REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM. CASE NO. O-449** (NPS Docket No. XV-07-INV-12L-08670) *For: Violation of Section 255, in relation to Sections 253(d) and 256, of the 1997 NIRC, as amended*
-versus-	Members:
ROGELIO A. TAN c/o JADEWELL PARKING SYSTEMS CORP., 1104 Masangkay St., Sta. Cruz, Manila *Accused.*	***BAUTISTA, Chairperson FABON-VICTORINO, and RINGPIS- LIBAN, JJ.*** **Promulgated:** APR 18 2018 9:35 a.m.

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RESOLUTION

For resolution are the following:

1. Plaintiff's Motion to Admit *Exhibit* "P-32" ("Motion to Admit") filed on February 6, 2018, with accused's Opposition filed on February 21, 2018; and

2. Accused's Motion for Leave to File and Admit Attached Demurrer to Evidence ("Motion for Leave") filed on February 21, 2018, without comment from plaintiff despite notice, per Records Verification Report dated March 22, 2018.

On August 9, 2017, the Court promulgated a resolution denying *Exhibit* "P-32" for not bearing the proper marking.

On August 30, 2017, the prosecution filed a Motion for Reconsideration and to Admit Exhibit, this was opposed to by the accused in its Opposition filed on September 26, 2017.

On October 19, 2017, the Court promulgated a Resolution granting the Motion for Reconsideration and setting a commissioner's hearing for the marking of *Exhibit* "P-32."

On November 28, 2017, the prosecution marked the Memorandum of Agreement between City of Baguio and Jadewell Parking System Corp. dated June 26, 2000, as *Exhibit* "P-32".

In its Motion to Admit, prosecution states that due to inadvertence, they were not able to move for its admission to form part of evidence for the prosecution. The prosecution thus prays that *Exhibit* "P-32" be admitted to form part of its evidence.

In his Opposition, accused avers that the Motion to Admit must be denied outright as it failed to comply with *Sections 4 and 5 of Rule 15 of the 1997 Rules of Civil Procedure, as amended,* which has suppletory application to the *Revised Rules of the Court of Tax Appeals.* According to accused, lack of notice as to the time and place for the hearing of a motion is fatally defective and the court would consider the motion as a mere scrap of paper over which it has no jurisdiction to consider; that failure to comply with the rules will render the motion *pro forma* and presents no question which merits the attention and consideration by the court.

In addition to this, accused also argue that *Exhibit* "P-32" must be denied because the document sought to be admitted was a mere photocopy which violates the best evidence rule under *Sections 3 and 4 of Rule 130 of the Rules of Court.* Accused argues that since *Exhibit* "P-32" is one of the actionable documents that served as basis for the alleged computation of deficiency taxes, the prosecution must present either the original or certified copy thereof and not a mere photocopy. Thus, the accused prays that the Motion to Admit be denied.

The Court will first rule on the prosecution's Motion to Admit.

There is no merit in accused's argument that the Motion to Admit is fatally defective as it did not contain a notice as to the time and place of hearing, thus, it is a mere scrap of paper. Jurisprudence states that despite the lack of notice of hearing in a motion, there was substantial compliance with the requirements of due process where the adverse party actually had the opportunity to be heard and had filed pleadings in opposition to the motion.[1] In the case at bar, accused was able to file its Opposition to the Motion to Admit, thus curing the defect.

Moreover, contrary to accused's allegation that prosecution submitted a photocopy of *Exhibit* "P-32", the document on record bears the mark "This is to certify that this is a true copy of the record copy kept on file in this office", and the same is signed by the Chief Records Section. Thus, the Court will overrule accused's objection.

Based on the foregoing, the Motion to Admit is **GRANTED.** Consequently, *Exhibit* "P-32" is **ADMITTED.**

In his Motion for Leave, accused states that the prosecution has presented its evidence, and in fact, had already formally offered its evidence; and that on the basis of *Section 23, of Rule 119 of the Rules of Court,* the evidence presented by the prosecution the accused respectfully seeks leave from the court for him to file a demurrer to evidence, and to admit the same on the ground that the evidence presented by the prosecution is not sufficient to establish his guilt beyond reasonable doubt.

The Motion for Leave was granted in open Court during the hearing[2] held on March 1, 2018. On the same date, the prosecution was granted a period of ten (10) days or until March 11, 2018 within which to file its comment/opposition to the Demurrer to Evidence. However, it failed to do so, *per* Records Verification Report dated March 22, 2018.

The Court will now proceed to discuss the Demurrer to Evidence.

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[1] *Fausto R. Preysler, jr. vs. Manila Southcoast Development Corporation,* G.R. No. 171872, June 28, 2010, 621 SCRA 636.
[2] *Minutes of Hearing dated March 1, 2018.*

The *Revised Rules of Court* provides the procedure and guidelines for demurrer to evidence. Specifically, *Section 23, Rule 119* thereof states:

> Sec. 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 our 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 *Ong v. People*,[3] the Supreme Court discussed the nature of a demurrer to evidence in this wise:

> A demurrer to evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to

[3] G.R. No. 140904, October 9, 2000, 342 SCRA 372.

> ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.

On the other hand, in *People v. Sandiganbayan*,[4] the Supreme Court laid down the basis and effect of a court's resolution on a demurrer to evidence, thus:

> 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. Significantly, once the court grants the demurrer, such order amounts to an acquittal; and any further prosecution of the accused would violate the constitutional proscription on double jeopardy. This constitutes an exception to the rule that the dismissal of a criminal case made with the express consent of the accused or upon his own motion bars a plea of double jeopardy.

Applying the foregoing principles to the case at bar, the Court is required to ascertain whether the evidence presented by the prosecution is competent or sufficient to support a verdict of guilt. In this regard, a review of the pieces of evidence presented by the prosecution shows that the prosecution failed to present competent or sufficient evidence to support a verdict of guilt.

In his Demurrer to Evidence, the accused states that the prosecution failed to present proof beyond reasonable doubt that he violated *Section 255 of the 1997 NIRC*, based on the following grounds: *(1)* the assessment notices for deficiency taxes are void for having been issued beyond the period of assessment under the law; *(2)* there was no proof of mailing and receipt of the preliminary assessment notice ("PAN") and final assessment notice ("FAN") to the accused and to the corporation; and *(3)* the actionable documents which served as basis for the instant case, namely *Exhibit* "P-32", *Exhibit* "P-68", *Exhibit* "P-69", *Exhibit* "P-75", were denied admission by the

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[4] G.R. No. 140633, February 4, 2002, 376 SCRA 74.

Court rendering the prosecution's evidence insufficient to prove the guilt of the accused.

Accused, as president of Jadewell Parking Systems Corp. ("Jadewell") was indicted with violation of Section 255 in relation to Section 253(d) and 256 of the *1997 National Internal Revenue Code ("1997 NIRC")*. The accused is charged in the Amended Information which reads as follows:

AMENDED INFORMATION

> The undersigned accuses **ROGELIO A. TAN** of violation of Section 255 in relation to Section 253 (d) and 256 of the Tax Reform Act of 1997 as amended by Republic Act 8424, committed as follows:
>
> That on or about December 28, 2007 and subsequent thereto, in the City of Manila, Philippines, the said accused, being then the president and responsible officer of JADEWELL PARKING SYSTEMS CORPORATION located at 1104 Masangkay St., Sta. Cruz, this City, did then and there willfully and unlawfully fails, refuses and neglects, as he still fails, refuses and neglects to pay his deficiency internal revenue tax liabilities <u>for the year 2002</u> in the total amount of P9,244,801.95 under assessment notice SID-31-2002/2003/<u>2004</u>, despite notice and service of said assessment dated December 28, 2008, without formally protesting against or appealing the same, and repeated demands made upon him to do so, to the damage and prejudice of the government of the Republic of the Philippines in the aforesaid amount of P9,244,801.95, Philippine Currency.[5]
>
> Contrary to law.

From the above-quoted Amended Information, it is clear that accused was charged for failure to pay deficiency taxes for taxable year 2002. Records reveal that the PAN[6] for deficiency income tax and VAT for the fourth quarter of 2002 ("VAT") was issued on October 8, 2007, while the PAN[7] for deficiency DST was issued on November 19, 2007. The FAN was issued on December 28, 2007.

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[5] Underscoring ours.
[6] *Records, Vol. 2, Exhibit "P-39,"* p. 663
[7] *Id., Exhibit "P-45,"* p. 670.

Section 203 of the 1997 NIRC provides for the period within which the government must assess the taxpayer. *Section 203 of the 1997 NIRC* provides as follows:

> *SEC. 203.* **Period of Limitation Upon Assessment and Collection.** - Except as provided in Section 222, internal revenue taxes shall be assessed within three 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 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.

For income tax, the return shall be filed on or before the fifteenth day of April of each year covering income for the preceding taxable year.[8] For VAT, every person liable to pay VAT shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer.[9] For DST, the return shall be filed within five (5) days after the close of the month when the taxable document was made, signed, accepted, or transferred.[10]

Applying this to the case at bar, the accused was assessed for deficiency income tax, VAT and DST for the taxable year 2002. Counting three (3) years from the date of filing or the last day prescribed for filing of the subject returns, the government had until April 15, 2006, January 25, 2006 and January 5, 2006 and to assess Jadewell for deficiency income tax, VAT, and DST, respectively. Thus, having issued the assessment notices only on December 28, 2007, the government's right to assess Jadewell has already prescribed.

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8 *Section. 51.* **Individual Return.** xxx
(C) **When to File.** (1). The return of any individual specified above shall be filed on or before the fifteenth (15th) day of April of each year covering income for the preceding taxable year.

9 *Section 114.* **Return and Payment of Value-added Tax.** - (A) **In General.** - Every person liable to pay the [VAT] imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer. Provided, however, that VAT-registered persons shall pay the [VAT] on a monthly basis.

10 *Section 5, Revenue Regulations No. 6-2001.*

Assuming that the government's right to assess has not prescribed, accused maintains that due process requires that at the very least, the notice should be actually received by the taxpayer; and that an assessment does not become final and executory unless the person liable receives the assessment.

Section 228[11] *of the 1997 NIRC* provide that the taxpayer should be informed in writing of the law and the fact upon which the assessment is based, otherwise such assessment shall be void.

The accused denied having received the PAN and the FAN. When a mail matter is sent by registered mail, there exists a presumption, set forth under *Section 3(v), Rule 131 of the Rules of Court*, that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.[12]

Review of the records reveal that the prosecution was not able to refute the accused's claim that he did not receive the PAN and the

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[11] SEC. 228. ***Protesting of Assessment***. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings:

xxx *xxx* *xxx*

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void. Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings. Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.

Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final. If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

[12] *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. CIR*, G.R. No. 157064, August 7, 2006, 498 SCRA 126.

FAN. Prosecution witness Mr. Armando C. Macatangay, testified by way of judicial affidavit[13] that his primary duty is to personally send notices of assessments and their corresponding formal demand letters including demand letters for compromise penalties to the taxpayers through registered mails. Mr. Macatangay stated that he placed the FAN in a mailing envelope addressed to the registered address of Jadewell as appearing on the assessment notices, sealed it, attached a registry return receipt/card and personally brought it to the central post office Manila and mailed them through registered mail. Thereafter, he pasted the registry receipts to the copy of the transmittal slips as proof that the documents indicated therein had already been mailed to Jadewell. However, when asked if he has proof that the FAN was actually sent to the addressee, he answered in the negative, to wit:

> ATTY. FALLER Q: Now, as a mailing custodian, do you have with you the return card showing that these mail matters mentioned in your judicial affidavit pertaining to taxpayer [Jadewell] had been received by the taxpayer?
>
> MR. MACATANGAY A: No, sir.
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> ATTY. FALLER Q: So, you have no record at all that these notices were duly received by the taxpayer?
>
> MR. MACATANGAY A: Yes, sir.[14]
>
> JUSTICE VICTORINO: How do you know that these documents you claimed you have been sent were actually sent to the addressee?
>
> MR. MACATANGAY: I just deposited it to the Central Post Office then they gave me the receipts and that the receipts I put in the transmittal of the taxpayers of our transmittal.
>
> JUSTICE VICTORINO: You stopped there?
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> MR. MACATANGAY: Yes, Your Honors.
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> JUSTICE VICTORINO: You are not aware whether these documents that you sent were actually received?
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> MR. MACATANGAY: Yes, Your Honor.

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[13] *Records, Vol. 1, Exhibit "P-72,"* pp. 294-298.
[14] *Id., Transcript of Stenographic Notes dated December 9, 2015*, p. 328.

> JUSTICE VICTORINO: Did you not verify before going to Court whether these documents you put inside the envelope you put the address and posted were actually received?
>
> MR. MACATANGAY: Your Honors, our proof of receipt of the taxpayer is the return card.
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> JUSTICE VICTORINO: Do you have the return card?
>
> MR. MACATANGAY: We do not have the return card.
>
> JUSTICE VICTORINO: You do not have the return card, so as of today without the return card, you are not sure whether those documents you sent were actually received by the addressee?
>
> MR. MACATANGAY: Yes, Your Honors, but the return card is only a piece of paper that was being grouped in bulk of mountains of paper.[15]

Prosecution should have presented the registry receipt or a certification from the Bureau of Posts in order to prove mailing of the PAN and the FAN.

Considering the assessment notice was issued beyond the period provided by law and considering further that the prosecution failed to prove that the PAN and the FAN were sent to and received by the accused, herein accused cannot be said to have failed to pay or withhold and remit payment withheld taxes – much more to have done so willfully – as required under *Section 255 of the 1997 NIRC,* which provides:

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

[15] *Records, Vol. 1, Transcript of Stenographic Notes dated December 9, 2015,* pp. 323-325.

> 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 (Php10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.
>
> xxx xxx xxx

All foretold, the Court holds that the prosecution was not able to establish with competent or sufficient evidence the guilt of accused for willful failure to pay any tax or withhold or remit taxes withheld under *Section 255 of the 1997 NIRC* in relation to Section 253(d) and 256 of the 1997 NIRC.

WHEREFORE, premises considered, the Demurrer to Evidence filed by accused is hereby **GRANTED**. Accordingly, CTA Crim. Case No. O-449 is **DISMISSED** on the ground of insufficiency of evidence.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice