0

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA CRIM. CASE NO. O-104

-versus-

Members:
BAUTISTA, Chairperson;
FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

ROBERT SIA and
JOHN KENNETH L. OCAMPO,
Accused.

Promulgated:
JUL 19 2017
1:35 p.m.

x---x

DECISION

RINGPIS-LIBAN, J.

The Case

Accused Robert Sia (Sia) and John Kenneth L. Ocampo (Ocampo) are charged in their capacity as President and Treasurer, respectively, of Roxy Industrial Sales Incorporation (Roxy), for violation of Section 255 in relation to Sections 253(d) of the National Internal Revenue Code of 1997, as amended, for failure of Roxy to pay its deficiency taxes for taxable year 1998.

Roxy has its business address at 713 Gonzalo Puyat Street, Quiapo, Manila (with former address at 691 Gonzalo Puyat Street, Quiapo, Manila).

The prosecution, on the other hand, is represented by the 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.

The Information against the two accused reads as follows:

"That on or about December 28, 2001, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping each other, being then the President and Treasurer, respectively of Roxy Industrial Sales Corporation, with business address at 691 Gonzalo Puyat Street, Quiapo, this City, having filed his internal revenue tax of the latter for the year 1998 and after examination and audit of the same, it has been found that there is due collectibles from said Roxy Industrial Sales Corporation the following, to wit:

Income tax- - - - P	73,401.64
Compromise Penalty on Income -	8,500.00
Value Added Tax - -	3,452,965.00
Compromise Penalty on VAT-	25,000.00
Expanded Withholding Tax-	3,649.27
Compromised Penalty on EWT-	1,000.00

for the said year under BIR Assessment/Demand Notice No. 32-1-98, did then and there willfully and unlawfully fail and refuse and neglect to pay said Deficiency Income Tax, and Compromise Penalty and without formally appealing the same, despite due assessment, notice and demand to do so, to the damage and prejudice of the Republic of the Philippines, in the total amount of P3,564,516.25, Philippine Currency.

CONTRARY TO LAW."

On February 4, 2009, the First Division of this Court issued a Resolution[1] ordering the issuance of warrants of arrest for accused Sia and Ocampo.

On February 16, 2009, the Court issued the Warrant of Arrest[2] for both accused.

On February 24, 2009, accused Sia and Ocampo voluntarily appeared before the Court and submitted themselves to the jurisdiction of the Court by posting a cash bond in the amount of P24,000.00 each, for their provisional liberty.

During the arraignment on March 23, 2009, both accused, with the assistance of their counsel de parte, entered a plea of "Not Guilty" to the crime charged. After the termination of the pre-trial held on July 13, 2009, the parties presented their respective evidence.

[1] Docket, CTA Case No. O-104, pp.42-44.
[2] Docket, p.46.

During the Pre-Trial Conference, accused Sia and Ocampo through their counsel, Atty. Allan Narciso P. Macasaet, orally moved that they be excused from attending the trial of the case. The Court granted the request of the accused.

Trial ensued and, to prove its case, the prosecution presented six (6) witnesses, namely: Rene Samonte, Edna Ortalla, Teresita Maglunog, Felicidad A. Dela Rosa, Elizabeth Reyes, and Armando C. Macatangay.

On January 7, 2010, this case was transferred to this Division, pursuant to CTA Administrative Circular No. 01-2010.[3]

The prosecution's first witness, ***Rene A. Samonte,***[4] Revenue Officer for Assessment assigned at Region 7, Quezon City, testified that his duty is to conduct an audit on the assigned tasks by virtue of a Letter of Authority[5]; that he knew Roxy; that the case of Roxy was re-assigned to him after the original examiner was transferred to another district; that the re-assignment was by virtue of Revenue Referral Memorandum dated June 29, 2000; that the Letter of Authority bears the stamped word "revalidated" because the 120 days had already lapsed; that he identified the Letter of Authority; that the Letter of Authority was received by Eric Ocampo on October 12, 1999; that accused failed to present the required documents; that a Final Notice[6] was issued to Roxy for it to present the documents being requested and stated in the Letter of Authority; that the Final Notice was received by a certain "Belen"[7]; that the accused failed to present the required documents despite receipt of the Final Notice, hence, he issued a Memorandum[8] dated February 5, 2001 citing the provisions of law and informing the Revenue District Officer that Roxy did not comply with the second request sent to it and that he requested that a subpoena duces tecum be issued to the president or authorized representative of Roxy; that Roxy still failed to present the required documents; that after the documents were returned to him by the Legal Division, he made the assessment based on the best evidence available; that based on the available evidence, he found that there were deficiency income tax amounting to P92,211.95, value-added tax amounting to P689,684.93, and withholding tax in the amount of P4,650.64, inclusive of increments and penalties; that he issued a Memorandum[9] for the Revenue District Officer based on his findings; that to prove that he submitted the computation of the deficiency taxes, he presented the Revenue Officer's Audit Report[10]; that as proof that Roxy was informed of the results of his investigation, he presented the letter[11] of Asst. Revenue

---

[3] Order, p. 118.
[4] Testified on October 12, 2009, June 28, 2010, August 2, 2010, October 6, 2010,
[5] Exhibit "A".
[6] Exhibit "C".
[7] Exhibit "C-2".
[8] Exhibit "D".
[9] Exhibit "H".
[10] Exhibit "J".
[11] Exhibit "I".

District Officer Felipe G. Castillo dated August 22, 2001; that the said letter was sent to the president of Roxy and was accompanied by an Analysis and Computation of Deficiency Taxes[12]; and that he identified his Judicial Affidavit [13]executed on June 22, 2010, marked as Exhibit "T".

On cross examination, he testified that he does not personally know Eric Ocampo; that he does not know whether Eric Ocampo is connected with Roxy; that the name of accused Sia and Ocampo did not appear in the Letter of Authority; that there is nothing in the Letter of Authority which shows that the accused received the Letter of Authority; that he is the one who delivered the referral memorandum to the accused; that the said referral memorandum was received by Eric Ocampo; that he did not ask for any identification card from Eric Ocampo; that he does not know whether Eric Ocampo was authorized to receive the letter; that he had a gut feeling that Eric Ocampo is authorized to receive the letter because he is at the back of the cashier; that he does not know whether accused received the latter marked as Exhibit "P"; that when the investigation of Roxy was transferred to him, he received a Referral Memorandum; that the Letter of Authority dated October 7, 1999 was revalidated on August 30, 2001; that the BIR did not issue another Letter of Authority informing Roxy of the revalidation; that when he informed Roxy of the revalidation, only a photocopy of the revalidated Letter of Authority was shown to them; that he did not finish his examination within 120 days after the case was assigned to him; that the 120 days expired on October 29, 2000; that the Letter of Authority was not revalidated after the expiration of the 120 days; that he does not know whether Roxy executed a waiver of rights over the prescriptive period; that there is nothing in the August 22, 2001 letter (Exhibit "I") which shows that accused received the said letter; and that there is nothing in all the documents presented in Court which would show that both accused personally received copies of the said documents.

The prosecution's second witness, ***Ms. Edna Ortalla***[14], Chief of Review Section of the Assessment Division at Revenue District No. 6, BIR, Manila, testified that her duty is to supervise the review of audit and/or investigation of revenue examiners of various revenue districts of BIR-Manila; that per records of BIR, Revenue Region No. 6, Manila, the audit investigation conducted by Revenue Officer Rene Samonte was reviewed by Revenue Reviewer Jesus E. Tiongco pursuant to an assignment slip dated November 8, 2001; that consequently, the Pre-Assessment Notice (PAN)[15] dated November 16, 2001 for deficiency income tax, deficiency value-added tax and deficiency expanded withholding tax were issued; that a Revenue Officer's Audit Report[16] was issued; that for failure of Roxy to refute the assessments, Formal Assessment Notice (FAN) No. 32-1-98 for expanded withholding tax[17], value-added tax[18], income tax[19] and compromise penalty in the amounts of P3,649.27,

---

[12] Exhibit "I-1".
[13] Exhibit "T".
[14] Testified on March 16, 2011.
[15] Exhibit "K".
[16] Exhibit "J".
[17] Exhibit "L".
[18] Exhibit "M".

P3,452,965.34, P73,401.64 and P4,500.00, respectively were issued; that on December 28, 2001, demand letters were sent to Roxy requesting the latter to settle the deficiency taxes; that despite demand to pay, Roxy failed to settle the deficiency taxes, thus the case was forwarded to the collection division to enforce collection; that she executed a Judicial Affdiavit, marked as Exhibit "U".

On cross examination, she testified that she was assigned as Chief of Review Section since 2004 up to present; that in 2001, she was then a reviewer officer; that her office reviewed the dockets from the Review District Offices; that she has no proof of mailing of the PAN because it is the Billing Section which prepared the endorsement for mailing.

The prosecution's third witness, ***Ms. Teresita Maglunog***[20], OIC-Chief of the Assessment Division, BIR, Manila, testified that she was a former Chief of Records Section of Administrative Division; that her primary duty is to personally check the orderly sending of final notices of assessments, their corresponding demand letters including demand letter for compromise penalties prior to the actual sending of final assessment notices of assessments and demand letters through registered mail; that it is also her duty to personally keep documents as proof of receipt of those final notices of assessments and demand letters; that after she was informed that she will testify about the case of Roxy, she checked the Assessment Division's transmittal slip of the notices of final assessment and demand letters for income tax, value added tax and EWT for taxable year 1998 issued by the BIR to Roxy; that the transmittal slip was kept for safe keeping at the Records Section of Administrative Division, BIR-Manila; that the assessment notices were mailed through registered mail on December 28, 2001, with Registry Receipt No. 62508; that she identified the assessment notices, Exhibits "L" to "L-2, "M" to "M-2" and "N" to "N-2"; that the notices were signed by Regional Director Ruperto P. Somera; that she is familiar with the signature Ruperto P. Somera; that she has no personal knowledge as to the contents of the assessment notices because her task was merely to manually check the Assessment Notices or demand letters transmitted to her office by the Assessment Division before the said notices will be dispatched for mailing; that the assessment notices were addressed to Roxy Industrial Sales corporation; that after checking the assessment notices and demand letters, she instructed her subordinate to deliver the said notices to the Post Office for mailing through registered mail; that she identified the Assessment Division's transmittal slip marked as Exhibit "S"; that Mr. Armando Macatangay was the one who delivered to the Post Office of Manila the assessment notices; that after mailing, Mr. Armando Macatangay gave to her the Registry Receipt No. 62508 dated December 28, 2001 issued by the Post Office of Manila; that she personally attached to the transmittal slip the registry receipt; and that she executed a Judicial Affidavit, marked as Exhibit "V".

---

[19] Exhibit "N".

[20] Testified on June 28, 2011 and July 6, 2011.

On cross examination, she testified that they process the documents forwarded to them on the same day, or depending on the urgency specially the FAN; that the final notices and demand letters were no longer attached to the transmittal slip because they were mailed already; that there is no particular note in the transmittal slip which shows that the documents transmitted are the assessment notices; that it is the practice of the BIR to place in one envelop all the documents to be mailed if the same are to be sent to one addressee only; that there is no registry return card or return envelope attached to their record; that their office did not secure any certification from the post office that the mailed documents covered by Registry Receipt No. 62508 were actually received by the addressee; that it was not indicated in the registry receipt what documents were mailed; that it was on December 28, 2001 when she saw for the first time the FAN and demand letters; that she was not the one who mailed the documents; that Mr. Macatangay was the one who mailed the documents; that their office does not have a logbook for the transmittal slips, they only compile the transmittal slips; that she does not know if the mailed letter was received by the taxpayer; that she is not sure when her office received the assessment notices for mailing; that the one in-charge of mailing the documents was the one who checked the attachments to the transmittal slip.

The prosecution's fourth witness, ***Ms. Felicidad A. Dela Rosa***[21], an employee of the Collection Section of Revenue District Office, testified that she was a former Collection Seizure Agent assigned at the Collection Section of RDO No. 32, Revenue Region No. 6, BIR-Manila; that her duty was to send collection notices and serve warrant of distraint and/or levy to the taxpayers with delinquent accounts payable before RDO No. 32; that her duty was to serve warrants of garnishment before banks and/or tax lien notice before the Registry of Deeds in order to attach real properties of delinquent taxpayers; that she was the one who prepared the BIR Notice Before Seizure and the Warrant of Distraint and/or Levy[22] and served the same to Roxy; that the warrant was personally served on October 3, 2002 at Roxy's business address at No. 691 G. Puyat St. Quiapo, Manila; that the warrant was served to Roxy's representative; that the service was witnessed by Evangeline Moncada and Alegria dela Cruz of RDO No. 22, BIR-Manila; that the warrant was received by Eric Ocampo; that after service of the warrant, she executed a Memorandum Report for the Revenue District Officer of RDO No. 32, BIR-Manila recommending that the case be referred to the Legal Division for appropriate action; that thereafter, the case was forwarded to the Collection Division and Legal Division of BIR-Manila for appropriate action; that as proof that the case was forwarded to the concerned department, a 1st Indorsement was issued by Revenue District Officer Benito B. Wong, forwarding the Report on Delinquent Accounts of Roxy; that she is not aware what transpired after the docket of the case was forwarded to the Legal Division; and that she executed a Judicial Affidavit marked as Exhibit "X".

[21] Testified on August 3, 2011.
[22] Exhibit "O".

On cross examination, she testified that she prepared the final notice before seizure; she did not enforce the warrant of distraint; that she merely served the warrant of distraint; that she does not know the business of Roxy; that she described the place where she served the warrant as a "little store"; that she has no idea what Roxy is selling; that she knew the rule in the service of warrants of distraint and/or levy; that the warrant was received by Eric Ocampo; that she does not personally know Eric Ocampo; that she did not ask any identification card from Eric Ocampo; that he does not know the position of Eric Ocampo in Roxy; that he did not verify the identity of Eric Ocampo; and that he does not know if Eric Ocampo is connected with Roxy.

The prosecution's fifth witness, ***Ms. Elizabeth Reyes***[23], Administrative Assistant III of Assessment Division of BIR-Manila, testified that in year 2001, she was then a Computer Operator assigned at the Billing Section, Assessment Division, BIR-Manila; that her duty then was to prepare final notices of assessments, their corresponding demand letters, as per instruction of her superiors; that she is also tasked to transmit the final notices of assessment and demand letters to the Administrative Division; that according to the instruction of Ma. Paz Arcilla, Billing Section Chief, she prepared the final notices of assessment and demand letters for income tax, VAT and EWT for taxable year 1998; that she merely copied the draft final notices and demand letters delivered to her by Ma. Paz Arcilla; that she was the one who transmitted the final notice of assessment and demand letters to the Assessment Division; that she identified Exhibits "L", "L-1", "L-2", "M", "M-1", "M-2", N", "N-1", "N-2"; that after the assessment notices were signed by the authorized signatories, she prepared the transmittal slip and forwarded the final assessment notices and demand letters to the Administrative Division for mailing to the subject taxpayer; that the transmittal slip is the proof that the assessment notices issued by the BIR against Roxy was transmitted by the Assessment Division to the Administrative Division; that she is not aware what transpired after the case was forwarded to the Administrative Division; and that she executed a Judicial Affidavit marked as Exhibit "Z".

On cross examination, she testified that her signature does not appear on the assessment notices that she prepared because the said documents will be signed only by the official signatory; that her signature appears in the transmittal slip; that she identified Exhibits "L", "L-1", "L-2", "M", "M-1", "M-2", N", "N-1", "N-2" as the same documents she prepared; that she usually makes two copies of the assessment notices; that the original copy of the document was the one sent to the taxpayer; that she has no knowledge whether the assessment notices and demand letters which she prepared were actually sent by the BIR to the taxpayer; that she was the one who typed or printed the assessment notices; that she transmitted the documents to the Administrative Division on December 27, 2001; and that the assessment notices she identified were dated, prepared and probably signed on December 28.

[23] Testified on October 5, 2011 and May 23, 2012.

The prosecution's sixth witness, ***Mr. Armando C. Macatangay,***[24] presently assigned at the Administrative Division of BIR Manila, testified that in year 2001 she was then the Administrative Assistant III of the Administrative Division of Revenue Region No. 6-Manila; that her primary duty was to personally send final assessment notices of assessments and their corresponding demand letters including demand letters for compromise penalties through registered mails; when he learned that he will be testifying regarding the case of Roxy, he immediately examined the records and he found that the notices of assessment and demand letters for income tax, value-added tax and expanded withholding tax for taxable year 1998 issued by the BIR to Roxy were mailed on December 28, 2001 through registered mail covered by Registry Receipt No. 62508; that he identified Exhibits "L", "L-1", "L-2", "M', "M-1", "M-2", N', "N-1", "N-2" as the same documents he personally checked for mailing; that after checking the said notices, he placed them in one envelope, sealed it and personally brought them to the Central Post Office Manila and mailed it through registered mail on December 28, 2001; that the letter was addressed to Roxy at its address at 691 G. Puyat St. Quiapo, Manila; that thereafter, he took the registry receipt and gave it to their Chief of Administrative Division for attachment to the transmittal slip; that he identified Exhibit "S" as the transmittal slip where the registry receipt was attached; that he executed a Judicial Affidavit marked as Exhibit "AA".

On cross examination, he testified that he was doing messengerial services at the time that he was assigned at the Administrative Division; that he was tasked to mail the letters; that the letters sent to Roxy were placed in one envelope; that the usual procedure of the BIR is to place in one envelope all the letters if the addressee is only one; that the letter was sent at Raon, Quiapo, Manila; that he does not know if the letter was received by Roxy; that they do not have the return card for the letter sent to Roxy; that they do not have proof that the letter or the assessment notices were in fact received by Roxy; that their office did not ask the Central Post Office to issue a certification that the mail matter covered by Registry Receipt No. 62508 dated December 28, 2001 was actually received by Roxy; that he received the transmittal slip and the letters for mailing on December 27, 2001; that Exhibits "L", "L-1", "L-2", "M', "M-1", "M-2", N', "N-1", "N-2" which he identified to be the documents he mailed on December 28, 2001, are also dated December 28, 2001; and that the documents he received on December 27, 2001 are the same documents that he mailed on December 28, 2001.

On re-direct examination, he testified that the date December 18 appearing on the transmittal slip refers to date when the transmittal slip was received by the Assistant Regional Director for review and initial of the final assessment.

---

[24] Testified on August 29, 2012.

On January 8, 2013,[25] the prosecution filed its Formal Offer of Evidence then rested its case with the admission of its documentary evidence on March 12, 2013.[26]

On March 22, 2013, accused Sia and Ocampo, filed through their counsel, a "Motion for Leave of Court to File Demurrer to Evidence."[27] In the Resolution[28] of the Court dated March 27, 2013, the accused were ordered to file their Comment on the said motion. On April 18, 2013, the prosecution filed their "Comment (To Motion for Leave of Court to File Demurrer to Evidence)."[29] On April 30, 2013, the Court issued a Resolution[30] granting the "Motion for Leave of Court to File Demurrer to Evidence."

On May 17, 2013, accused, through their counsel, filed a "Demurrer to the Prosecution's Evidence."[31] On June 21, 2013, the prosecution filed a "Comment (to Accused's Demurrer to the Prosecution Evidence)."[32] On July 8, 2013, the Court issued a Resolution denying the Demurrer to Evidence.[33]

The defense presented three (3) witnesses, namely: accused Sia, accused Ocampo and Atty. Allan Narciso P. Macasaet.

Accused ***Robert Sia***[34], testified that he is the President of Roxy; that he manages the company and oversees its day to day operations; that he is the president of Roxy since 1991; that he is also a stockholder and a member of the Board of Directors of Roxy; that he does not know Eric Ocampo; that they do not have an employee, director or stockholder by the name of Eric Ocampo; that the corporation has not given any authority to a person named Eric Ocampo; that as proof thereof, he presented the SSS Collection List[35] of Roxy for the years 1999-2003 which show that Roxy did not employ any person by the name of Eric Ocampo; that he presented the Articles of Incorporation[36] and the General Information Sheet[37] for the year 2013 of Roxy showing that there is no person named Eric Ocampo; that the name Eric Ocampo appearing in the Letter of Authority, letter marked as Exhibit "A-10", letter marked as Exhibit "B", and Warrant of Distraint and Levy is not the same as Jacob Ericson L. Ocampo, director and stockholder of Roxy; that he asked Jacob Ericson Ocampo if he received any document from the BIR pertaining to the investigation being conducted by the BIR; that the Articles of Incorporation and By-Laws of the Corporation would show that the signatures of Jacob Ericson Ocampo appearing therein are not the same as the signatures

---

25 Docket, pp. 467-474.
26 Docket, pp. 535-536.
27 Docket, pp. 537-540.
28 Docket, pp. 546-547.
29 Docket, pp. 548-550.
30 Docket pp. 552-554.
31 Docket, pp. 555-559.
32 Docket, pp. 565-568.
33 Docket, pp. 570-571.
34 Testified on September 25, 2013 and July 9, 2014.
35 Exhibits "21"- "41".
36 Exhibit "19".
37 Exhibit "20".

appearing in the notice allegedly received by Roxy; that he saw for the first time the prosecution's exhibits when they were shown to him by their lawyer a month before he executed his Judicial Affidavit; that he had seen the other exhibits of the prosecution when the case was already filed against them before the City Prosecutor's Office; that he and co-accused Ocampo executed a Counter-Affidavit[38] which was submitted to the Prosecutor's Office of the City of Manila stating that Roxy or any of the employees of the corporation did not receive any notice from the BIR; that he presented a letter[39] addressed to the Chief Legal Division, Atty. Mario Saldevar, dated November 10, 2003, showing that Roxy did not receive the assessments and they requested for a reinvestigation; that the said letter was in response to the demand letter from the BIR[40], dated August 18, 2003; that the BIR did not respond to the letter of Roxy; that when the case was filed before the prosecutor's office, the lawyer for the government told them that the assessments were already final and can no longer be the subject of a reinvestigation; that they are law abiding citizens who pay taxes dutifully; that to show good faith and clean intentions, they paid on May 11, 2012 and August 23, 2013 the total amount of P884,720.32 which is equivalent to 40% of the base assessments hoping that the BIR would consider the payment as a compromise for the deficiency taxes that they allegedly owe the government; that as proof thereof, they presented the Bank Deposit Slips and BIR Forms No. 605[41]; and that they do not agree with the assessments made by the BIR because they are arbitrary; that he executed a Judicial Affidavit marked as Exhibit "50".

On cross examination, he testified that he is still the president, stockholder and member of the Board of Directors of Roxy; that in 1999, Roxy has twenty (20) employees; that he does not know all the names of his employees; that the registered address of Roxy is at 691 Gonzalo Puyat Street, Quiapo, Manila; that Roxy is a retail shop; that they maintain an office in 652 Quirino Avenue, Tambo, Parañaque, Metro Manila; that he is not sure if the list of employees appearing in the SSS forms submitted to the Court includes the employees of Quiapo and Parañaque; that the main office of Roxy is the one listed in the Articles of Incorporation, which is in Quiapo; that Jacob Ericson L. Ocampo is not the same as Eric Ocampo; that they call Jacob Ericson as "Jacob"; that he asked in year 2003 or 2004 whether Jacob received documents from the BIR; that Jacob did not receive any document from the BIR; that Jacob is the brother of accused John Kenneth Ocampo; that Jacob is above 40 years of age; that Jacob Ericson Ocampo is not an employee but a director of Roxy; and that Jacob Ericson Ocampo does not hold office in Parañaque nor in Quiapo.

Accused ***John Kenneth L. Ocampo***[42] testified that since 1999 up to the present, he is the Treasurer of Roxy, a stockholder and member of the Board of Directors; that as the Treasurer, his duties and responsibilities are :1)

[38] Exhibit "18".
[39] Exhibit "17".
[40] Exhibit "16".
[41] Exhibits "42" – "49".
[42] Testified on April 22, 2015.

oversee the financial insight of Roxy; 2) financial planning, budgeting and reporting to the Board of Directors of Roxy; 3) book and record keeping of the financial matters of Roxy; that they do not have any employee, stockholder, director by the name of Eric Ocampo; that they did not authorize Eric Ocampo to receive documents on their behalf; that as proof thereof he presented the SSS Collection List[43] of Roxy for the years 1999-2003 which shows that Roxy did not employ any person by the name of Eric Ocampo; that the Articles of Incorporation[44] and General Information Sheet for the year 2013[45] of Roxy show that there is no person named Eric Ocampo therein; that he personally asked Jacob Ericson Ocampo if he receive any document from the BIR and he was told by Jacob that he did not received any document from the BIR; that the signatures appearing on the Exhibits[46] of the prosecution are not the signatures of Jacob Ericson Ocampo; that he only saw for the first the documents marked as Exhibits "A" to "S" when their lawyer showed them the said documents when the case was already filed against them; that the employees, directors, stockholders and officers of Roxy informed him that they did not receive documents from the BIR; that on October 3, 2000, Roxy's office located at 691 and 685 Gonzalo Puyat Street, Quiapo Manila were burned, and because of such incident, Roxy moved its office at 713 Gonzalo Puyat Street, Quiapo, Manila; that as proof thereof, he presented the Certification from the Bureau of Fire Protection dated November 18, 2000[47]; that due to the change of address, it is impossible for Roxy to receive the assessment notices dated December 28, 2001 and Final Notice Before Seizure dated September 5, 2002; that he sent a letter to the BIR dated November 18, 2000, informing them that they moved to 713 Gonzalo Puyat Street, Quiapo, Manila; that the said letter was received by the BIR on January 24, 2001[48]; that he was the one who signed the letter to the BIR; that he was shocked when a case was filed against them because they have been paying their tax liabilities consistently and in good faith; that they can no longer settle the case because the assessments made by the BIR are already final; that they paid on May 11, 2012 and August 23, 2013 the total amount of P884,720.32 representing 40% of the base assessments made by the BIR; that as proof thereof, he presented the Bank Deposit Slips and BIR Forms No. 605[49]; and that the BIR accepted their payment and since then they have not heard from the BIR; and that he executed a Judicial Affidavit marked as Exhibit "52".

On cross examination, he testified that they do not have an employee by the name Eric Ocampo; that Roxy has around 10 to 15 employees; that Roxy is a retail store "tindahan"; that Jacob Ericson Ocampo is not the same as Eric Ocampo; that Jems Appliance Center is the trade name of the company and their corporate name is Roxy Industrial Sales Corporation because Jems was a single proprietor before, and they used its name because it already has good will; that they sell appliances; that Jacob Ericson Ocampo is his brother and he

[43] Exhibits "21" to "41".
[44] Exhibit "19".
[45] Exhibit "20".
[46] Exhibits "A", "A-10", "B" and "O".
[47] Exhibit "50".
[48] Exhibit "51-A".
[49] Exhibits "42" -"49".

is not a member of the Board of Directors, he is only a stockholder; that he came to know about this case when a warrant of arrest against them was issued by the CTA; that they were not even notified by the Department of Justice (DOJ) regarding the case; and that as far as he know, the case was filed without any investigation conducted by the DOJ.

The defense' last witness, ***Atty. Allan Narciso P. Macasaet***[50] testified that he is the legal counsel of the accused; that he is familiar with the documents, i.e. Letter of Authority, marked as Exhibit "1", Request for Presentation of Records marked as Exhibit "2', Pre-Assessment Notice dated November 16, 2001, marked as Exhibit "5", and Warrant of Distraint and Levy, marked as Exhibit "15", because these documents were obtained from Atty. Magsambol, the former handling prosecuting attorney of the BIR, during one of the preliminary conference hearings for the marking of the parties' exhibits; that he saw those documents from Atty. Magsambol and he asked her if he could photocopy those documents so he can have them marked as defense evidence; that Atty. Magsambol agreed that is why he has a copy of the said exhibits; that these Exhibits "1", "2" "5" and "15" are the true and faithful reproductions of the originals that he saw from Atty. Magsambol; and that the originals of the said exhibits are with the BIR.

The defense filed its Formal Offer of Evidence on November 6, 2015[51] and rested its case with the admission of its documentary evidence in the Resolutions dated December 21, 2015[52] and May 6, 2016.[53]

The prosecution failed to file its Memorandum while the defense submitted its Memorandum on July 18, 2016.[54] The case was submitted for decision in the Resolution dated July 22, 2016.[55]

The Issues

This Court is confronted with these main issues:

1. Whether or not the assessments made by the BIR are valid.
2. Whether or not accused is guilty of the crime charged and liable to pay the deficiency taxes.

The Arguments

[50] Testified on September 2, 2015.
[51] Docket, pp. 890-810.
[52] Docket, pp. 983-984. In the said Resolution, Exhibit "17", "20" and "53" were denied for being provisionally marked, and Exhibit 16 for failure to identify the same in open Court.
[53] Docket, pp. 1017-1019. In the said Resolution, Exhibits "16", 17" and "5" are admitted.
[54] Docket, p. 1032-1043.
[55] Docket, p. 1045.

The prosecution claims that the notices were properly sent and received by the accused and the latter failed to interpose objections on the issued assessments; and that the accused are guilty for willful non-payment of deficiency taxes.

On the other hand, accused Sia and Ocampo argue that there was no valid assessment because there was no proper service of assessment notices; that they are not liable for willful non-payment of taxes and that the payment of compromise is an act of good faith.

The Ruling of the Court

The relevant provisions of the National Internal Revenue Code (NIRC) of 1997 are 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 any 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 laws 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 (P10,000.00) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.
>
> x x x
>
> **Sec. 253. General Provisions.** – x x x
>
> (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 the employees responsible for the violation."
>
> **Sec. 256. Penal Liability of Corporation.** – 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 (P50,000.00) but not more than One hundred thousand pesos (P100,000.00)."

The prosecution must prove beyond reasonable doubt the following three (3) essential elements before a taxpayer can be held liable under Section 255 of the NIRC:

1. The 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 the tax was willful.

Roxy is a juridical person required to pay its taxes

There is no question that Roxy is a juridical person required to pay its taxes under Sec. 23(E) of NIRC, to wit:

> "SEC. 23. **General Principles of Income Taxation in the Philippines.** - Except when otherwise provided in this Code: x x x (E) A domestic corporation is taxable on all income derived from sources within and without the Philippines; x x x"

Under Sec. 256 of the NIRC which we previously quoted, penal liability for violations of Sec. 255 is pinned upon the responsible officer of the corporation, specifically, accused Robert Sia, President of Roxy and accused John Kenneth L. Ocampo, Treasurer of Roxy. Both accused admitted during the Pre-Trial Conference[56] that they are the officers of the corporation.

Whether or not the assessment notices issued by the BIR were received by Roxy

Both accused were charged of willful failure to pay deficiency income tax, value-added tax and expanded withholding tax for taxable year 1998 arising from BIR Assessment/Demand Notice No. 32-1-98. Inasmuch as the alleged deficiency income and value-added tax arose from an assessment, as stated in the Information, it becomes necessary for the prosecution to prove that they issued the subject assessment notices pursuant of Section 228 of the NIRC.

Section 228 of the NIRC, as amended, in relation to Section 3 of Revenue Regulations No. 12-99, provides the due process requirements in an assessment. Section 228 provides:

[56] TSN dated July 13, 2009, p. 8.

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

In the case of *Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue,*[57] the Supreme Court held that it is a requirement of due process that the taxpayer must actually receive the assessment.

> "Respondent argues that an assessment is deemed made for the purpose of giving effect to such assessment when the notice is released, mailed or sent to the taxpayer to effectuate the assessment, and there is no legal requirement that the taxpayer receive said notice xxx Although there is no specific requirement that the taxpayer should receive the notice within said

[57] G.R. No. 155541, January 27, 2004.

> period, due process requires at the very least that such notice actually be received. " In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*, we had occasion to say:
>
> > An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer.
> >
> > xxx.
> >
> > It appearing that the person liable for the payment of the tax did not receive the assessment, the assessment could not become final and executory."

To prove that Roxy was properly assessed for deficiency taxes and that notices were issued, sent and received by Roxy, the BIR presented the following documents: BIR Form No. 1702 Annual Income Tax Return (ITR) of Roxy for taxable year 1998, BIR Form No. 1702 A1F-1 Account Information Form, Letter of Authority, Request for Presentation of Records and Checklist of Requirements, Final Notice dated October 8, 2000, BIR Form No. 0508 Revenue Officer's Audit Report on Compensation Withholding Tax, BIR Form No. 0509 Revenue Officer's Audit Report on Expanded withholding Tax, BIR Form No. 0500 Revenue Officer's Audit Report on Income Tax, Notice of Informal Conference dated August 22, 2001, Revenue Officer's Audit Report on Value-Added Tax, Preliminary Assessment Notice dated November 16, 2001, Final Assessment Notice on Expanded Withholding Tax and Demand Letter dated December 28, 2001, Final Assessment Notice on Value-Added Tax and Demand Letter dated December 28, 2001, Final Assessment Notice on Income Tax and Demand Letter dated December 28, 2001, Revenue Officer's Audit Report on Value-Added Tax, Warrant of Distraint and/or Levy No. 32-047-02, Letter of Demand dated August 18, 2003, and the Transmittal Slip with Post Office Registry Receipt No. 62508.

Both accused however, aver that they did not receive all the notices issued by the BIR especially the FAN. They claim that the notices were sent by the BIR to Roxy's old address at 691 Gonzalo Puyat Street, Quiapo, Manila, despite knowledge that Roxy moved to 713 Gonzalo Puyat Street, Quiapo, Manila. Notably, accused, through a letter dated November 18, 2000[58] informed

[58] Exhibit "51".

the BIR that Roxy moved to 713 Gonzalo Puyat Street, Quiapo, Manila because their store was gutted by fire in October 3, 2000. The said letter bears a stamped receipt of the BIR on January 24, 2001. As proof that their store was burned located at 691 Gonzalo Street, they presented the Certification from the Bureau of Fire Protection. Hence, the BIR was aware of Roxy's new address when they issued and sent all the notices pertaining to the assessment of Roxy's deficiency taxes.

Accused claim that Eric Ocampo, the person who received the notices, was not in any way connected with Roxy. As proof thereof, the defense presented the Articles of Incorporation and General Information Sheet of the corporation, to show that the signature of Eric Ocampo appearing on the prosecution's evidence is not the same as the signature of Jacob Ericson Ocampo. Also, they presented the SSS Collection List from 1999 to 2003, to attest that they do not have an employee by the name of Eric Ocampo.

Considering that both accused denied having received the assessment notices from the BIR, it is incumbent upon the latter to prove by competent evidence that the notices were indeed received by Roxy. Thus, the burden of proof is shifted to the BIR to prove by contrary evidence that Roxy received the assessment notices in the due course of mail.

In ***Barcelon Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue,***[59] the Supreme Court held:

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

[59] G.R. No. 157064, August 7, 2006.

> "The facts to be proved to raise this presumption are (a) that the letter was properly addressed with postage prepaid, and (b) that it was mailed. Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail. But if one of the said facts fails to appear, the presumption does not lie. (VI, Moran, Comments on the Rules of Court, 1963 ed, 56-57 citing *Enriquez vs. Sunlife Assurance of Canada, 41 Phil 269*)."
>
> xxx xxx xxx
>
> xxx. What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized representative. And if said documents cannot be located, Respondent at the very least, should have submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts. xxx

In the case of ***Protector's Services, Inc. vs. Court of Appeals***,[60] the Supreme Court ruled that:

> "When a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3 (v), Rule 131 of the Rules of Court, that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favoured by the presumption to prove that the mailed letter was indeed received by the addressee."

The prosecution claims that the Letter of Authority and letter dated June 29, 2000 were validly served to Roxy because they were sent personally and received by a certain "Eric Ocampo". However, the identity of the recipient was not validated by the revenue officer who personally served the notice.

On cross examination[61], Mr. Rene Samonte testified as follows:

ATTY. MACASAET

---

[60] 386 Phil. 611, cited in the case of Barcelon, Roxas Securities, Inc. vs. CIR, G.R. No. 157064, August 7, 2006.
[61] TSN dated October 6, 2010, pp. 9-18.

Q. Now, since you engaged in messengerial functions, I will ask you whether you were the one who served this Letter of authority to Roxy Industrial Corporation?

MR. SAMONTE
A. No.

ATTY. MACASAET
Q. Since you were not the one who served this Letter of Authority, you have no personal knowledge if this LA was personally served against Roxy Industrial Service, is that correct?

MR. SAMONTE
A. Yes.

ATTY. MACASAET
Q. Now, according to this LA which you identified as exhibit "A", and on the bottom portion we constrained to appear that this LA was received by a certain Eric Ocampo last October 12, 1999, do you know this Mr. Eric Ocampo, Mr. witness?

MR. SAMONTE
A. I presume that it is the person who received the Letter of Authority.

ATTY. MACASAET
Q. No, do you personally know Mr. Eric Ocampo?

MR. SAMONTE
A. No.

ATTY. MACASAET
Q. So, since you don't personally know Mr. Eric Ocampo, you will not also know whether or not this Eric Ocampo is connected with Roxy, is that correct?

MR. SAMONTE
A. Yes.

ATTY. MACASAET
Q. So, since you do not personally know that Mr. Ocampo is connected with Roxy you do not also know if Mr. Ocampo is a representative of Roxy authorized to receive the Letter of Authority?

MR. SAMONTE
A. Yes.

ATTY. MACASAET
Q. Now, from your educational background Mr. Witness and experience and length of staying this BIR, who are the person being authorized to received (sic) the letter of Authority in behalf of the corporation?

MR. SAMONTE
A. First is the President, the general manager the authorized personnel or in accounting department head.

ATTY. MACASAET
Q. Is Mr. Eric Ocampo any of the persons you've just mentioned?

MR. SAMONTE
A. Your Honors, I've just mentioned I don't know who Eric Ocampo?

xxx

ATTY. MACASAET
Q. Now, does the name of both accused Robert Sia and John Kenneth Ocampo appear anywhere in the Letter of Authority you had identified as Exhibit "A"?

MR. SAMONTE
A. No.

ATTY. MACASAET
Q. Is there anything in that Letter of authority which would prove that both of the accused were personally served a copy of that Letter of Authority?

xxx

MR. SAMONTE
A. None.

ATTY. MACASAET
Q. Now, let me go to the letter dated June 29, 2000. Now, this letter is address (sic) to the President of Roxy Industrial Sales Corporation, which was earlier marked as Exhibit "A-10", according to this letter revenue District Officer Marina C. De Guzman informed Rosy that the investigation under the Letter of Authority which was previously identified as Exhibit "A", shall now be conducted by Rene Samonte?

MR. SAMONTE
A. Yes.

ATTY. MACASAET
Q. Were you the one who were (sic) delivered this letter Mr. Witness?

MR. SAMONTE
A. Yes.

xxx

ATTY. MACASAET
Q. Did you asked (sic) for an identification card?

MR. SAMONTE
A. No.

ATTY. MACASAET
Q. Did you asked (sic) for a driver's license?

MR. SAMONTE
A. No.

ATTY. MACASAET

Q. Or any government I.D.?
MR. SAMONTE
A. No.

ATTY. MACASAET
Q. So you merely presume that Mr. Ocampo is the person who signed the letter?

MR. SAMONTE
A. Yes.

ATTY. MACASAET
Q. And in that point when Mr. Ocampo signed that you do not also know whether or not he was authorized by Roxy to received (sic) the letter which allegedly you handed him?

MR. SAMONTE
A. May be I have the guts or got (sic) feeling that he is authorized because he is the one at the back of the cashier.

ATTY. MACASAET
Q. Thank you Mr. Witness, but xxx

To prove that the BIR sent the Assessment Notices,[62] the prosecution presented the Transmittal Slip with attached registry return receipt.[63] In its attempt to prove proper service of the notices, the prosecution presented Ms. Teresita Maglunong, the person in-charge in the orderly sending of notices, and Mr. Armando Macatangay, the person in-charge in the mailing of assessment notices. However, during their cross examination, it was shown that they failed to prove proper service of the assessment notices.

Ms. Teresita Maglunog testified[64] as follows:

ATTY. MACASAET
Q. Okay. Now, is there anything in that transmittal slip which identifies the documents that were transmitted to your office and send for mailing? xxx

MS. MAGLUNOG
A. There is a stamped mark "received" under the certification on the lower right hand corner below of the transmittal slip this is the note that we received in assessment notices and demand letters.

ATTY. MACASAET
Q. Excuse me, Ms. Witness, my question is, is there anything in that document which identifies the document that transmitted your office like, "here is the final assessment notice, the demand letters, so and so"? which identifies the document that transmitted to your office?

MS. MAGLUNOG

[62] Exhibits "L" to "L-2, "M" to "M-2" and "N" to "N-2".
[63] Exhibit "S".
[64] TSN dated July 6, 2001, pp. 11-35.

A. Nothing in particular in this document.

ATTY. MACASAET
Q. Okay. So, Ms. Witness, it is correct to say that you assumed that the document shown to you by counsel during the last hearing and for which you're testifying I for the same document supposedly covered by that transmittal slip?

MS. MAGLUNOG
A. Yes, Sir.

ATTY. MACASAET
Q. Ms. Witness, if your office was instructed to mail a document to a certain person that document will have to be placed in an envelope and then after mailed (sic) and for which the corresponding registry receipt will be issued, is that correct?

MS. MAGLUNOG
A. Yes, Sir.

ATTY. MACASAET
Q. Now, if two documents will be sent to the same address with the same addressee these will be placed in two (12) separate envelopes and have two (2) registry receipts, am I correct?

MS. MAGLUNOG
A. Ah in this case... (interrupted by Atty. Macasaet)

ATTY. MACASAET
Q. No, no, your practice, Ms. Witness? Normally what do you do?

MS. MAGLUNOG
A. If we received it together or attached to each other like the final assessment notice and demand letter we place it together in one enveloped (sic).

xxx

ATTY. MACASAET
Q. Okay. Now, will you agree with me that the purpose of this registry receipt is to tract list of documents like for example a simple registry receipt will be for a certain demand letter and another demand letter that is the purpose, right?

MS. MAGLUNOG
A. As I have said when the assessment notices were sent and the demand letters when we received it they are together.

xxx

ATTY. MAGLUNOG
Q. Okay. But in that one transmittal slip Ma. Witness, does it states that what was transmitted it you are final assessment notices and demand letters, does it states anywhere in that document?

MS. MAGLUNOG
A. It does no states to us, (sic) but... (interrupted by Atty. Macasaet)

ATTY. MACASAET

Q. That's okay. Ms. Witness, how do you know that a letter was received by addressee?

MS. MAGLUNOG
A. Ah if the registry return card.

ATTY. MACASAET
Q. With the registry return card?

MS. MAGLUNOG
A. Yes, Sir.

ATTY. MACASAET
Q. Now in your inspection of the transmittal slip, were you able to find the registry return card for that particular registry receipt?

xxx

MS. MAGLUNOG
A. No, sir.

ATTY. MACASAET
Q. Okay. Now, if the documents were received there were will be a return card, as I correct?

MS. MAGLUNOG
A. Yes.

ATTY. MACASAET
Q. Now, of those documents were not received there will be a return envelope, am I correct? That enveloped (sic) will be returned to you. Now were you able to find a return envelope for those sets of documents which you claim your offices mailed?

MS. MAGLUNOG
A. I'm not aware whether this (sic) documents were checked by us.

ATTY. MACASAET
Q. So, you were not able to find a registry return card as well as a return enveloped (sic)?

MS. MAGLUNOG
A. Yes, Sir.

ATTY. MACASAET
Q. Now, not having this return card and this return envelope, Ms. Witness, did you secure any certification from the Post Office that the mailed matters covered by registry receipt 62508 was actually received by the addressee? Did you do that?

MS. MAGLUNOG
A. In this case ah, we were not able to secure because… (interrupted by Atty. Macasaet)

ATTY. MACASAET
Q. Okay. I'm just saying, do you have a certification from the Post Office?

MS. MAGLUNOG

A. None, sir.

xxx

JUSTICE ENRIQUEZ

Q. In this case you have the return card?

MS. MAGLUNOG

A. I'm not aware, your Honors, if the return card return to us?

JUSTICE ENRIQUEZ

Q. You do not know. If there is no return card what is the SOP in your office for you to determine whether or not the tax payer received the notice, what is your SOP in your office if the return card is not received?

MS. MAGLUNOG

A. Usually, your Honors, we checked it with the Post Office, but unfortunately we were not able to secure a certification.

JUSTICE ENRIQUEZ

Q. In this case, you did that?

MS. MAGLUNOG

A. We did not, but we requested certification but the Post Office said that they have no longer records because they already disposed of the records.

JUSTICE ENRIQUEZ

Q. Do you have a copy for that in writing a certification of the Post Master stated that they don't have a copy anymore, does it in writing?

Xxx

MS. MAGLUNOG

A. In this case, Your Honors, I was not able to secure a certification, but usually when we request for certification they give, but in this case... (interrupted by the Court)

JUSTICE ENRIQUEZ

Q. Ah, so there is no certification here. Why you do not ask for a certification. Because, your theory here the accused received the final notice *noh*. What is your proof now that it was received by the addressee?

MS. MAGLUNOG

A. As I said, your Honors, I don't know if this was received by the tax payer. I'm not aware.

On the other hand, Mr. Armando Macatangay[65] testified as follows:

ATTY. MACASAET

Q. No, my question is, do you know if these letters were received by Roxy or the accused in this case, yes, or no?

---

[65] TSN dated October 3, 2012, pp. 16-17.

MR. MACATANGAY
A. I don't know.

ATTY. MACASAET
Q. Do you have the return card for these letters, Mr. Witness?

MR. MACATANGAY
A. No, we don't have.

ATTY. MACASAET
Q. But, you are familiar with the return card, am I correct?

MR. MACATANGAY
A. Yes.

ATTY. MACASAET
Q. So which means that you do not have proof that these letters or these assessment notices were in fact received by Roxy or the accused in this case, is that correct? Yes or not?

MR. MACATANGAY
A. Yes.

ATTY. MACASAET
Q. Now, did you asked the Central Post Office to issue a certification that the mail matter covered by registry receipt No. 62508 dated December 28, 2001, was actually received by the accused and/or Roxy Industrial Sales Corp., did you do that?

MR. MACATANGAY
A. No.

Applying the quoted cases in the case at bar, this Court finds that the evidence of the prosecution failed to satisfactorily prove that Roxy actually received the PAN, FAN and Formal Letters of Demand. The prosecution's documentary evidence failed to prove that the assessment notices sent through registered mail were indeed received by Roxy or any of its authorized representatives. The prosecution's witnesses could not positively testify that the FAN and Formal Letters of Demand were actually received by Roxy. Hence, the failure of the BIR to prove receipt of the assessment notices by Roxy leads to the conclusion that no assessment was validly issued.

Whether or not accused willfully failed to pay the assessed tax liabilities

Now, did both accused willfully fail to pay the assessed tax liabilities at the time it was legally required to be paid, to the damage and prejudice of the government?

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 to say, with bad purpose either to obey or to disregard the law.[66]

Clearly, therefore, to attribute to accused a "willful failure to pay" the tax, it must be shown that such failure or omission by accused was done knowingly, intentionally and with the specific intent not pay the tax. In other words, it must be shown that accused was aware of his obligation to pay the tax, but he nevertheless voluntarily, knowingly and intentionally failed to pay it.

Considering that the prosecution failed to prove the fact of mailing of the PAN, FAN and Formal Letters of Demand, and no evidence was presented to prove that accused actually received the assessments, the Assessment Notice No. 32-1-98, which is the basis of the criminal complainant and Information for willful failure to pay tax under Section 255, cannot be considered a valid assessment which would give rise to an obligation to pay the assessed deficiency taxes on the part of Roxy.

There being no valid assessment, accused, therefore, cannot be made liable for non-payment of deficiency taxes as alleged in the Information because as held in ***Commissioner of Internal Revenue vs. Reyes***,[67] a void assessment bears no fruit.

CONCLUSION

In all criminal prosecutions, the burden of proof is on the prosecution to establish the guilt of the accused beyond reasonable doubt. It has the duty to prove each and every element of the crime charged in the Information to warrant a finding of guilt for the said crime or for any other crime necessarily included therein.[68]

In the appreciation of evidence in criminal cases, it is a basic tenet that the prosecution has the burden of proof in establishing the guilt of the accused for the offense with which he is charged. *Ei incumbit probation qui dicit non qui negat; i.e.*, "he who asserts, not he who denies, must prove." The conviction of appellant must rest not on the weakness of his defense, but on the strength of the prosecution's evidence.[69]

After careful consideration of the testimonial and documentary evidence presented by both parties, the Court finds that the prosecution was not able to prove the guilt of the accused beyond reasonable doubt.

---

[66] Black's Law Dictionary, 6th Edition, p. 1599.
[67] G.R. No. 159694, January 27, 2006.
[68] Leonila Batulanon vs. People of the Philippines, G.R. No. 139857, September 16, 2006
[69] People of the Philippines vs. Nenita B. Hu, G.R. No. 182232, October 6, 2008 citing People vs. Corpuz, 459 Phil 100.

WHEREFORE, premises considered, this case is **DISMISSED** for failure of the prosecution to prove beyond reasonable doubt the guilt of both accused. Therefore, accused **ROBERT SIA and JOHN KENNETH L. OCAMPO** are hereby **ACQUITTED** of the crime charged.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(With Concurring Opinion)
LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM. CASE NO. O-104**
	Members: **BAUTISTA,** *Chairperson* **FABON-VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
-versus-	
ROBERT SIA and JOHN KENNETH L. OCAMPO, *Accused.*	Promulgated: JUL 2017 1:35 p.m.

x---x

CONCURRING OPINION

BAUTISTA, J.:

While I am in harmony with the *ponencia* in dismissing the case and acquitting the two accused, I believe that the BIR was not properly informed of the change in address of Roxy Industrial Sales Corporation ("Roxy") from "691 Gonzalo Puyat Street, Quiapo, Manila" to "713 Gonzalo Street, Quiapo, Manila" through the Letter dated November 18, 2000. Instead, Roxy should have filed BIR Form No. 1905 - Application for Registration Information Update. Otherwise, it is safe to assume that the BIR was unable to update its records as to the new address of Roxy.

Nonetheless, due to accused's claim that they did not receive the assessment notices, the burden of proof was indeed shifted to the BIR to show that the assessment notices were received by accused, which the BIR failed to do. Moreover, the testimonies and evidence of the prosecution all revolve around Roxy and not around accused themselves. No evidence was presented by the prosecution to link accused to the crime charged; and no clear and convincing evidence was presented by the prosecution to sustain the allegation that accused are guilty of willfully failing to pay taxes. It must be noted that in all criminal prosecutions, an accused is presumed innocent until the contrary is proved beyond reasonable doubt. In the case of accused, the prosecution simply failed to overcome this constitutional presumption.

In order for non-payment of tax be deemed a criminal act, it must be "willful," which is a voluntary, intentional violation of a known legal duty.[1] "Willfulness" connotes the existence of knowledge and voluntariness, that is, accused is aware or knows his/her tax liability but voluntarily and intentionally refuses to pay.[2] "Willfulness" is a state of mind that may be inferred from the circumstances of the case,[3] and proof thereof may be, and usually is, shown by circumstantial evidence alone.[4] Moreover, "willfulness," as an element of an offense, must be proven beyond reasonable doubt.

Records reveal that accused showed good faith in partially paying 40% of the assessment. Hence, the element of willfulness is absent in this case.

Having emphasized the foregoing, I vote to dismiss the case and acquit both accused.

LOVELL R. BAUTISTA
Associate Justice

---

[1] *Mertens Law of Federal Income Taxation, Volume 15, 1988 Ed., Chapter 55A,* p. 76.
[2] CTA Crim. Case No. O-114, May 16, 2012.
[3] *Black's Law Dictionary, 6th Edition,* p. 1599.
[4] *United States v. Grumka,* 728 F.2d 794, 796-97 (6th Cir. 1984); *United States v. Gleason,* 726 F.2d 385, 388 (8th Cir. 1984); *United States v. Marabelles,* 724 F.2d 1374, 1379 (9th Cir. 1984).