REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

ENVIROAIRE, INC., Represented by TYRONE N. ONG and ARLENE CHUA,	**CTA *EB* CRIM. NO. 073** *(CTA Crim. Case No. O-408)*
Petitioners,	Present:
-versus-	**DEL ROSARIO, P.J.,** **CASTAÑEDA, JR.,** **UY,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** *and* **REYES-FAJARDO,** *JJ.*
PEOPLE OF THE PHILIPPINES, *Respondent.*	Promulgated: NOV 2 5 2021 4:15pm

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* are a Petition for Review[1] and a Supplemental Petition for Review,[2] filed under ***Section 9(b), Rule 9 of the Revised Rules of the Court of Tax Appeals ("RRCTA")***[3] by petitioner Enviroaire, Inc., ("Enviroaire") represented by Tyrone N. Ong ("Ong") and Arlene Chua ("Chua") (hereinafter collectively referred to as "petitioners").

Petitioners pray for the Court *En Banc* to reverse and set aside the Decision, promulgated on 4 September 2019, and Resolution, dated 18 November 2019, of the Court of Tax Appeals ("CTA") Second Division ("Court in Division") in so far as they were found guilty beyond reasonable

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[1] Petition for Review; Records, pp. 1-141, with annexes.
[2] Supplemental Petition for Review; Records, pp. 151-358, with annexes.
[3] A.M. No. 05-11-07-CTA, 22 November 2005.

doubt of violating ***Section 254 in relation to Sections 253 and 256 of the National Internal Revenue Code, as amended (hereinafter referred to as the "Tax Code").***

The Parties

Petitioner Enviroaire is a domestic corporation registered with the Securities and Exchange Commission ("SEC") on 13 March 2002 and the Bureau of Internal Revenue ("BIR") Revenue District Office No. ("RDO") 41-Mandaluyong with Tax Identification No. ("TIN") 218-084-255-000. It is primarily engaged in the business of emission testing and supply of equipment and other related products, including parts and accessories.

Petitioners Ong and Chua are the President and Treasurer of Enviroaire, respectively.

Respondent People of the Philippines is represented by the Legal Division of the BIR Revenue Region No. 7 under the Commissioner of Internal Revenue ("CIR").

The Facts

On 26 April 2012, Commission on Audit ("COA") Director Leonor D. Boado issued a *Subpoena Duces Tecum*. She ordered BIR RDO No. 41 to issue a Certification confirming whether Enviroaire declared the following gross sales in its Income Tax Returns ("ITR") for taxable years 2007 and 2008:[4]

Date	Official Receipt Nos.	Invoice Nos.	Amount
17 January 2008	7760	ER-07-13 to ER-07-25 issued in 2007	₱ 85,179,953.22
	7761	ER-07-12 issued in 2007	140,531,250.01
TOTAL			**₱225,711,203.23**

The inquiry was made pursuant to the COA's investigation on certain purchases of spare parts and procurement of repair and maintenance services of the Philippine National Police ("PNP") on its light armored vehicles ("LAV") from Enviroaire. The investigation was in accordance with COA Office Order No. 2011-866 dated 29 December 2011.[5]

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[4] Decision, Annex "A" of the Petition for Review; Records, pp. 36-91.
[5] *Ibid.*

In compliance with the *Subpoena Duces Tecum*, RDO No. 41 issued the requested Certification. It was received by the Fraud Audit and Investigation Office, Legal Service Sector of the COA on 14 May 2012.[6] The Certification stated that Enviroaire only declared the gross sales of ₱12,611,752.93 in its ITR for taxable year 2008. The amounts covered by Official Receipt Nos. 7760 and 7761 were not included in the Company's declared gross income.[7]

Corollary, the CIR issued Letter of Authority ("LOA") No. 211-2012000000046/eLA201100018418, dated 6 June 2012, authorizing Revenue Officer Enrico Omaña ("RO Omaña") and Group Supervisor Jose Pazcoguin, Jr. to examine the books of accounts and other accounting records of Enviroaire under the BIR's Run After Tax Evaders ("RATE") Program. The LOA was received by a certain Leinor Mojica on 6 June 2012.[8]

By virtue of the LOA, the BIR conducted its own investigation of Enviroaire. It was able to secure certified true copies of certain documents from the SEC, BIR, the Ombudsman, and COA,[9] as follows:

Exhibit No.	Description
"P-4"	SEC Certificate of Incorporation of Enviroaire, Company Registration No. A200204249 issued on 13 March 2002
"P-4-a"	Enviroaire's Articles of Incorporation
"P-5"	Enviroaire's General Information Sheet for the Year 2007
"P-6"	Enviroaire's Amended Annual ITR (BIR Form 1702) for Calendar Year 2007
"P-7"	Enviroaire's Return Information on the Tax Return for Calendar Year 2008
"P-8"	Enviroaire's Audited Comparative Financial Reports for Calendar Years 2007 and 2008
"P-9"	RDO 41 Certification dated 15 May 2012
"P-10" to "P-23"	Sales Invoices issued by Enviroaire to the PNP, ER-07-12 to ER-07-25 issued in 2007

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6 *Ibid.*
7 *Ibid.*
8 *Ibid.*
9 *Ibid.*

"P-24"	PNP Check No. 457825, dated 26 December 2007, pay to the order of Enviroaire, Inc. in the amount of ₱85,179,953.22
"P-24-a"	Enviroaire's Official Receipt No. 7760, dated 17 January 2008 in the amount of ₱85,179,953.22
"P-25"	PNP Check No. 457991 dated 27 December 2007 pay to the order of Enviroaire, Inc. in the amount of ₱140,531,250.01
"P-25-a"	Enviroaire's Official Receipt No. 7761 dated 17 January 2008 in the amount of ₱140,531,250.01

Based on its investigation, the BIR found that Enviroaire substantially underdeclared its sales. It noted that for taxable year 2007 the Company only reported the total gross sales of ₱27,585,555.35 in its ITR which was way below the gross sales it received from the PNP in the amount of ₱225,711,203.23.[10]

This prompted the BIR examiners to file their Complaint-Affidavit against petitioners with the Department of Justice ("DOJ") on 7 June 2012.[11]

While the case before the DOJ was ongoing, the BIR forwarded the administrative records of Enviroaire to the BIR Assessment Division for the preparation of the Preliminary Assessment Notice ("PAN"), and the Final Assessment Notice ("FAN") with Formal Letter of Demand ("FLD") for the collection of deficiency taxes.[12]

On 24 February 2014, the DOJ issued a Resolution finding probable cause to charge petitioners Ong and Chua of violating ***Sections 254 (Attempt to Evade or Defeat Tax)*** and ***255 (Failure to Supply Correct and Accurate Information)*** in relation to ***Sections 253 and 256 of the Tax Code***, in their capacity as President and Treasurer of Enviroaire, respectively.[13]

On 10 June 2014, two (2) Informations were filed before the CTA. One, accusing petitioners Ong and Chua of violating ***Section 254 in relation to Sections 253 and 256 of the Tax Code*** for taxable year 2007. The other is for allegedly violating ***Section 255 in relation to Sections 253 and 256 of the Tax Code***. The first Information, which is the subject matter of the above-

[10] *Ibid.*
[11] *Ibid.*
[12] *Ibid.*
[13] *Ibid.*

captioned case, was docketed as ***CTA Crim. Case No. O-408***. Meanwhile, the second Information was docketed as ***CTA Crim. Case No. O-407***.[14]

On 10 March 2015, the Court in Division allowed respondent to amend the Information in this case upon respondent's Motion, ostensibly to implead the corporation Enviroaire, of which the accused Ong and Chua were the responsible officers.[15] While the Amended Information did add Enviroaire in the title, only the word "income" was added in the accusatory portion, as gleaned below:

> "That on or about April 15, 2008, in the city of Mandaluyong, Philippines, and within the jurisdiction of this Honorable Court, the Accused **TYRONE N. ONG** and **ARLENE CHUA**, being the President and Treasurer, respectively, of **ENVIROAIRE, INC.**, a domestic corporation registered as a taxpayer with Revenue District Office (RDO) No. 041-Mandaluyong City under BIR Tax Identification No. 218-084-255-00, and at the time required by law, rules and regulations to pay taxes for the said corporation, in conspiracy with one another, did then and there willfully, unlawfully and feloniously attempt to evade or defeat the payment of correct income tax, as said accused under-declared ENVIROAIRE, INC.'s gross sales and income for taxable year 2007 by not including the aggregate amount of ₱225,711,203.23 as shown in Official Receipt Nos. 7760 and 7761 issued by ENVIROAIRE, INC. to PNP Finance Center, in order to conceal ENVIROAIRE, INC.'s true income which resulted to its basic deficiency income tax of Seventy-Nine Million Three Hundred Eighty-Three Thousand Two Hundred Twenty-Six Pesos and Ten Centavos (₱79,383,226.10), more or less, for taxable year 2007, exclusive of surcharge and interests, to the damage and prejudice of the government.
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> **CONTRARY TO LAW.**"

When arraigned on 8 June 2016, both petitioners Ong and Chua pleaded "NOT GUILTY" to the crime charged.[16]

Meanwhile, the BIR served the PAN, issued on 28 June 2016, to Enviroaire's registered addresses in Mandaluyong City and Quezon City, and to petitioners Ong and Chua's address on record in Tondo, Manila, by way of registered mail. Thereafter, on 26 July 2016, the BIR issued the FAN/FLD which were served by registered mail to petitioners' registered addresses and address on record.[17]

On 20 July 2017, the parties filed their Joint Stipulation of Facts and Issues ("JSFI") containing, among others, the following admitted facts:

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[14] *Ibid*; Decision in CTA Crim. Case No. O-407; Supplemental Petition for Review, Records, pp. 184-217.
[15] Decision, Annex "A" of the Petition for Review; Records, pp. 36-91.
[16] *Ibid.*
[17] *Ibid.*

1. The jurisdiction of the Honorable Court over the persons of the accused;

2. The jurisdiction of the Honorable Court over the offense charged;

3. The identities of the petitioners Ong and Chua; and

4. The fact that when the BIR filed the instant case with the Department of Justice, it had not yet issued the PAN and the FAN/FLD against Enviroaire.[18]

The Court in Division approved the parties' JSFI in its Resolution dated 4 August 2017. Consequently, a Pre-Trial Order was issued on 18 August 2017 marking the end of the Pre-Trial Conference. Trial ensued thereafter.[19]

Respondent presented RO Omaña as its first witness. He testified on the findings of the BIR in relation to its investigation of Enviroaire. He stated that when the BIR compared the gross sales declared by the company in its ITR with the amount paid by the PNP, it found that Enviroaire substantially underdeclared its sales/receipts during taxable year 2007. He also presented certified photocopies of official receipts and invoices issued by Enviroaire to the PNP, and duplicate copies of checks issued by the PNP to Enviroaire as proof of the subject transactions.[20]

RO Omaña also confirmed, among others, that petitioners Ong and Chua, as President and Treasurer of Enviroaire, were the signatories of the company's Statement of Management's Responsibility for Financial Statements.[21]

Subsequently, respondent presented Atty. Alma G. Cagat-Cagat (Officer-in-Charge of the Records Division of the Office of the Special Prosecutor, Ombudsman). She confirmed furnishing the BIR certified true copies of the invoices and official receipts issued by Enviroaire to the PNP.[22]

Thereafter, instead of presenting Atty. Joffre Gil C. Zapata as respondent's last witness, the parties agreed to stipulate on the following matters:

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18 *Ibid.*
19 *Ibid.*
20 *Ibid.*
21 *Ibid.*
22 *Ibid.*

1. That Atty. Zapata issued certified true copies of invoices issued by Enviroaire to the PNP;

2. That these documents were provided by Atty. Zapata to the BIR Revenue Region No.7;

3. That Atty. Zapata has no personal knowledge as to the preparation and execution of the said documents; and

4. That Atty. Zapata has no personal knowledge as to the criminal charge filed before this Honorable Court.[23]

As for petitioners, they presented petitioner Ong as their lone witness. He confirmed that he is the President of Enviroaire and functions as its Public Relations Officer or the person in charge of meeting and courting potential clients and closing deals on behalf of the Company.[24]

Petitioner Ong seconded that Enviroaire rendered services to the PNP, specifically, the reconditioning and rehabilitation of its old LAVs or tanks, and supplied the parts needed thereto to complete the said services.[25]

He insisted that the Company is not liable for Income Tax for taxable year 2007 since the official receipts covering the said transaction were issued in 2008. He explained that the sales invoices that were issued in 2007 are not proofs of payment consistent with the statement written on the said documents which state "*this invoice is not recognized as paid unless covered by an Official Receipt.*"[26]

He also explained that petitioners were never furnished a copy of the LOA, request for conference, or any communication from the BIR prior to the filing of the herein case. He states that Leinor Mojica, who received the LOA issued against Enviroaire, is not an officer or an authorized representative of the Company.[27]

Petitioner Ong averred that he and petitioner Chua were never involved with the finances of the corporation. He said that petitioner Chua was only named as Treasurer because she is his wife.[28]

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[23] *Ibid.*
[24] *Ibid.*
[25] *Ibid.*
[26] *Ibid.*
[27] *Ibid.*
[28] *Ibid.*

He explained that he did not examine Enviroaire's ITR line by line but admitted that the Company issued the pertinent sales invoices and official receipts to the PNP.[29]

On 4 September 2019, the Court in Division rendered the assailed Decision finding petitioners guilty beyond reasonable doubt of violating ***Section 254 in relation to Sections 253 and 256 of the Tax Code.***[30] The dispositive portion is hereby reproduced, as follows:

> "**WHEREFORE**, premises considered, the Court rules as follows:
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> 1. Accused **TYRONE N. ONG** and **ARLENE CHUA** are hereby found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 254 in relation to Section 253 and 256 of the NIRC, as amended, and are hereby **SENTENCED** to suffer an indeterminate penalty of imprisonment of two (2) years as minimum to four (4) years as maximum, and **ORDERED** to pay a fine in the amount of One Hundred Thousand Pesos (₱100,000.00), with subsidiary imprisonment, in case accused have no property with which to meet such fine, pursuant to Section 280 of the NIRC, as amended.
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> 2. **ENVIROAIRE INC.** is found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 254 in relation to Section 256 of the NIRC, as amended, and is **ORDERED TO PAY** a fine of One Hundred Thousand Pesos (₱100,000.00); and,
>
> 3. The Preliminary Assessment Notice dated June 28, 2016, and Final Assessment Notice and Formal Letter of Demand for Income Tax and Value Added Tax, all dated July 26, 2016, are hereby declared **VOID**.
>
> **SO ORDERED.**"

In the assailed Decision, the Court in Division found that respondent was able to prove beyond reasonable doubt the existence of the elements of Tax Evasion under ***Section 254 in relation to Sections 253 and 256 of the Tax Code.***[31]

The Court in Division ruled that respondent was able to establish that Enviroaire is a domestic corporation subject to Income Tax on its sales to the PNP. It appreciated the pieces of evidence offered by both petitioners and respondent evidencing the subject transaction, including, the sales invoices, official receipts, and checks issued by the PNP to Enviroaire.[32]

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[29] *Ibid.*
[30] *Ibid.*
[31] *Ibid.*
[32] *Ibid.*

The Court in Division rejected petitioners' argument that Enviroaire was not required to report income in relation to its sale to the PNP in 2007 since it only received payment in 2008. It found said argument to be contrary to the accounting method employed by the company in its financial reporting which is the Accrual Method of Accounting.[33]

It explained that the Accrual Method prescribes entities to recognize revenue when earned rather than when cash is received. It also states that this method of accounting is congruent to the "all-events test" laid down by the Supreme Court in ***Commissioner of Internal Revenue v. Isabela Cultural Corp., (hereinafter referred to as the 'Isabela Case")***[34] which sets out the conditions on when income is to be recognized.[35]

Notwithstanding the same, the Court found that even if it subscribes to petitioners' argument, it noted that Enviroaire still did not report the contended income in its ITR for taxable year 2008.[36]

Based on the foregoing, the Court in Division ruled that Enviroaire's failure to declare its sales to the PNP resulted in a substantial under declaration of income to an amount equivalent to more than 30% which is a clear indicium of fraud. Hence, it declared petitioners to have willfully evaded the payment of Income Tax.[37]

Meanwhile, in finding petitioners Ong and Chua liable, the Court in Division found their argument that they were not privy to the financials and tax reporting of Enviroaire self-serving. The Court in Division gave premium to the Statement of Management Responsibility signed by both petitioners Ong and Chua taking full responsibility over all the information and representations stated in Enviroaire's Financial Statements.[38]

It also considered the materiality of the underdeclared amount and the role of petitioner Ong in closing deals for the Company. The Court in Division concluded that since it was petitioner Ong who transacts with Enviroaire's customers, it follows that he is also well-aware of the existence of the sale rendered to the PNP. As such, coupled with the materiality of the amount of the contended income, the Court in Division noted that it was impossible for petitioners Ong and Chua to have unintentionally omitted the recognition of the said amount in the Company's Financial Statements.[39]

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[33] *Ibid.*
[34] G.R. No. 172231, 12 February 2007.
[35] Decision, Annex "A" of the Petition for Review; Records, pp. 36-91.
[36] *Ibid.*
[37] *Ibid.*
[38] *Ibid.*
[39] *Ibid.*

Undeterred, petitioners filed their Partial Motion for Reconsideration (On the Decision dated 04 September 2019) on 19 September 2019. Respondent did not file its Comment based on the Court's Records Verification Report dated 11 November 2019.[40]

On 18 November 2019, the Court in Division issued the assailed Resolution denying petitioners' Partial Motion for Reconsideration for lack of merit. Petitioners received the same on 4 December 2019.[41]

Aggrieved, petitioners filed the instant Petition for Review on 19 December 2019.[42]

On 17 June 2020, petitioners filed a Motion for Leave to File Attached Supplemental Petition for Review (On the Decision dated 04 September 2019 and Resolution dated 18 November 2019). In the said Motion, petitioners informed the Court *En Banc* that the CTA First Division had just rendered a Decision in ***CTA Crim Case No. O-407*** on 26 February 2020 acquitting petitioners Ong and Chua. As such, they prayed that they be allowed to file a Supplemental Petition for Review in order to clarify the facts and put the issues contended herein in proper perspective.[43] The Court granted the Motion on 15 September 2020.[44]

As for respondent, it failed to file its Comment on the Petition for Review and Supplemental Petition for Review, per the Court's Records Verification Report, dated 18 November 2020.[45]

Given the same, the case was submitted for decision on 26 November 2020.[46] Hence, this Decision.

The Issues[47]

> WHETHER THE INFORMATION IS FATALLY DEFECTIVE DEPRIVING PETITIONERS OF THE RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST THEM.

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40 Resolution Annex "B" of the Petition for Review; Records, pp. 92-102.
41 *Ibid.*
42 Petition for Review; Records, pp. 1-141, with annexes
43 Motion for Leave to file attached Supplemental Petition for Review (On the Decision dated 04 September 2019 and Resolution dated 18 November 2019); Records, pp. 146-358.
44 Resolution; Records, pp. 364-366.
45 Records Verification Report; Records, p. 367.
46 Resolution; Records, pp. 368-370.
47 See Grounds for the Petition, page 10 of the Petition for Review; Records, p. 10.

WHETHER NOT ALL THE ELEMENTS FOR VIOLATION OF SECTION 254 IN RELATION TO SECTIONS 253 AND 256 OF THE TAX CODE ARE PRESENT IN THIS CASE.

Petitioners' Arguments[48]

Petitioners contend that Enviroaire was not charged as an accused in the Amended Information. They argue that the Court in Division, therefore, is bereft of jurisdiction over the person of the Company. In turn, they explain that since petitioners Ong and Chua's conviction is dependent on the guilt of Enviroaire, the findings of the Court in Division against them are improper and invalid.

Petitioners also point out that the Information, which made use of the phrase "more or less," rendered the principal amount of taxes claimed ambiguous and unspecified. They state that it is thus the regular courts which has jurisdiction over the case and not the Court in Division.

They opine that their right to be informed of the nature and cause of accusation against them was also violated. They aver that based on the Amended Information, they were indicted for violation of ***Section 254 of the Tax Code*** for taxable year 2007, while the charges against them were based on official receipts that were issued in 2008.

Further, they stress that respondent failed to prove the existence of all the elements of Tax Evasion under ***Section 254 of the Tax Code***. They insist that respondent failed to establish that there was actual receipt of gain or profit or proof of constructive receipt of income during taxable year 2007. They explain that, other than the date of issuance of the checks, respondent did not provide any proof that these were actually or constructively received in 2007.

They insist that they did not evade the payment of taxes. They posit that the income Enviroaire earned from the PNP was received only in 2008 in accordance with ***Section 44 of the Tax Code***. They explain that the Court in Division erred in relying on the sales invoices Enviroaire issued in 2007 as basis of the Company's supposed Income Tax liability. They argue that the invoices contained the statement "*this invoice is not recognized as paid unless covered by an Official Receipt*." Hence, Enviroaire is not liable to pay Income Tax for the said transaction in 2007 since the official receipts were only issued in 2008.

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[48] Petition for Review; Records, pp. 1-141, with annexes; Supplemental Petition for Review (On the Decision dated 04 September 2019 and Resolution dated 18 November 2019); Records, pp. 151-358.

Lastly, petitioners state that they did not have a hand in the preparation of Enviroaire's ITR. Their witness recounted in his testimony that he did not instruct any person to under declare the Company's income for taxable year 2007. This fact, they assert, negates respondent's contention that they intended to evade the payment of taxes. They insist that the prosecution failed to prove petitioners Ong and Chua's participation in the act charged against them. As such, they insist that they cannot be held accountable for the crime charged.

The Ruling of the Court

The Court agrees with the petitioners that as Enviroaire was not charged as an accused in the Amended Information, the Court never obtained jurisdiction over it. Furthermore, petitioners Ong and Chua's conviction must be set aside since Enviroaire was not charged in the Information and as such, their conviction has no leg to stand on.

A closer look at ***Section 254*** in relation to ***Sections 253 and 256 of the Tax Code*** will reveal why this is so.

Section 254 provides as follows:

> "**SEC. 254. Attempt to Evade or Defeat Tax.**- Any person who willfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment thereof shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine not less than Thirty thousand pesos (₱30,000) but not more than One hundred thousand pesos (₱100,000) and suffer imprisonment of not less than two (2) years but not more than four (4) years: Provided, That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes."

The crime covered is tax evasion, and it may be committed by "(A)ny person."

We now turn to ***Section 253 of the Tax Code*** which, in turn, provides, to wit:

> "**SEC. 253.** ***General Provisions.*** –
>
> (a) Any person convicted of a crime penalized by this Code shall, in addition to being liable for the payment of the tax, be subject to the penalties imposed herein: Provided, That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution for violation of any provision of this Code or in any action for the forfeiture of untaxed articles.

> (b) Any person who willfully aids or abets in the commission of a crime penalized herein or who causes the commission of any such offense by another shall be liable in the same manner as the principal.
>
> (c) If the offender is not a citizen of the Philippines, he shall be deported immediately after serving the sentence without further proceedings for deportation. If he is a public officer or employee, the maximum penalty prescribed for the offense shall be imposed and, in addition, he shall be dismissed from the public service and perpetually disqualified from holding any public office, to vote and to participate in any election. If the offender is a Certified Public Accountant, his certificate as a Certified Public Accountant shall, upon conviction, be automatically revoked or cancelled.
>
> (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**.
>
> (e) The fines to be imposed for any violation of the provisions of this Code shall not be lower than the fines imposed herein or twice the amount of taxes, interest and surcharges due from the taxpayer, whichever is higher." (Emphasis supplied.)

It is clear from ***Section 253(d) of the Tax Code*** that in case of corporations, the penalty shall be imposed on the officers responsible for the violation.

Finally, we have ***Section 256 of the Tax Code***, which provides:

> "**SEC. 256.** ***Penal Liability of Corporations.*** - Any corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000)."

This time, an additional fine is provided for the corporation convicted for violations of the Code, in addition to penalties imposed upon the responsible officers.

Comparing these three, it stands clear that ***Section 254 of the Tax Code*** is the only provision of the crime that is being charged – tax evasion. The other two provisions do not contain any new crime but merely supplement ***Section 254 of the Tax Code***, by way of explanation (***Section 253 of the Tax Code***) and by way of inclusion (***Section 246 of the Tax Code***).

Going back to ***Section 254 of the Tax Code***, as stated, above, the crime covered is tax evasion and it may be committed by "(A)ny person". Person here can mean a natural person or a juridical person. There are thus two possible offenders in this crime – individuals or juridical persons, such as a corporation like Enviroaire. Indeed, that a corporation can be the "person" offender in ***Section 254 of the Tax Code*** is supported by ***Section 253 of the Tax Code***, which expressly holds out that in case of corporations, the penalty shall be imposed on the officers responsible for the violation. Then, too, ***Section 256 of the Tax Code*** provides for an additional fine for the corporation convicted for violations of the Code, in addition to penalties imposed upon the responsible officers.

Coming now to the case before Us, the subject taxes that were alleged to have been evaded were income taxes of Enviroaire for the year 2007, specifically those covered by two (2) identified receipts issued by Enviroraire to the PNP Finance Center. It stands clear that these income taxes were not due from either Ong nor Chua but undeniably corporate income taxes of Enviroaire.

The relevant provisions which deal with the imposition, declaration, and payment of corporate income tax are ***Sections 27, 52, and 56 of the Tax Code***, to wit:

> "SEC. 27. Rates of Income tax on Domestic Corporations. - (A) In General. — Except as otherwise provided in this Code, **an income tax** of thirty-five percent (35%) is hereby **imposed upon the taxable income derived during each taxable year from all sources within and without the Philippines by every corporation**, as defined in Section 22(B) of this Code and taxable under this Title as a corporation, organized in, or existing under the laws of the Philippines: Provided, That effective January 1, 2009, the rate of income tax shall be thirty percent (30%).
>
> xxx xxx xxx
>
> SEC. 52. Corporation Returns. –
>
> (A) Requirements. - **Every <u>corporation</u> subject to the tax herein imposed,** except foreign corporations not engaged in trade or business in the Philippines, **<u>shall render, in duplicate, a true and accurate quarterly income tax return and final or adjustment return</u> in accordance with the provisions of Chapter XII of this Title.**
>
> **The return shall be <u>filed by the president</u>, vice-president or other principal officer, and shall be sworn to by such officer <u>and by the treasurer or assistant treasurer</u>.**
>
> xxx xxx xxx

SEC. 56. Payment and Assessment of Income Tax for Individuals and Corporation. –

(A) Payment of Tax. -

(1) In General. - **The total amount of tax imposed by this Title shall be paid by <u>the person subject thereto</u> at the time the return is filed.**

In the case of tramp vessels, the shipping agents and/or the husbanding agents, and in their absence, the captains thereof are required to file the return herein provided and pay the tax due thereon before their departure.

Upon failure of the said agents or captains to file the return and pay the tax, the Bureau of Customs is hereby authorized to hold the vessel and prevent its departure until proof of payment of the tax is presented or a sufficient bond is filed to answer for the tax due. xxx"
(Emphasis and underscoring supplied.)

The foregoing provisions are clear that for income received by the corporation, the Tax Code imposes on the said entity the obligation to declare (by virtue of ***Section 52 in relation to Section 27 of the Tax Code)***, and pay (by virtue of ***Section 56 in relation to Section 27 of the Tax Code)*** the relevant tax due. However, considering the artificial personality of the said entity, the Tax Code extends the duty of the physical filing of the tax return to its corporate officers.

It is important to point out that that the obligation of the corporate officers to file the tax return on behalf of the corporation is a derivative of the juridical entity's obligation to pay and declare tax. Hence, without the latter, the former's duty ceases to exist.

Having established that the corporation is the entity required by law to declare and pay the corporate income tax, it follows that it is also the person who may cause its non-declaration and non-payment. Stated differently, the corporation, itself, is the perpetrator of the crime. Enviroaire is then the "person" committing the alleged tax evasion penalized as a crime under ***Section 254 of the Tax Code***.

More importantly in the instant case, the conviction of Enviroaire is necessary and indispensable before ***Section 253 of the Tax Code*** can even be applied to make whatever penalty for the crime imposable upon its officers Ong and Chua.

The recent case of ***Commissioner of Internal Revenue v. The Hongkong Shanghai Banking Corp. Limited-Philippine Branch***[49] laid down the factors to be proven for tax evasion cases. There, the Supreme Court enunciated as follows:

> "Contrariwise, tax evasion is "a scheme used outside of those lawful means." It "connotes fraud thru the use of pretenses and forbidden devices to lessen or defeat taxes." To constitute tax evasion, the following factors must be proven: "(1) the end to be achieved, i.e., the payment of less than that known by the taxpayer to be legally due, or the non-payment of tax when it is shown that a tax is due; (2) an accompanying state of mind which is described as being "evil," in "bad faith," "willful," or "deliberate and not accidental"; and (3) a course of action or failure of action which is unlawful." In other words, the payment of lesser taxes does not necessarily constitute tax evasion. The taxpayer's resort to minimize taxes must be in the context of fraud, which must be proven by clear and convincing evidence and cannot be based on mere speculation xxx."

Meanwhile, the foregoing elements were simplified by the Court in Division, as follows:

1. There is a tax is imposed on the corporation under the NIRC;

2. An attempt in any manner to evade or defeat any tax imposed under the NIRC or the payment thereof;

3. Such attempt to evade or defeat tax or the payment thereof is willful; and,

4. In the case of corporations, the penalty shall be imposed on the president, general manager, branch manager, treasurer, officer-in-charge, and the employees r*esponsible* for the violation.[50]

Evidently, before the Courts can impose the penalty on the corporate officers under the fourth element, it must necessarily go through proving the existence of the first to third elements which pertain to taxes of the corporation. That is precisely why, in the Amended Decision, the Court in Division had to contend with and resolve issues pertaining to the status and acts of Enviroaire (e.g. whether it is liable for Income Tax, whether it declared the sales from the PNP in its ITR and Audited Financial Statements).

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[49] G.R. No. 227121, 9 December 2020.
[50] Decision, Annex "A" of the Petition for Review; Records, pp. 36-91.

It is only following a review of the corporation's acts and an eventual finding of guilt on its part when ***Section 253 of the Tax Code*** can come into play. In other words, the conviction of the corporation for ***Section 254 of the Tax Code*** is necessary before the penalty therefor may be imposed upon its corporate officers under ***Section 253 of the Tax Code***.

Having established the same, the imposition of the penalty upon a corporate officer under ***Section 254 in relation to Section 253 of the Tax Code*** without first convicting the corporation, itself, is void and must be struck down. This is so because without a convicted corporation, there is no erring responsible officer. To reiterate, the crime of willfully attempting to evade or defeat tax may only be committed by the person obligated under the law to declare and pay tax, which, in this case, is the corporation.

Succinctly, there is no criminal offense that directly sanctions the corporate officers for Corporate Income Tax Evasion. Therefore, to punish the officers without establishing the guilt of the juridical entity runs against the basic tenets of due process and the rule of "***nullum crimen, nulla poena sine lege***," or that there can exist no punishable act except those previously and specifically provided for by penal statute, regardless of how reprehensible the act is.[51]

Truth to tell, the assailed Decision does not stray from the conclusions rendered above. Indeed, the Court in Division convicted Enviroaire together with its corporate officers, petitioners Ong and Chua, for violation of ***Section 254 in relation to Sections 253 and 256 of the Tax Code***. Evidently, this acknowledges the importance of establishing the guilt of the corporation prior to that of the corporate officers.

However, as pointed out by petitioners, what is fatal to their conviction in this case is the failure of the prosecutor to indict Enviroaire in the Amended Information.

Without such indictment and without being charged in the Information, can a person be convicted? Certainly not.

It is hornbook law that a person may not be lawfully convicted without due process of law. This requirement is immortalized under ***Section 14, Article III of the 1987 Constitution***, to wit:

> "SECTION 14. (1) **No person shall be held to answer for a criminal offense without due process of law**.

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[51] Corpuz v. People, G.R. No. 180016, 29 April 2014.

> (2) In **all criminal prosecutions**, the **accused shall be presumed innocent until the contrary is proved**, and **shall enjoy the right to be heard by himself and counsel**, **to be informed of the nature and cause of the accusation against him**, **to have a speedy, impartial, and public trial, to meet the witnesses face to face**, and **to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf**. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable."
> (Emphasis and underscoring supplied.)

The above-stated portion of the Constitution is now encapsulated under ***Rule 110 of the Rules of Court.*** The relevant sections of the said rule are here reproduced, as follows:

> "Section 2. The Complaint or information. — The complaint or information shall be in writing, in the name of the People of the Philippines **and against all persons who appear to be responsible for the offense** involved. (2a)
>
> xxx xxx xxx
>
> Section 4. Information defined. — An information **is an accusation in writing charging a person with an offense, subscribed by the prosecutor and filed with the court**. (4a)
>
> xxx xxx xxx
>
> Section 6. Sufficiency of complaint or information. — A complaint or information **is sufficient if it states the name of the accused**; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.
>
> **When an offense is committed by more than one person, all of them shall be included in the complaint or information**.
>
> Section 7. Name of the accused. — **The complaint or information must state the name** and surname of the **accused** or any appellation or nickname by which he has been or is known. If his name cannot be ascertained, he must be described under a fictitious name with a statement that his true name is unknown.
>
> If the true name of the accused is thereafter disclosed by him or appears in some other manner to the court, such true name shall be inserted in the complaint or information and record."
> (Emphasis and underscoring supplied.)

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Based on the aforementioned Rules, due process mandates that before the corporation can be convicted under ***Section 254 in relation to Section 256 of the Tax Code***, it should have been first charged in the Information. Undeniably, one can only be considered an accused "after it has been formally charged with a crime (as by indictment or information)."[52]

Furthermore, an accused can only be convicted of an offense after it has been duly informed of the charges contained in an Indictment or Information against it, as ruled in ***People v. Dasmariñas y Gonzales***[53] citing ***People v. Manalili***,[54] to wit:

> "xxx **an accused cannot be convicted of an offense, unless it is clearly charged in the complaint or information**. Constitutionally, he has a right to be informed of the nature and cause of the accusation against him. To convict him of an offense other than that charged in the complaint or information **would be violative of this constitutional right. Indeed, the accused cannot be convicted of a crime, even if duly proven, unless it is alleged or necessarily included in the information filed against him**." (Emphases and underscoring supplied.)

Here, Enviroaire was neither charged in the Amended Information nor the subject of an arraignment, through its responsible officers.[55] As such, it cannot be considered an accused herein, much less convicted and ordered to pay the fine under ***Section 254 in relation to Section 256 of the Tax Code***.

It is worthy to note that the prosecution cannot feign ignorance on the importance of indicting the corporation in cases of willful attempt to evade or defeat corporate income tax. Case records disclose that on 24 February 2015, respondent filed a Motion for Leave of Court to File Amended Information to implead the corporation Enviroaire.[56] While Enviroaire was included in the title of the Amended Information, it was not included in the body of the Information, the accusatory portion, where only the word "income" was added in order to specify the type of tax which petitioners' allegedly evaded. Surely, respondent was afforded every opportunity to rectify the defects in the said Information, and its negligence and failure to include Enviroaire in the body of the Information is decidedly fatal.

To reiterate, since only petitioners Ong and Chua were indicted/charged for willful attempt to evade or defeat taxes in the Amended Information, the charges against them must be struck down.

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[52] Black's Law Dictionary 10th Edition for the iPhone and iPad, 2014.
[53] G.R. No. 203986, 4 October 2017.
[54] G.R. No. 121671, 14 August 1998.
[55] Order dated 8 June 2016, Division Records, Vol. 1, pp. 511-512.
[56] Division Docket Vol. 1, pp. 415-417.

It must be stressed that there is no penal law that directly charges the corporate officers for willful attempt to evade and defeat corporate income tax. Hence, without Enviroaire, the facts charged against petitioners Ong and Chua do not constitute an offense. On this note, the case against them should, likewise, be dismissed. A similar dismissal was upheld in ***People v. Siat***,[57] where the facts charged did not constitute an offense, to wit:

> "xxx alleging that the facts charged do not constitute an offense, **respondent Judge dismissed the case in an Order dated May 17, 1976,** xxx.
>
> Considering that PD 772 applies only to urban communities and the information filed in the case at bar does not allege that barrio Bagongbayan, Puerto Princesa City where the squatting was allegedly committed is an urban community, **the respondent Judge did not commit any reversible error in holding that the <u>facts charged do not constitute an offense</u>.**
>
> ACCORDINGLY, the petition is Dismissed and the orders of the court a quo dated May 17 and 31, 1976 are Affirmed. No costs."
> (Emphasis and underscoring supplied.)

In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proven. At this juncture, the prosecution is burdened not only to prove the guilt of the accused based on proof beyond reasonable doubt but to ensure that the accused person's constitutional rights to due process are at all times upheld. As for the Courts, they are expected to zealously guard against the curtailment of the accused person's constitutional rights.

Given these reasons, the Court *En Banc* is inclined to dismiss the case against Enviroaire for lack of jurisdiction and against petitioners Ong and Chua on the ground that the facts charged against them do not constitute an offense. Considering the same, the Court *En Banc* will no longer discuss the other issues raised in the instant Petition.

WHEREFORE, premises considered, petitioners' Petition for Review is **GRANTED**. The Decision, dated 4 September 2019, and Resolution, dated 18 November 2019, of the Court of Tax Appeals, Second Division are **REVERSED AND SET ASIDE**. C.T.A. Crim. Case No. O-408 is **DISMISSED** on the grounds of lack of jurisdiction and the facts charged do not constitute an offense.

The respective bail bonds of the petitioners are hereby **CANCELLED** and ordered **RELEASED** to them upon presentation of proper documents, in accordance with usual accounting rules and regulations.

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[57] G.R. No. 44095, 24 April 1989, *see also* Rule 117, Section 3(a) and 9 of the Rules of Court.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

with Concurring Opinion
ROMAN G. DEL ROSARIO
Presiding Justice

(With due respect, I join the CDO of J. Villena.)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, I join the CDO of J. Villena.)
CATHERINE T. MANAHAN
Associate Justice

(With due respect, please see Concurring and Dissenting Opinion.)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

Pursuant to *Article VIII, Section 13 of the Constitution*, 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

EN BANC

ENVIROAIRE, INC., represented by TYRONE N. ONG and ARLENE CHUA, *Petitioners,*	**CTA EB CRIM. NO. 073** *(CTA Crim. Case No. O-408)*
	Present:
- versus -	**DEL ROSARIO**, *P.J.*, **CASTAÑEDA, JR.**, **UY**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, and **REYES-FAJARDO**, *JJ.*
PEOPLE OF THE PHILIPPINES, *Respondents.*	Promulgated: NOV 2 5 2021 4:15pm

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* of my learned colleague, Honorable Associate Justice Maria Rowena Modesto-San Pedro.

The present controversy revolves around the issue of whether or not a responsible officer of a corporate taxpayer may be held criminally liable for any violation of the provisions of Section 254 of the National Internal Revenue Code (NIRC) of 1997, as amended, allegedly committed by a corporation, *sans* indictment and conviction of the corporate taxpayer itself.

In the present case, Enviroaire, Inc. is the corporate taxpayer which is required by the NIRC to declare its correct gross income and pay the corresponding income tax due thereon. If, upon investigation, it is declared that Enviroaire, Inc. has no tax liability and therefore need not pay any tax delinquency, it necessarily follows that its corporate officers have no liability, civil or criminal, to answer for and on behalf of the corporation.

In other words, to successfully prosecute a criminal case for tax evasion under Section 254 of the NIRC of 1997, as amended, the identification and indictment of Enviroaire, Inc. is vital and indispensable. As aforestated, Enviroaire, Inc. is the corporate taxpayer required by law to pay any deficiency tax.

Consistent with due process, Enviroaire has the inherent right to defend itself and prove that the allegation of under-declaration of gross income has no basis in fact and in law.

Interestingly, there is nothing on record to show that Enviroaire, Inc. was ever charged and found guilty of tax evasion. Yet, the culpability of responsible officers of a corporate entity is dependent upon the liability of the corporation itself as the taxpayer. *Sans* the corporate taxpayer itself being held liable, its officers cannot assume a liability that does not exist.

Section 256, in relation to Section 253, of the NIRC of 1997, as amended, specifies the respective penal liability of the corporate taxpayer on one hand, and its officers on the other hand, in cases where the offender-taxpayer is a corporation. Jointly read, it is the prior conviction of the corporation that triggers the imposition of penalty upon its corporate officers, *viz.*:

> **"SEC. 256. *Penal Liability of Corporations.* -** Any **corporation**, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees shall, **upon conviction** for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000)." *(Boldfacing and underscoring supplied)*
>
> **xxx**
>
> **"SEC. 253. *General Provisions.* -**
>
> (a) Any **person convicted** of a crime penalized by this Code shall, in addition to being liable for the payment of the tax, **be subject to the penalties imposed herein**: *Provided,* That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution for violation of any provision of this Code or in any action for the forfeiture of untaxed articles.
>
> **xxx**
>
> (d) In the case of associations, partnerships or **corporations**, the **penalty shall be imposed** on the partner, **president**, general manager, branch manager, **treasurer**, officer-in-charge, and the employees responsible for the violation.

xxx." *(Boldfacing and underscoring supplied)*

Truth to tell, the <u>conviction</u> of a corporate entity is a condition *sine qua non* for the **imposition of penalty** upon its responsible officers. While Enviroaire, Inc. is named as accused in the title of this case per the Amended Information, the cause of action, however, as contained in the accusatory portion, is directed only against accused Tyrone N. Ong and Arlene Chua as President and Treasurer, respectively, of Enviroaire, Inc. To my mind, the Court in Division has no jurisdiction to render a judgment against Enviroaire, Inc. as it is neither an accused nor was it arraigned in the case at bar.

Indeed, I find it disturbing to impose any penalty upon Tyrone N. Ong and Arlene Chua for a purported liability of Enviroaire, Inc., which under the circumstances, may not lawfully be convicted. Needless to say, Enviroaire, Inc. is a juridical entity with a personality separate and distinct from its officers.

While there is a view that a corporation cannot be charged and convicted as it cannot be "imprisoned", I submit that the teachings in *Alfredo Ching vs. The Secretary of Justice, et.al*[1] is enlightening:

> "If the crime is committed by a corporation or other juridical entity, the directors, officers, employees or other officers thereof responsible for the offense shall be charged and penalized for the crime, precisely because of the nature of the crime and the penalty therefor. A corporation cannot be arrested and imprisoned; hence, cannot be penalized for a crime punishable by imprisonment. However, **<u>a corporation may be charged and prosecuted for a crime if the imposable penalty is fine</u>. Even if the statute prescribes both fine and imprisonment as penalty, a corporation may be prosecuted and, <u>if found guilty</u>, may be fined**." *(Boldfacing and underscoring supplied)*

In sum, I submit that accused Tyrone N. Ong and Arlene Chua, as responsible officers of Enviroaire, Inc., may not be held criminally liable for tax evasion *sans* the prior conviction of Enviroaire, Inc.

All told, I CONCUR with the *ponencia*.

ROMAN G. DEL ROSARIO
Presiding Justice

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[1] G. R. No. 164317, February 6, 2006.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

ENVIROAIRE, INC., represented by TYRONE N. ONG and ARLENE CHUA,
Petitioners,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

CTA EB CRIM. NO. 073
(CTA Crim. Case No. O-408)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO, *and*
REYES-FAJARDO

Promulgated:
NOV 2 5 2021 4:15pm

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CONCURRING AND DISSENTING OPINION

BACORRO-VILLENA, J.:

After a second hard look at the records of this case, I am constrained to agree with the *ponencia* of our esteemed colleague, Hon. Justice Maria Rowena Modesto-San Pedro, that Enviroaire, Inc. cannot be held liable for a crime for which it was not charged. *However*, I respectfully dissent from the *ponencia*'s resolution to acquit accused-appellant Tyrone N. Ong (**Ong**) and Arlene Chua (**Chua**).

With due respect, in contrast to the disquisitions in the *ponencia*, I find that the acquittal of both accused-appellant as responsible officers of Enviroaire, Inc., on the sole basis of the prosecutions' failure to indict the corporation, unwarranted.

While I agree that the prosecution's failure to include the corporation in the criminal information makes fatal any attempt to hold the same liable, it cannot be denied as well that the prosecution was able to establish the corporation's non-declaration of income and the apparent knowledge and acquiescence of accused Ong and Chua with such scheme.

As cited in the *ponencia*, in *Commissioner of Internal Revenue v. Hongkong Shanghai Banking Corp. Limited-Philippines*[1] (**HSBC**), the Supreme Court enumerated the elements of tax evasion, to wit:

> ...
>
> ... To constitute tax evasion, the following factors must be proven: "(1) the end to be achieved, i.e., the payment of less than that known by the taxpayer to be legally due, or the non-payment of tax when it is shown that a tax is due; (2) an accompanying state of mind which is described as being "evil," in "bad faith," "willful," or "deliberate and not accidental"; and (3) a course of action or failure of action which is unlawful. " In other words, the payment of lesser taxes does not necessarily constitute tax evasion. The taxpayer's resort to minimize taxes must be in the context of fraud, which must be proven by clear and convincing evidence and cannot be based on mere speculation.
>
> ...

To my mind, the foregoing requisites are all present in the case at bar. The prosecution was able to prove that: (1) Enviroaire, Inc. had an undeclared income and unpaid income taxes for which it is liable for; (2) it was impossible for both accused-appellant Ong and Chua as Enviroaire, Inc's. President and Treasurer, respectively, to not notice such underpayment given the amounts involved making such negligence tantamount to bad faith; and, (3) that their inaction was patently unlawful.

Moreover, the case of *People v. Siat*[2] (**Siat**) cited in the *ponencia* appears to be inapplicable herein as to relieve accused-appellant Ong and Chua of their criminal liability.

In *Siat* what was involved was a violation PD 772[3] which provides criminal liability for person engaged in illegal constructions in urban communities. There, the accused was acquitted on the failure of the prosecution to prove that the site where the alleged illegal construction took place was an "urban community" although this fact was an indispensable element of the crime charged.

The same, however, cannot be said of tax evasion. As can be gleaned clearly from the elements of the crime in the *HSBC* case as quoted above and in the *ponencia*, the indictment of the corporation is *not* an essential

[1] G.R. No. 227121, 09 December 2020.
[2] G.R. No. 44095, 24 April 1989.
[3] PENALIZING SQUATTING AND OTHER SIMILAR ACTS.

element of the crime; only that non-payment or non-declaration of tax as the case may be should be proved.

Furthermore, a corporation as being of legal fiction has no will of its own and can act only through its officers and agents.[4] The second element of "willfulness" to commit the crime or *mens rea* is one that can only be attributed to the natural persons responsible for the corporation's course of action.

Even in civil cases, piercing the veil of corporate fiction has always been used to hold a corporation's officers directly liable in in fraud cases, when it is used to justify a wrong, protect fraud, or defend a crime.[5] Therefore, I see no reason why the Court should act differently now where the amount of unpaid taxes has already created a *prima facie* finding of fraud not only against Enviroaire, Inc. but also against accused-appellant Ong and Chua.

Moreover, while I equally agree with the *ponencia* that Section 2, Rule 110 of the Rules of Court (**ROC**) states that the information should be against "all persons who appear to be responsible for the offense involved"[6] (as this should ideally be the case), nothing in the said provision provides that a criminal case cannot proceed against some of the perpetrators of the crime without all of them being indicted.

As instructive as Section 2, Rule 110 of the ROC may be, the provision should not be seen as a bar to hold an accused responsible by the mere reason that a co-accused or a co-conspirator was not included in the criminal information. Differently put, the indictment of the corporation or a separate finding of criminal liability on the part of the corporation should *not* be a condition precedent to maintain accused-appellant Ong's and Chua's conviction as principals in a charge for tax evasion.

As per accused-appellant Ong's and Chua's personal defense, that the facts alleged in the information do not constitute a crime, I find this not to be the case. As earlier stated, the indictment of the corporation appears to be not an essential element of the crime charged hence, the information filed against them is sufficient to sustain their conviction (given that all the

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4 *People v. Tan Boon Kong*, 54 Phil. Reports 607 (1930).

5 *Pantranco Employees Association v. NLRC*, 600 Phil. 645 (2009).

6 ...

Section 2. The Complaint or information. — The complaint or information shall be in writing, in the name of the People of the Philippines and against all persons who appear to be responsible for the offense involved.

...

necessary elements of the crime of tax evasion provided in *HSBC* have been alleged in the assailed information).

With the foregoing, I **VOTE** to maintain the assailed Decision of the Second Division Decision in CTA Crim. Case No. O-408 insofar as it finds accused-appellant Tyrone N. Ong and Arlene Chua criminally liable for the crime of tax evasion.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice