REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PEOPLE OF THE PHILIPPINES, *Plaintiff*	**CTA CRIM CASE NOS. O-877 & 878**
-versus-	Members: **RINGPIS-LIBAN,** *Chairperson* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
SWEE KIM TAN GO, *Accused.*	Promulgated: APR 27 2023 11:52 a.m.

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RESOLUTION

For resolution is accused's **Demurrer to Evidence** ("**Demurrer**"),[1] posted on 19 January 2023 and received by the Court on 26 January 2023, with plaintiff's comment, posted on 6 February 2023 and received by the Court on 9 February 2023, praying that the criminal cases against the accused be dismissed for insufficiency of evidence to prove her guilt beyond reasonable doubt.

Accused Go was charged with the crime of violations of ***Section 255 of the 1997 National Internal Revenue Code*** **("*NIRC*"),** as amended, allegedly committed in the following Informations:

Criminal Case No. O-877[2]

> "That on or about November 5, 2018 and thereafter, in San Pablo City, Laguna, and within the jurisdiction of this Honorable Court, accused Swee Kim Tan Go, the proprietor of Liana's Trading, which is registered with the Revenue District Office No. 55, Bureau of Internal Revenue, San Pablo City, Laguna, with Tax Identification Number 205-574-624-000, did then and there, willfully and unlawfully fail to pay deficiency value-added tax for taxable year 2012 in the amount of One Million Seven Hundred Fifty Five Thousand Four Hundred Eighty Four Pesos

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1 Docket, CTA Crim Case No. O-877, pp. 533 – 559.
2 *Id.*, p. 5.

and Seventy-Six Centavos (Php1,755,484.76), exclusive of surcharge and interest, despite final assessment, including prior and post notices, and formal demands to pay, the latest being in the nature of Final Notice Before Seizure issued on November 5, 2018, to the damage and prejudice of the government."

Criminal Case No. O-878[3]

"That on or about November 5, 2018 and thereafter, in San Pablo City, Laguna, and within the jurisdiction of this Honorable Court, accused Swee Kim Tan Go, the proprietor of Liana's Trading, which is registered with the Revenue District Office No. 55, Bureau of Internal Revenue, San Pablo City, Laguna, with Tax Identification Number 205-574-624-000, did then and there, willfully and unlawfully fail to pay deficiency income tax for taxable year 2012 in the amount of Three Million Three Hundred Twenty Two Thousand One Hundred Twenty Eight Pesos and Twenty-Nine Centavos (Php3,322,128.29), exclusive of surcharge and interest, despite final assessment, including prior and post notices, and formal demands to pay, the latest being in the nature of Final Notice Before Seizure issued on November 5, 2018, to the damage and prejudice of the government."

On 18 May 2021, the same date the Informations were filed, plaintiff submitted a Motion for Consolidation and Joint Trial of CTA Crim. Case Nos. O-877 & O-878.[4]

Pending the Court's Resolution on the Motion for Consolidation, warrants of arrest were issued on 17 June 2021 for Crim. Case No. O-878[5] and on 28 June 2021 for Crim Case No. O-877.[6]

Per the Court's Resolutions, dated 15 July 2021[7] and 16 July 2021,[8] accused appeared and submitted her person to the jurisdiction of the Court on 9 July 2021. Further, after having posted the required bond of Php60,000 for each criminal case, the Court granted the bail.

In Resolutions, dated 1 December 2021[9] and 15 February 2022,[10] the Court granted the consolidation of Crim. Case Nos. O-877 and O-878.

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[3] *See* Information, Docket, CTA Crim Case No. O-878.
[4] *See* Motion for Consolidation and Joint Trial, Docket, CTA Crim Case No. O-878; Docket, CTA Crim Case No. O-877, p. 103.
[5] *See* Warrant of Arrest, *id.*
[6] Docket, CTA Crim Case No. O-877, p. 108.
[7] *See* Resolution, dated 15 July 2021, Docket, CTA Crm Case No. 878.
[8] Docket, CTA Crim Case No. O-877, p. 113-114.
[9] *See* Resolution, dated 1 December 2021, Docket, CTA Crm Case No. 878.
[10] Docket, CTA Crim Case No. O-877, p. 134-135.

Plaintiff filed its Pre-Trial Brief on 18 February 2022,[11] while accused filed hers on 22 February 2022.[12] Accused was arraigned and entered a plea of "Not Guilty" to the criminal charges against her on 23 February 2022.[13]

Thereafter, preliminary conferences were conducted on 24 February 2022[14] and 8 March 2022.[15] The parties then filed their Joint Stipulation of Facts and Issues on 17 March 2022.[16]

During trial, plaintiff offered the testimonies of the following witnesses: (1) Bureau of Internal Revenue (BIR) Revenue Officer (RO) Edward King Manguera; and (2) RO Denisse Dionne Villanueva who both testified through their respective judicial affidavits.

RO Manguera testified on the issuance and service of the Letter of Authority (LOA), dated 5 February 2015,[17] the requests for presentation of records,[18] the subpoena duces tecum with SDT No. RR-9-D-2015-065,[19] the Preliminary Assessment Notice (PAN), dated 19 May 2016,[20] the Formal Letter of Demand (FLD)[21] and Final Assessment Notices (FAN), dated 19 July 2016,[22] and the Final Decision on Disputed Assessment (FDDA), dated 24 January 2017.[23] The witness further testified that the PAN, FLD/FAN and FDDA were served via registered mail and that the same were received by accused's authorized representative.[24]

Meanwhile, RO Villanueva testified on being tasked to execute and enforce the summary remedies as well as the collection of the accused's delinquent account. She further testified on the issuance and service of the Preliminary Collection Letter (PCL), dated 12 October 2018,[25] the Final Notice Before Seizure (FNBS) dated 5 November 2018,[26] the Warrant of Distraint and/or Levy (WDL), dated 19 February 2019,[27] and the Warrants of Garnishment[28] issued to nine (9) banks.

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[11] *Id.*, pp. 136-141.
[12] *Id.*, pp. 151-155.
[13] *See* Certificate of Arraignment, *id.*, p. 160 & 162.
[14] *See* Minutes of Preliminary Conference, 24 February 2022, *id.*, pp. 182 & 187.
[15] *See* Minutes of Preliminary Conference, 8 March 2022, *id.*, pp. 194 & 196.
[16] *Id.*, pp. 201-207.
[17] Exhibit "P-5", *Id.*, p. 254.
[18] Exhibits "P-6" and "P-7", *id.*, p. 256-257..
[19] Exhibit "P-8", *id.*, p. 259.
[20] Exhibit "P-9", *id.*, p. 260-263.
[21] Exhibit "P-10", *id.*, p. 265-268.
[22] Exhibits "P-11", "P-12", & "P-13", *id.*, pp. 269-271.
[23] Exhibit "P-17", *id.*, pp. 284-286.
[24] *See* Judicial Affidavit of Edward King Manguera, with Annexes, *id.*, pp. 211-287.
[25] Exhibit "P-20", *id.*, p. 388.
[26] Exhibit "P-21", *id.*, p. 390.
[27] Exhibit "P-22", *id.*, p. 391.
[28] Exhibits "P-23", "P-24", "P-25", "P-26", "P-27", "P-28", "P-29", "P-30", and "P-31", *id.*, pp. 392-400.

RO Manguera was called to the witness stand and was cross-examined on 11 May 2022,[29] while RO Villanueva appeared before the Court and was likewise cross-examined on 10 August 2022.[30]

With the presentation of the testimonies of their witnesses, plaintiff proceeded to file its Formal Offer of Evidence (FOE) on 18 August 2022,[31] with the accused's Comment/Objections, filed on 13 September 2022.[32] The exhibits were admitted by the Court in its Resolution, dated 27 October 2022.[33]

Instead of proceeding to present her evidence, the accused filed a Motion for Leave of Court to File Demurrer to Evidence on 2 November 2022,[34] which was opposed by the plaintiff on 17 November 2022.[35] The same Motion for Leave was granted in a Resolution, dated 5 December 2022.[36]

Thereafter, the accused filed the instant Demurrer wherein she raised the following arguments:

1) The FAN/FLD issued had already prescribed, pursuant to ***Section 203 of the NIRC, as amended***;
2) The prosecution does not have witnesses who have personal knowledge on the service of the PAN, dated 19 May 2016, FLD dated 19 July 2016, FAN, dated 19 July 2016, FDDA, dated 24 January 2017, PCL, dated 12 October 2018, and FNBS, dated 5 November 2018;
3) No other witness who had personal knowledge of the facts and circumstances surrounding the case was presented to substantiate the charges against the accused;
4) Assuming the prosecution's witnesses have personal knowledge on the service of the BIR Notices, there was improper service of the same since they were not served personally upon the person of the accused but to a person who is not even an employee or authorized representative of the accused;
5) The FDDA should be declared void as it is violative of accused's right to due process to appeal her case before the Commissioner of Internal Revenue and for having been issued contrary to ***Annex C of Revenue Regulations No. 18-2013***.[37]

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[29] *See* Minutes of Hearing, 11 May 2022, *id.*, p. 429.
[30] *See* Minutes of Hearing, 10 August 2022, *id.*, p. 458.
[31] *Id.*, p. 461-491.
[32] *Id.*, p. 494-506.
[33] *Id.*, p. 513-514.
[34] *Id.*, p. 516-520.
[35] *Id.*, p. 521-525.
[36] *Id.*, p. 529.
[37] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, 28 November 2013.

The plaintiff then filed its opposition to the Demurrer on 6 February 2023.

After a careful review of the records, We find the instant Demurrer impressed with merit.

Section 23 Rule 119 of the Revised Rules of Court provides the procedure and guidelines to demurrer to evidence, to wit:

> "**Section 23.** Demurrer to evidence. — After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.
>
> If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.
>
> The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.
>
> If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.
>
> The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by certiorari before judgment."

In the case of ***Semania vs. Simbillo-Semania and People of the Philippines,***[38] citing ***Go-Yu vs. Yu,***[39] the Supreme Court explained the nature of a demurrer to evidence thus:

> "A demurrer to evidence is defined as '**an objection or exception by one of the parties in an action at law, to the effect that the evidence which his adversary produced is insufficient in point of law (whether true or not) to make out his case or sustain the issue.**' The demurrer challenges the sufficiency of the plaintiffs 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. Moreover, [t]he grant or denial of a demurrer to evidence is left to the sound discretion of the trial court, and its ruling on the matter shall not be disturbed in the absence of a grave abuse of such discretion. (citations omitted)"

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[38] G.R. No. 221328, 23 June 2021.
[39] G.R. No. 230443, 3 April 2019.

(Emphasis supplied)

Further, in the case of ***Mangaoang vs. Bank of the Philippine Islands***,[40] citing ***Jalandoni vs. Ombudsman***,[41] the Supreme Court discussed the basis of a court's resolution on a demurrer to evidence, to wit:

> "When a demurrer to evidence is filed, the trial court ascertains **whether there is competent or sufficient evidence to issue a judgment**. Thus, a demurrer's resolution belongs to the court's sound discretion. In *People v. Sandiganbayan*:
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> > 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. Thus, in resolving the accused's demurrer to evidence, **the court is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or support a verdict of guilt**. The grant or denial of a demurrer to evidence is left to the sound discretion of the trial court, and its ruling on the matter shall not be disturbed in the absence of a grave abuse of discretion. 54 (Citations omitted)
>
> x x x"
> (Emphasis supplied)

Guided by these pronouncements, the Court is tasked to ascertain whether the evidence presented by the prosecution is competent or sufficient to support a verdict of criminal guilt.

The issuance of the FAN/FLD is not barred by prescription

For her first argument, the accused contends that the FAN/FLD was issued beyond the period prescribed by the laws.

Section 203 of the NIRC, as amended, governs the prescriptive period for the assessment and collection of taxes. The said provision limits the BIR's right to assess deficiency taxes within three (3) years after the last day prescribed by law for filing of the return or from the day the return was filed, whichever comes later, to wit:

> "**Section 203.** *Period of Limitation Upon Assessment and Collection.* - Except as provided in Section 222, internal revenue taxes **shall be assessed within three (3) years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day

[40] G.R. No. 260380, 19 October 2022.
[41] G.R. Nos. 211751, 217212-80, 244467-535, 245546-614, 10 May 2021.

> the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."
> (Emphasis supplied.)

Meanwhile, ***Section 222 of the NIRC*** provides for the exceptions on the period of limitations prescribed in the abovementioned provision:

> "**Section 222.** *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> (a) In the case of a **false or fraudulent return** with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, **at any time within ten (10) years after the discovery of the falsity, fraud or omission**: *Provided*, That **<u>in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.</u>**
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
>
> (c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.
>
> (d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5)-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.
>
> (e) Provided, however, That nothing in the immediately preceding Section and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax return filed in accordance with the provisions of any tax amnesty law or decree."
> (Emphasis and underscoring supplied.)

A review of the criminal information and the evidence presented reveals that the accused was assessed for deficiency income and value added taxes (VAT) for the taxable year 2012. The corresponding FLD/FAN was issued by the BIR on 19 July 2016, and allegedly mailed to the accused on 20 July 2016. Both dates are beyond the three (3)-year period prescribed by ***Section 203*** above, as shown in the table below:

Tax Type	Due Date	Legal Basis	Due Date for Taxable Year 2012	End of the Three(3)-Year Period
Income Tax	On or before the 15th day of the 4th month following the close of the taxable year	Section 77 (B) of the NIRC	15 April 2013	15 April 2016
Value Added Tax	On or before the 25th day following the close of the taxable quarter	Section 114 (A) of the NIRC	1st Quarter: 25 April 2012	25 April 2015
			2nd Quarter: 25 July 2012	25 July 2015
			3rd Quarter: 25 October 2012	25 October 2015
			4th Quarter: 25 January 2013	25 January 2016

However, upon review of the FLD/FAN the BIR assessed the accused with 50% surcharge on top of the deficiency taxes. The FLD states that the same is imposed pursuant to ***Section 248 (B) of the NIRC***, which states:

> "**Section 248.** Civil Penalties –
>
> x x x
>
> (B) **In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of deficiency tax,** in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: Provided, That a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute prima facie evidence of a false or fraudulent return: Provided, further, That **failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding thirty percent (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration** of sales, receipts or income or for overstatement of deductions, as mentioned herein." (Emphasis supplied)

The Court notes that the BIR alleges fraud on the part of the accused on the basis of a claimed substantial under-declaration of sales. Thus, the assessment falls under one of the exceptions to the three (3)-year prescriptive period, specifically ***Section 222 (a) of the NIRC***, as cited above.

Furthermore, as mandated by ***Section 222 (a)***, the instant case is in the nature of a criminal action for the collection of assessed taxes. Hence, the Court need not require any evidence related to the alleged fraud.

Accordingly, the ten (10)-year prescriptive period shall apply in the case at hand. Prescription had not yet set in upon the issuance of the FAN/FLD on 19 July 2016 and its subsequent mailing to the accused on 20 July 2016.

Of course, the accused can very well refute the allegation of fraud if this Demurrer is denied. In order to escape from the application of the longer ten (10)-year prescriptive period, the taxpayer is bound to refute the presumption of the falsity of the return and to prove that it had filed accurate returns.[42]

The prosecution failed to establish the proper service of PAN, FAN/FLD and FDDA to the accused

Anent the second to fourth arguments raised in the Demurrer, the accused basically assails the sufficiency of evidence to prove the propriety of the service of the BIR notices. The plaintiff, on the other hand, claims that the notices were properly served.

Upon the Court's weighing of the evidence presented by the plaintiff, we find the same wanting.

Section 13 of Rule 13 of the Rules of Court provides:

> "**Section 13.** *Proof of Service.* — Proof of personal service shall consist of a **written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service.** If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with section 7 of this Rule. **If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office.** The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee."
> (Emphasis supplied.)

[42] See Commissioner of Internal Revenue v. Asaluz Corporation, G.R. No. 221590, 22 February 2017.

On the basis of the aforementioned rule, the Supreme Court discussed in the case of ***Republic v. Resins, Inc.***[43] that in instances when notices were served through registered mail, the services must be proved through the submission of both (1) the registry receipt; and (2) the affidavit of the person mailing the notice, to wit:

> "OSG's denial of receipt of the 17 March 1993 Judgment required Resins, Inc. to show proof that the Judgment was sent through registered mail and that it was received by the Republic. While the certification from the RTC Clerk of Court and photocopies of the return slips prove that the Republic was served the judgment, it does not follow that the Republic, via the OSG, actually received the judgment. Receipts for registered letters and return receipts do not prove themselves, they must be properly authenticated in order to serve as proof of receipt of the letters. Resins, Inc. also did not show a certification from the postmaster that notice was duly issued and delivered to the OSG such that service by registered mail may be deemed completed. It cannot be stressed enough that "***it is the registry receipt issued by the mailing office <u>and</u> the affidavit of the person mailing, which proves service made through registered mail.***" Absent one or the other, or worse both, there is no proof of service."
> (Citations omitted; emphasis supplied.)

In the case at hand, the notices issued by the BIR, the surrounding circumstances on the service thereof, and the corresponding documentary evidence to prove such service are summarized below:

Notice	Mode of Service	Person who Received the Service	Documentary evidence to prove service
LOA & Checklist of Documentary Requirements	Personal service	Accused Go	Certified true copy (CTC) of signed "received" LOA[44] and Checklist of Documentary Requirements[45]
First Request for Presentation of Records	Substituted service	Sevilla Esquerra	CTC of signed "received" First Request for Presentation of Records[46]
Second and Final Notice for	Personal service	Accused Go	CTC of signed "received" Second and Final

[43] G.R. No. 175891, 12 January 2011.
[44] Exhibits "P-5" and "P-5-a", Docket, CTA Crim. Case No. O-877, p. 254.
[45] Exhibits "P-5-b" and "P-5-c", *id.*, p. 255.
[46] Exhibits "P-6" and "P-6-a", *id.*, p. 256.

Presentation of Records			Notice for Presentation of Records[47]
Subpoena Duces Tecum	Personal service	Accused Go	CTC of signed "received" Subpoena duces tecum[48]
PAN	Registered mail	Hector Esparcia	CTC of Registry Return Receipt[49]
FLD/FAN	Registered mail	Sevilla Esquerra	CTC of Registry Return Receipt[50] and Acknowledgment Receipt signed by accused on 28 November 2016
FDDA	Registered mail	Unidentified	CTC of Registry Return Receipt[51]
PCL	Substituted service	Sevilla Esquerra	CTC of signed "received" PCL[52] and Progress Report dated 19 October 2018[53]
FNBS	Personal service	Accused Go	CTC of signed "received" FNBS[54]
WDL	Substituted service	Barangay Kagawad and Barangay Treasurer	CTC of signed "received" WDL[55]

The service of PAN, FLD/FAN, and FDDA through registered mail was attempted to be proven through the submission of a mere registry receipt.

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47 Exhibits "P-7" and "P-7-a", *id.*, p. 257.
48 Exhibits "P-8" and "P-8-a", *id.*, p. 259.
49 Exhibit "P-9-a", *id.*, p. 264.
50 Exhibit "P-14", *id.*, p. 272.
51 Exhibit "P-17-a", *id.*, p. 287.
52 Exhibit "P-20", *id.*, p. 388.
53 Exhibit "P-20-a", *id.*, p. 389.
54 Exhibit "P-21", *id.*, p. 390.
55 Exhibit "P-22", *id.*, p. 391.

Noticeably, **the plaintiff failed to submit the required affidavit of the person mailing the notices.**

Plaintiff's own witness, RO Manguera, admitted that he did not serve the BIR notices; thus, he had no personal knowledge as to the service of the PAN, FAN/FLD, and FDDA. Fatal to the plaintiff's action is that the witness also admitted that there was no required affidavit of service. Relevant portions of the cross-examination, held during the hearing on 11 March 2022,[56] are reproduced below:

> "Atty. Balolong: You mentioned that the PAN was served to the accused's registered address via registered mail. Did you serve the PAN?
>
> Witness: No ma'am.
>
> Atty. Balolong: So you do not have personal knowledge of the service of the PAN via registered mail?
>
> Witness: No ma'am.
>
> x x x
>
> Atty. Balolong: **Was there any affidavit of service with regard to the service of the PAN?**
>
> Witness: **No ma'am.**
>
> x x x
>
> Atty. Balolong You mentioned that the FLD and FAN was served via registered mail to the accused's rregistered address. Did you serve the FLD or FAN?
>
> Witness: No ma'am.
>
> Atty. Balolong: So you do not have personal knowledge of the service of the FLD and FAN?
>
> Witness: No ma'am.
>
> x x x
>
> Atty. Balolong: Okay, thank you Mr. Witness. In Answer No. 75, you mentioned that the FDDA was served via registered mail to the accused's registered address. Did you serve the FDDA?
>
> Witness: No ma'am.
>
> Atty. Balolong: So you do not have personal knowledge of the service of the FDDA?

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[56] *See* TSN of the hearing on 11 May 2022, *id.*, pp. 432-454.

Witness: Yes ma'am

Atty. Balolong: **Was there any affidavit of service?**

Witness: **No ma'am."**

It should likewise be emphasized that most of the notices, specifically the PAN, FLD/FAN, and FDDA, were not received by the accused himself but by an alleged authorized representative. However, **the plaintiff failed to present proof that the signatories to the registry return receipt were duly authorized by the accused.**

Moreover, assuming that alleged representatives were actually duly authorized, the service of the notices through registered mail is not prescribed by ***Section 3.1.6 of RR 12-99, as amended by RR 18-13***, which states:

> "**Section 3.** Due Process Requirement in the Issuance of a Deficiency Tax Assessment –
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> x x x
>
> 3.1.6 Modes of Service. — The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:
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> (i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A known address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.
>
> **In case personal service is not practicable, the notice shall be served by substituted service or by mail.**
>
> (ii) Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:
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> x x x
>
> (iii) **Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party** with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.
>
> The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of

> service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information. The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.
>
> **Service to the tax agent/practitioner, who is appointed by the taxpayer under circumstances prescribed in the pertinent regulations on accreditation of tax agents, shall be deemed service to the taxpayer.**" (Emphasis and underscoring supplied.)

The rules clearly state that service of notice through registered mail may be resorted to only if personal service is not practicable. In the case at hand, the plaintiff failed to establish that personal service was not practicable to justify the service through registered mail. There was failure to adduce evidence that the ROs attempted to serve the notices to petitioner herself at her registered address.

The Court further notes that the plaintiff, in its Comment, argues that the allegation of improper service of the FLD/FAN should fail due to the accused's execution of the Acknowledgment Receipt[57] and the submission of the Letter, dated 16 August 2016.[58]

The Court finds no merit in such contention.

The records reveal that the Acknowledgment Receipt states that the FLD/FAN was received by the accused on 28 November 2016. The same date does not coincide with the alleged receipt through registered mail on 20 July 2016. Thus, due to the said material inconsistency, the Court finds no credence to the plaintiff's contention that the Acknowledgment Receipt negates claim of improper service through registered mail, on the date that the FLD/FAN were allegedly served.

Meanwhile, the filing of protest does not cure the BIR's violation of the accused's right to due process. Such protest does not negate the fact that the accused was deprived of statutory and procedural due process to contest the assessment before it was deemed final and executory.[59]

Taking all of the foregoing into consideration, the Court therefore finds that no competent evidence was presented by the prosecution to prove that the notices were duly served to the accused. Accordingly, the subject PAN, FLD/FAN, and FDDA are void.

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[57] Exhibit "P-14-a", *id.*, p. 273.
[58] Exhibit "P-15", *id.*, pp. 274-280.
[59] Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue, G.R. No. 172598, 21 December 2007, as cited in Fort 1 Global City Center Inc. vs. Hon. Caesar R. Dulay, in his capacity as Commissioner of Internal Revenue, CTA Case No. 9490, 24 September 2019.

An invalid assessment bears no fruit. Therefore, the PCL, FNBS and WDL issued pursuant to the assessment are likewise ineffectual.

An invalid assessment negates the alleged willful failure to pay taxes

The accused is charged with the alleged violation of ***Section 255 of the NIRC***, which states:

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

Based on the above provision, the following are the elements which need to be proven in order to sustain a conviction:

1. The **accused was required under the NIRC to pay any tax**, make a return, keep any record, or supply 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;
2. The **accused failed to pay the required tax**, make a return or keep the required record, or supply the correct and accurate information; and
3. The **accused willfully failed to pay the tax**, make the return, keep the record, or supply the 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 or regulations.[60]

To reiterate, the Court finds that the subject PAN, FLD/FAN and FDDA are void. Accordingly, the legal obligation on the part of the accused to pay the subject deficiency tax assessment did not arise.

Thus, in the absence of a valid assessment for deficiency tax, the accused cannot be said to have failed to pay the assessed taxes, much more to

[60] People of the Philippines vs. Christopher John Junio Coronel, CTA Crim. Case Nos. O-585 & O-586, Resolution, 8 October 2019.

have done so willfully, as required under ***Section 255 of the NIRC***.[61] The third element to find conviction thereof is thus absent.

In brief, the prosecution was not able to establish, with competent and sufficient evidence, the guilt of the accused for willful failure to pay any tax under ***Section 255 of the NIRC***.

With such finding, the Court also finds no basis for any civil liability on the part of the accused.

WHEREFORE, premises considered, the Demurrer to Evidence filed by the accused is hereby **GRANTED**. The above-captioned case against the accused is hereby **DISMISSED** for insufficiency of evidence.

SO ORDERED.

(On leave.)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

[61] People of the Philippines vs. Cross Country Oil & Petroleum Corporation, CTA Crim. Case No. O-631, Resolution, 13 March 2018.