fiction, [43] required by law to make or file the returns and pay the corresponding taxes. In relation to the foregoing, Section 253(d) of the NIRC, as amended, provides that in the case of associations, partnerships, or corporations, the penalty for violations of any pertinent provisions of the Code, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation.

Therefore, to the establish the first element of the charges, it is essential that the prosecution establish beyond reasonable doubt that accused-movant is the Treasurer of Techpoint upon whom the penalty for the crimes charged may be imposed.

However, the prosecution miserably failed in this regard. The testimonies of prosecution witnesses show that the Treasurer of Techpoint is a certain Paul Tan and not accused-movant Raymond Lee. Neither is Raymond Lee a partner, president, general manager, branch manager, nor officer-in-charge of Techpoint who should bear the punishment for alleged infractions of the Tax Code. Revenue Officer Marita P. Panteriori categorically declared in no uncertain terms that Paul O. Tan is the Treasurer of Techpoint and not accused-movant, thus:

> Atty. Verga:
> Q: Ms. Witness, can you tell us if Mr. Lee is an employee responsible for filing tax return and paying of the taxes of Techpoint?
>
> Ms. Panteriori:
> A: I cannot answer you.
>
> Atty. Verga:
> Q: You cannot answer. So he stands in trial only because of the allegation that he was a treasurer of Techpoint? In your allegation, what was the position of Mr. Lee in all your documents?

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[43] Exhibits GG to GG-13, also Exhibit 1-Raymond Lee to 1-m-Raymond Lee, docket pp. 397-410.

Ms. Panteriori:
A: I did not prepare any document with the name of Mr. Raymond Lee.

Atty. Verga:
Q: You identified several documents a while ago wherein Mr. Raymond Lee was named as treasurer of the corporation?

Ms. Panteriori:
A: Only in the *subpoena duces tecum*, but I was not the one who referred to him as the treasurer.

Atty. Verga:
Q: But then, can you confirm that Mr. Lee stands trial today for whatever tax violation allegedly committed by Techpoint because according to you, in your investigation, he is the treasurer?

Ms. Panteriori:
A: As I've said, I was not the one who referred to him as the treasurer. What I know is that on the Director's Certificate, he is one of the directors.

Atty. Verga:
Q: One of the directors, but not the treasurer?

Ms. Panteriori:
A: Yes.

Atty. Verga:
Q: Can I have a copy of the Articles of Incorporation? I am showing to you a Treasurer's Affidavit attached to the Amended Articles of Incorporation previously marked as Exh. "GG", this was marked as Exh. "GG-12", can you tell us who executed this Treasurer's Affidavit?

Ms. Panteriori:
A: Mr. Paul Tan.

Atty. Verga:
Q: Mr. Paul Tan and not Mr. Raymond Lee?

Ms. Panteriori:
A: Yes.

Atty. Verga:
Q: On page 8 of the Articles of Incorporation, meaning the treasurer of the corporation, who is the person named therein as the treasurer of Techpoint Computers (sic) Corporation?

Ms. Panteriori:
A: Mr. Paul Tan.[44]

The admission made by Marita P. Panteriori was bolstered by a similar declaration by Revenue Officer Angela Marie Simpit, who testified as follows:

Atty. Verga:
Okay.
Q: You do not have any idea, who are the officers of the corporation?

Ms. Simpit:
A: Yes.

Atty. Verga:
Q: Now, I'm telling you Ms. Witness, that one of the Accused here is one Raymond Lee who, according to the comment, is the Treasurer of the corporation. Being a Revenue Officer assigned under Atty. Carolino, to investigate this case, do you have any personal knowledge if this Raymond Lee is the President of Techpoint?

Ms. Simpit:
A: No.

Atty. Verga:
Q: Is he a General Manager?

Ms. Simpit:
A: No.

Atty. Verga:

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[44] Transcript of Stenographic Notes dated January 11, 2012, pp. 70-73.

Q: Is he an Officer-in-Charge?

Ms. Simpit:
A: No.

Atty. Verga:
No.
Q: And so, you cannot likewise state here affirmatively if he is the Treasurer of the corporation? What is your answer?

Ms. Simpit:
A: No.

Atty. Verga:
No.
Q: He is not the Treasurer because you do not have any knowledge if he is an officer at all?

Ms. Simpit:
A: Yes.[45]

The testimony of the fourth prosecution witness Assistant Commissioner Erlinda A. Simple did not in any way strengthen the case against accused-movant for she merely identified the Memorandum dated September 11, 2006[46] which she issued pertaining to the list of the sales and purchases of Techpoint taken from the Quarterly List on Sales and Purchases which originated from Techpoint's customers and suppliers.

The same is true with the last prosecution witness Edna C. Tapar, the DOTC Chief Accountant, who merely testified on the action taken by her agency upon receipt of the BIR Access to Record Letter dated January 26, 2006 sent to then DOTC Secretary Leandro Mendoza. While she confirmed that DOTC paid Techpoint for the purchase of several units of computers from 2002 to 2005, she did not identify the person who received the payments and under what authority did that person receive such payments.

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[45] Transcript of Stenographic Notes dated February 15, 2012, pp. 32-34.
[46] Exhibits FF to FF-1 (provisionally marked and not admitted).

Even the prosecution's own documentary evidence contradict its contention that accused-movant is the Treasurer of Techpoint, hence, liable for the alleged infractions committed by the corporation. Specifically, the Amended Articles of Incorporation[47] indicates that Paul O. Tan and not accused-movant is the Treasurer of Techpoint. The Director's Certificate[48] attached to the Amended Articles of Incorporation shows that the President of Techpoint is Edwin T. So and the Secretary is Paul David C. So.

Granting that accused-movant is one of the Directors of Techpoint, per the Director's Certificate presented by the prosecution, being such will not automatically render him liable as the responsible officer or employee of corporation. Note that the prosecution was not able to establish with particularity his connection or direct participation in the alleged violation of the Tax code. Neither was the prosecution able to establish his role in the management of the affairs of the corporation. The only basis of indictment is the alleged information gathered from unidentified persons in the premises of the corporation that accused-movant is the Treasurer of Techpoint, which at most is hearsay. In fine, the prosecution utterly failed to exactly prove by any measure to sustain the accusation that accused-movant is the Treasurer of Techpoint.

Further, the Supreme Court had the occasion to rule that the Board of Directors are not necessarily criminally liable for violations of law of a corporation, despite Section 23 of the Corporation Code of the Philippines which provides that the corporate powers of a corporation are reposed in the board of directors, thus:

> When the offender is a **corporation**, partnership, or other juridical person, the **president**, the **general manager, managing partner**, or such other **officer charged with the management of the business affairs thereof**, or **employee responsible for the**

[47] Exhibits GG to GG-13, also Exhibit 1-Raymond Lee to 1-m-Raymond Lee .
[48] Exhibit GG-13, docket p. 410.

> **violation** shall be criminally liable; in case the offender is an alien, he shall be subject to deportation after serving the sentence.
>
> If the offender is a government official or employee, he shall be perpetually disqualified from office.

Relying on the third paragraph of the above statutory proviso, petitioners argue that they cannot be held liable for any perceived violations of BP 33, as amended, since they are mere directors of Omni who are not in charge of the management of its business affairs. Reasoning that criminal liability is personal, liability attaches to a person from his personal act or omission but not from the criminal act or negligence of another. Since Sec. 4 of BP 33, as amended, clearly provides and enumerates who are criminally liable, which do not include members of the board of directors of a corporation, petitioners, **as mere members of the board of directors who are not in charge of Omni's business affairs, maintain that they cannot be held liable for any perceived violations of BP 33, as amended.** To bolster their position, they attest to being full-time employees of various firms as shown by the Certificates of Employment they submitted tending to show that they are neither involved in the day-to-day business of Omni nor managing it. Consequently, they posit that even if BP 33, as amended, had been violated by Omni they cannot be held criminally liable thereof not being in any way connected with the commission of the alleged violations, and, consequently, the criminal complaints filed against them based solely on their being members of the board of directors as per the GIS submitted by Omni to SEC are grossly discriminatory.

xxx xxx xxx.

It may be noted that Sec. 4 above enumerates the persons who may be held liable for violations of the law, viz: (1) the president, (2) general manager, (3) managing partner, (4) such other officer charged with the

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management of the business affairs of the corporation or juridical entity, or (5) the employee responsible for such violation. A common thread of the first four enumerated officers is the fact that they manage the business affairs of the corporation or juridical entity. In short, they are operating officers of a business concern, while the last in the list is self-explanatory.

It is undisputed that petitioners are members of the board of directors of Omni at the time pertinent. There can be no quibble that the enumeration of persons who may be held liable for corporate violators of BP 33, as amended, excludes the members of the board of directors. This stands to reason for the board of directors of a corporation is generally a policy making body. Even if the corporate powers of a corporation are reposed in the board of directors under the first paragraph of Sec. 23 of the Corporation Code, it is of common knowledge and practice that the board of directors is not directly engaged or charged with the running of the recurring business affairs of the corporation. Depending on the powers granted to them by the Articles of Incorporation, the members of the board generally do not concern themselves with the day-to-day affairs of the corporation, except those corporate officers who are charged with running the business of the corporation and are concomitantly members of the board, like the President. Section 25 of the Corporation Code requires the president of a corporation to be also a member of the board of directors.

Thus, the application of the legal maxim *expressio unius est exclusio alterius,* which means the mention of one thing implies the exclusion of another thing not mentioned. If a statute enumerates the thing upon which it is to operate, everything else must necessarily and by implication be excluded from its operation and effect. The fourth officer in the enumerated list is the catch-all "such

> **other officer charged with the management of the business affairs" of the corporation or juridical entity which is a factual issue which must be alleged and supported by evidence**. [49] (emphasis ours)[50]

Pursuant to the legal maxim *expressio unius est exclusio alterius*, or the mention of one thing implies the exclusion of another thing not mentioned, it follows that what is not enumerated therein must be excluded. Hence, a director or a member of the Board of Directors, who is not among the enumeration, cannot be held criminally liable for the illegal acts of the corporation.

The Supreme Court adapted a similar interpretation when it ruled that "if the State, by statute, defines a crime that may be committed by a corporation but prescribes the penalty therefor to be suffered by the officers, directors, or employees of such corporation or other persons responsible for the offense, only such individuals will suffer such penalty."[51]

It must be stressed at this point that the prosecution bears the *onus probandi* of showing beyond moral certainty that each and every element of the crime charged exists to sustain conviction. Whatever facts and circumstances must be stated and determined by reference to the definitions and the essentials of the specific crimes.[52]

In the absence of the first element, the scale of justice will undoubtedly tilt in favor of accused-movant, who under the Constitution is presumed innocent until proven otherwise.

In view of the foregoing, a discussion on the other elements of the crimes charged is superfluous, if not unnecessary.

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[49] Arnel U. Ty, Marie Antonette Ty, Jason Ong, Willy Dy, and Alvin Ty vs. NBI Supervising Agent Marvin E. De Jemil, Petron Gasul Dealers Association, and Totalgaz Dealers Association, G.R. No. 182147, December 15, 2010.
[50] In the last two paragraphs.
[51] Alfredo Ching vs.The Secretary of Justice, Asst. City Prosecutor Cecilyn Burgos-Villavert, Judge Edgardo Sudiam of the Regional Trial Court, Manila, Branch 52; Rizal Commercial Banking Corp. and The People of the Philippines, G. R. NO. 164317, February 06, 2006.
[52] Ngo vs. People, G.R. No. 155815, July 14, 2004.

WHEREFORE, the Demurrer To Evidence dated November 28, 2012, filed by the accused Raymond R. Lee, is hereby GRANTED. Consequently, accused-movant Raymond R. Lee is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. The instant criminal cases are therefore DISMISSED.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

ERLINDA P. UY
Acting Chairperson