REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

THE PROPRIETOR OF CELIA'S HANDBAG, RODOLFO QUEZON REYES,
Accused.

CTA CRIM. CASE NO. O-859
For: Violation of Section 255 of the National Internal Revenue Code of 1997, as amended

Members:

DEL ROSARIO, *P.J.*, *Chairperson*,
MANAHAN, and
REYES-FAJARDO, *JJ.*

Promulgated:

JAN 1 8 2023 ; 8:50 a.m.

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DECISION

DEL ROSARIO, P.J.:

This involves the criminal case filed by the plaintiff against accused for violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, for alleged refusal and failure to pay basic deficiency income tax in the amount of ₱3,991,360.88, exclusive of surcharge and interest, for taxable year (TY) 2011 pursuant to Formal Letter of Demand No. 45-2017-B013-11.

THE FACTS

Accused **Rodolfo Quezon Reyes** is the sole proprietor of Celia's Handbag, engaged in the manufacturing of bags, and with postal address at 36 General F. Santos Street, Barangay Calumpang, Marikina City.[1]

The Bureau of Internal Revenue (BIR) issued undated Letter Notice (LN) No. 045-RLF-11-00-00322 against accused informing the

[1] Exhibit "A-10", Docket, Vol. II, p. 641.

latter of discrepancy in the sales per Summary List of Purchases (SLP) submitted by its customers, and finding that accused has undeclared sales in the amount of ₱12,632,377.74.[2]

On September 29, 2014, a Letter of Authority (LOA) was issued by Regional Director Alfredo V. Misajon of Revenue Region No. 7 authorizing Revenue Officer (RO) Ademar Balan and Group Supervisor (GS) Alberto Enriquez, Jr. to examine accused's books of account and other accounting records for income tax and value-added tax (VAT) for the period from January 1, 2011 to December 31, 2011.[3] The LOA, together with the Checklist of Requirements,[4] was received by accused on October 8, 2014.

The BIR sent an undated Second & Final Request for Presentation of Records.[5]

For accused's failure to heed the BIR's requests, RO Balan and GS Enriquez recommended the issuance of a subpoena *duces tecum*,[6] which was thereafter issued on June 25, 2015.[7]

RO Balan and GS Enriquez then recommended the issuance of a Preliminary Assessment Notice (PAN) against accused, finding the latter liable for deficiency income tax and VAT in the amounts of ₱9,216,930.02 and ₱3,519,017.88, respectively.[8]

Meanwhile, accused filed an Application for Business Retirement with the Business Permits and Licensing Office of the City of Marikina on May 17, 2016, which was approved by said Office.[9]

On June 2, 2017, a PAN with Details of Discrepancies was issued against accused finding him liable for deficiency income tax and VAT, including interest, in the total amounts of ₱10,109,625.02 and ₱3,818,647.20, respectively.[10] The PAN was received on the same date by a certain Cristina E. Ellosa, the supposed secretary of the establishment at the taxpayer's office or regular place of business.[11]

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[2] Exhibit "P-1", Docket, Vol. I, p. 490.
[3] Exhibit "P-2", Docket, Vol. I, p. 491.
[4] Exhibit "P-3", Docket, Vol. I, pp. 492-493.
[5] Exhibit "P-4", Docket, Vol. I, p. 494.
[6] Exhibit "P-5", Docket, Vol. I, p. 495.
[7] Exhibit "P-6", Docket, Vol. I, p. 496.
[8] Exhibit "P-7", Docket, Vol. I, pp. 497-498.
[9] Exhibit "A-8", Docket, Vol. I, p. 264.
[10] Exhibit "P-8", Docket, Vol. I, pp. 499-502.
[11] *Id.*; Exhibit "P-8-1", Docket, Vol. I, p. 503.

A Formal Letter of Demand (FLD) with Details of Discrepancies[12] and attached Assessment Notices with Demand No. 45-2017-B031-11[13] was issued on June 30, 2017, ordering accused to pay deficiency income tax and VAT, including interest, in the total amounts of ₱10,192,732.81 and ₱3,849,498.39, respectively. The FLD and ANs were served via registered mail,[14] and by service upon the same Cristina E. Ellosa.[15]

On December 13, 2017, a Preliminary Collection Letter (PCL) was issued.[16] This was followed by a Final Notice Before Seizure (FNBS) dated December 21, 2017.[17]

A Warrant of Distraint and/or Levy was issued and constructively served on April 2, 2018.[18]

Thereafter, several Warrants of Garnishment were issued to different banks.[19]

On November 5, 2018, a Demand Before Suit was issued.[20]

For failure of accused to pay the deficiency taxes after repeated demands by the BIR, ROs Liezl G. Bohol, Marilyn V. Mendoza, Raymond G. Itliong, and Benedicto Augusto M. Cruz filed a Joint-Complaint Affidavit before the Department of Justice (DOJ),[21] with the referral of the Commissioner of Internal Revenue,[22] on December 13, 2018.[23]

In a Resolution dated September 3, 2020, the DOJ resolved to indict accused for violation of Section 255 of the NIRC of 1997, as amended, for willful failure to pay deficiency income tax and VAT for TY 2011.[24]

Thus, an Information was filed with the Court on January 14, 2021, the accusatory portion of which reads:

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[12] Exhibit "P-9-2", Docket, Vol. I, pp. 506-509.
[13] Exhibits "P-9" and "P-9-1", Docket, Vol. I, pp. 504-505.
[14] Exhibit "P-9-4", Docket, Vol. I, p. 511.
[15] Exhibit "P-9-3", Docket, Vol. I, p. 510.
[16] Exhibit "P-10", Docket, Vol. I, p. 517.
[17] Exhibit "P-11", Docket, Vol. I, p. 518.
[18] Exhibit "P-12", Docket, Vol, I, p. 519.
[19] Exhibits "P-13" to "P-28", Docket, Vol. I, pp. 520-535.
[20] Exhibit "P-29", Docket, Vol. I, p. 536.
[21] Exhibit "P-32", Docket, Vol. I, pp. 20-72.
[22] Exhibit "P-31", Docket, Vol. I, pp. 18-19.
[23] Exhibit "P-30", Docket, Vol. I, p. 17.
[24] Docket, Vol. I, pp. 7-15.

"That on or about 5 November 2018 and continuously up to the present, in the City of Marikina, and within the jurisdiction of this Honorable Court, accused Rodolfo Quezon Reyes, the sole proprietor of Celia's Handbag, to whom notices and demands were made by the Bureau of Internal Revenue (BIR) to pay income tax obligation for taxable year 2011, *to wit*: Three Million Nine Hundred Ninety-One Thousand Three Hundred Sixty Pesos and Eighty-Eight Centavos (₱3,991,360.88), exclusive of surcharge and interest, under BIR Assessment Notice No. 45-2017-B013-11, did then and there, wilfully, unlawfully and knowingly fail, refuse and neglect to pay the BIR the said amount, despite due notice and demand, the latest of which is the Demand Before Suit dated 5 November 2018, and without formally protesting and appealing the same with the proper authority, which demand had already become final, to the damage and prejudice of the government.

CONTRARY TO LAW."[25]

THE PROCEEDINGS BEFORE THE COURT

On February 1, 2021, the Court issued a Resolution finding probable cause for the issuance of a Warrant of Arrest, ordering the issuance of a Warrant of Arrest against accused, and setting the amount of bail at ₱60,000.00.[26]

The Court issued a Warrant of Arrest against accused on February 4, 2021.[27]

On March 1, 2021, accused voluntarily surrendered and posted bail.[28] Thus, in an Order of even date, the Court lifted the arrest warrant, and set the preliminary conference on April 7, 2021, and accused's arraignment and pre-trial conference on April 21, 2021.[29]

Accused's counsel filed an Entry of Appearance with Urgent Motion to Defer Proceedings on July 12, 2021, requesting for the re-setting of the preliminary conference, arraignment and pre-trial conference,[30] which the Court granted in a Resolution dated July 19, 2021.[31] Accordingly, the preliminary conference was reset to August 4, 2021, and the arraignment and pre-trial conference were reset to August 25, 2021.

[25] Docket, Vol. I, p. 5.
[26] Docket, Vol. I, pp. 74-79.
[27] Docket, Vol. I, pp. 80 & 83.
[28] Docket, Vol. I, pp. 89-98.
[29] Docket, Vol. I, pp. 99-103.
[30] Docket, Vol. I, pp. 127-136.
[31] Docket, Vol. I, p. 150.

In a Notice of Resetting dated September 13, 2021, the parties were informed of the resetting of the preliminary conference to October 6, 2021, and the arraignment and pre-trial conference on October 20, 2021.[32]

The preliminary conference was held on October 6, 2021 for the marking of the parties' exhibits.[33]

Accused filed an Urgent Motion for Postponement [Re: Scheduled Hearing on 20 October 2021] via electronic mail on October 18, 2021,[34] and via private courier on October 26, 2021,[35] which the Court granted in an Order of even date.[36] Thus, the arraignment and pre-trial conference were reset to November 24, 2021.

On October 20, 2021, plaintiff filed via electronic mail a Motion for Resetting of Hearing (Scheduled on October 20, 2021),[37] which the Court declared as moot in its Order dated November 19, 2021.[38]

Plaintiff filed its Pre-Trial Brief via electronic mail and private courier on November 24, 2022,[39] together with its Authority to Prosecute dated July 5, 2021 issued by the Prosecutor General.

Arraignment was conducted on November 24, 2021, where accused pleaded "**NOT GUILTY**" to the crime charged.[40] The Court then proceeded to the pre-trial conference.[41]

The Pre-Trial Order was issued on March 16, 2022.[42]

On April 27, 2022, plaintiff presented its witness, RO Benedicto Augusto M. Cruz, who identified the Joint Complaint-Affidavit dated December 13, 2018, the signature appearing thereon, and the exhibits referred to therein.[43] Said witness testified on cross-examination that:

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[32] Docket, Vol. I, pp. 152-156.
[33] Docket, Vol. I, pp. 157-158 and 233-234.
[34] Docket, Vol. I, pp. 266-274.
[35] Docket, Vol. I, pp. 284-289.
[36] Docket, Vol. I, pp. 275-277.
[37] Docket, Vol. I, pp. 279-283.
[38] Docket, Vol. I, p. 337.
[39] Docket, Vol. I, pp. 362-370.
[40] Docket, Vol. I, pp. 343-351.
[41] *Id.*
[42] Docket, Vol. II, pp. 560-585.
[43] Docket, Vol. II, pp. 587-B to 587-E.

(1) He is one of the ROs who filed the Joint Complaint-Affidavit with the DOJ;

(2) He was designated as Seizure Agent assigned to pursue collection efforts against accused. As such, he was not assigned any assessment functions with respect to the examination of accused's books of account and accounting records;

(3) He was not named in the LOA issued by Regional Director Alfredo V. Misajon;

(4) The PAN, FLD and ANs were not served personally upon accused but to a certain Cristina E. Ellosa as indicated in the tax docket;

(5) He served the several Warrants of Garnishment to different banks; and,

(6) He is not the one who served the Warrant of Distraint and/or Levy.[44]

On May 2, 2022, plaintiff filed its Formal Offer of Evidence (FOE), offering in evidence the following exhibits:

EXHIBIT	DESCRIPTION
P-1	Letter Notice (LN) No. 045-RLF-11-00-00322
P-2	Letter of Authority (LOA) No. LOA-45-2014-00000351 / SN: eLA201100093022 dated September 29, 2014
P-3	Checklist of Requirements dated September 29, 2014
P-4	Second and Final Request for Presentation of Records
P-5	Recommendation for Issuance of Subpoena *Duces Tecum*
P-6	Subpoena *Duces Tecum* dated June 25, 2015
P-7	Memorandum for the Issuance of Preliminary Assessment Notice (PAN)
P-8	PAN dated June 2, 2017
P-8-1	Affidavit of Service dated June 2, 2017
P-8-2	Registry Receipt No. RD 728 576 724 ZZ as proof of service of the PAN
P-9	Assessment Notice (AN) for Income Tax
P-9-1	AN for Value-Added Tax
P-9-2	Formal Letter of Demand with Details of Discrepancies dated June 30, 2017
P-9-3	Affidavit of Service dated June 30, 2017
P-9-4	Registry Receipt No. RD 728 579 875 ZZ
P-10	Preliminary Collection Letter dated December 13, 2017
P-10-1	Registry Receipt No. RD 943 008 519 ZZ

[44] Transcript of Stenographic Notes (TSN), April 27, 2022, pp. 14-19.

P-11	Final Notice Before Seizure dated December 21, 2017
P-11-1	Registry Receipt No. RD 943 013 187 ZZ
P-12	Warrant of Distraint and/or Levy
P-13	Warrant of Garnishment to Metropolitan Bank and Trust Co.
P-14	Warrant of Garnishment to United Coconut Planters Bank
P-15	Warrant of Garnishment to Asia United Bank
P-16	Warrant of Garnishment to Union Bank of the Philippines
P-17	Warrant of Garnishment to Bank of the Philippine Islands
P-18	Warrant of Garnishment to BPI-Family Bank
P-19	Warrant of Garnishment to Security Bank
P-20	Warrant of Garnishment to China Banking Corporation
P-21	Warrant of Garnishment to Philippine Savings Bank
P-22	Warrant of Garnishment to Banco de Oro Universal Bank
P-23	Warrant of Garnishment to Robinsons Bank
P-24	Warrant of Garnishment to Bank of Commerce
P-25	Warrant of Garnishment to Philippine Bank of Communications
P-26	Warrant of Garnishment to Philippine National Bank
P-27	Warrant of Garnishment to Landbank of the Philippines
P-28	Warrant of Garnishment to Philtrust Bank
P-29	Demand Before Suit dated November 5, 2018
P-29-1	Registry Receipt No. RD 905 783 233 ZZ
P-30	Investigation Data Form
P-31	Referral Letter
P-32	Joint Complaint-Affidavit
P-32-A	Signature of RO Benedicto Augusto M. Cruz

On May 16, 2022, accused filed a Submission with attached Comment [to Plaintiff's FOE dated 02 May 2022],[45] which the Court noted in its Resolution dated May 26, 2022.[46]

In a Resolution dated June 20, 2022, the Court admitted all of plaintiff's exhibits.[47]

Accused filed an Urgent Motion for Resetting of Hearing via electronic mail on June 21, 2022,[48] and via private courier on June 22, 2022,[49] for which plaintiff replied interposing no objection.[50] Thus, in a Resolution dated June 29, 2022, the Court granted accused's Urgent Motion for Resetting of Hearing, and accordingly reset accused's presentation of evidence to August 3, 2022, subject to submission of notarized medical certificate.[51] Accused filed a Compliance on July 26, 2022,[52] which was noted in a Minute Resolution dated July 29, 2022.[53]

[45] Docket, Vol. II, pp. 601-609.
[46] Docket, Vol. II, p. 612.
[47] Docket, Vol. II, pp. 615-616.
[48] Docket, Vol. II, pp. 617-622.
[49] Docket, Vol. II, pp. 625-631.
[50] Docket, Vol. II, p. 623.
[51] Docket, Vol. II, p. 632.
[52] Docket, Vol. II, pp. 633-636.
[53] Docket, Vol. II, unpaginated.

On August 1, 2022, accused filed a Manifestation informing the Court that he had previously filed an Application for Compromise Settlement with the BIR, and he had paid the amount of ₱399,136.09 representing the compromise amount.[54]

On August 3, 2022, trial continued with the presentation of the evidence for the accused. Counsel for the accused presented the accused, who identified his Amended Judicial Affidavit executed on June 1, 2020, and his signature appearing thereon.[55] Said witness testified that:

(1) He was the proprietor of Celia's Handbag from its establishment in 1984 until its closure in 2016;

(2) He was not in charge of filing and settling the business' tax returns, as he has engaged the services of a certain Glove Napire, and later Armando "Buddy" Torno, to process the tax returns of the business;

(3) He has paid income taxes as evidenced by the Annual ITRs for TYs 2008 to 2013;

(4) The business ceased operation when they applied for business retirement on May 17, 2016;

(5) He acknowledged receipt of the LOA and Checklist of Requirements, but insisted that it may have been an instance where he simply signed because he was told to do so by an unnamed person; and,

(6) He denied receipt of the PAN, FLD, PCL and FNBS.[56]

On August 8, 2022, accused filed his FOE,[57] offering in evidence the following exhibits:

EXHIBIT	DESCRIPTION
A-1	Senior Citizen ID and Voter's ID of Rodolfo Quezon Reyes
A-2	Annual Income Tax Return (ITR) or BIR Form 1701 for Taxable Year (TY) 2008 Filed and Executed by Rodolfo Quezon Reyes as the Sole Proprietor of Celia's Handbag

[54] Docket, Vol. II, pp. 722-726.
[55] Docket, Vol. II, pp. 728 to 729-A.
[56] Exhibit "A-9", Docket, Vol. II, pp. 640-647.
[57] Docket, Vol. II, pp. 730-734.

A-3	Annual ITR or BIR Form 1701 for TY 2009 Filed and Executed by Rodolfo Quezon Reyes as the Sole Proprietor of Celia's Handbag
A-4	Annual ITR or BIR Form 1701 for TY 2010 Filed and Executed by Rodolfo Quezon Reyes as the Sole Proprietor of Celia's Handbag
A-5	Annual ITR or BIR Form 1701 for TY 2011 Filed and Executed by Rodolfo Quezon Reyes as the Sole Proprietor of Celia's Handbag
A-6	Annual ITR or BIR Form 1701 for TY 2012 Filed and Executed by Rodolfo Quezon Reyes as the Sole Proprietor of Celia's Handbag
A-7	Annual ITR or BIR Form 1701 for TY 2013 Filed and Executed by Rodolfo Quezon Reyes as the Sole Proprietor of Celia's Handbag
A-8	Application for Business Retirement of Celia's Handbag dated 17 May 2016
A-9	Amended Judicial Affidavit of Witness Rodolfo Quezon Reyes dated 28 July 2022
A-9-1	Signature of Rodolfo Quezon Reyes

In a Resolution dated September 14, 2022, the Court admitted all of the exhibits offered in evidence by accused, and ordered the parties to submit their respective memoranda.[58]

Accused filed his Memorandum via electronic mail on October 17, 2022,[59] and via private courier on October 19, 2022.[60] Records Verification dated November 2, 2022 disclosed, however, that plaintiff failed to file memorandum.[61] In a Resolution dated November 4, 2022, the case was submitted for decision, with promulgation of judgment set on January 18, 2023.[62]

THE ISSUES

The issues for resolution are:

I. Whether or not the deficiency assessment issued against accused for TY 2011 have become final, executory and demandable; and,

II. Whether or not accused is guilty of the crime charged.[63]

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[58] Docket, Vol. II, pp. 741-742.
[59] Docket, Vol. II, pp. 760-776
[60] Docket, Vol. II, pp. 744-759.
[61] Docket, Vol. II, p. 777.
[62] Docket, Vol. II, p. 778.
[63] Pre-Trial Order, Docket, p. 483.

THE COURT'S RULING

Elements of the crime of Willful Failure to Pay Tax under Section 255 of the NIRC of 1997, as amended

Section 255 of the NIRC of 1997, as amended, punishes the crime of *Willful Failure to Pay Tax*, *viz.*:

> "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 the accurate information, **who willfully fails to pay such tax**, make such return, keep such 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** shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (₱10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.
>
> Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of internal revenue office wherein the same was actually filed shall, upon conviction therefore, be punished by a fine of not less than Ten thousand pesos (₱10,000) but not more than Twenty thousand pesos (₱20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years." (*Boldfacing supplied*)

From the foregoing, to sustain a conviction of the crime of *Willful Failure to Pay Tax* under Section 255 of the NIRC of 1997, as amended, the following elements must be satisfied:

(1) The taxpayer is required by the NIRC of 1997, as amended, or its rules and regulations to pay the tax;

(2) The taxpayer failed to pay the tax at the time required by the NIRC of 1997, as amended, or its rules and regulations; and,

(3) The taxpayer's failure to pay the tax was willful.

The burden rests with the prosecution to prove beyond reasonable doubt that all the elements of the crime are present,[64] and the absence of any or all of such elements would warrant the acquittal of the accused.

In the case at bar, evidence is wanting on the third element, as discussed hereunder.

Third Element: The taxpayer's failure to pay the tax was willful

To secure accused's conviction, it is indispensable for the prosecution to prove beyond reasonable doubt that the failure to pay the internal revenue tax liabilities was willful.

"Willful" in tax crime statutes means voluntary and intentional violation of a known legal duty; and bad faith or bad purpose need not be shown.[65] It means "premeditated; malicious; done with intent, or with bad motive or purpose, or with indifference to the natural consequence[.]"[66] An act or omission is "willfully" done if done voluntarily and intentionally and with specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done; that is, with bad purpose to either disobey or disregard the law. A willful act may be described as one done intentionally, knowingly and purposely, without justifiable excuse.[67]

Willfulness, being a "state of mind" is rarely susceptible of direct proof but must ordinarily be inferred from the facts and circumstances of the case. Thus, willfulness may be, and usually is, shown by circumstantial evidence alone.[68] For circumstantial evidence to be sufficient to support a conviction, all the circumstances must be consistent with one another and must constitute an unbroken chain leading to one fair and reasonable conclusion that a crime has been committed and that the accused is probably guilty thereof. The pieces of evidence must be consistent with the hypothesis that the accused was probably guilty of the crime and at the same time inconsistent with the hypothesis that he was innocent, and with every rational hypothesis

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[64] *Guilbemer Franco vs. People of the Philippines*, G.R. No. 191185, February 1, 2016.
[65] Mertens' Law of Federal Income Taxation, Chapter 47.05, page 28, Volume 13, see U.S. vs. Green, 757 F2d 116, 85-1 USTC 9178 (CA7 1985), in which the Court, citing *U.S. vs. Moore*, 627 F2d 830 (CA7 1980) and *U.S. vs. Verkuilen*, 690 F2d 648, 82-2 USTC 9618 (CA7 1982), upheld the conviction of a tax protester for willful failure to file returns.
[66] *Commissioner of Internal Revenue, et al. vs. The Honorable Court of Appeals, et al.*, G.R. No. 119322, June 4, 1996.
[67] BLACK'S LAW DICTIONARY (5th ed.), p. 1434.
[68] *United States vs. Grumka*, 728 F.2d 794, 796-97 (6th Cir. 1984); *United States vs. Gleason*, 726 F.2d 385, 388 (8th Cir. 1984); *United States vs. Marabelles*, 724 F.2d 1374, 1379 (9th Cir. 1984).

except that of guilt. Circumstantial evidence is sufficient, therefore, if: (a) there is more than one circumstance, (b) the facts from which the inferences are derived have been proven, and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[69]

To determine whether accused willfully failed to pay the deficiency tax, it is proper to ascertain first whether the assessment issued by the BIR is valid.

The PAN, FLD and ANs were validly served upon accused

Accused maintains that he never received the PAN, FLD and ANs. He insists that with the business' closure on May 17, 2016, the helpers and assistants of the business were separated from office. He argues that nowhere does his name or signature appear on the PAN, FLD and ANs.[70]

If the taxpayer denies having received an assessment from the BIR, the burden of proof shifts to the latter to prove that the former indeed received the assessment. As elucidated by the Supreme Court in *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*:[71]

> "**If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. Here, the *onus probandi* has shifted to the BIR to show by contrary evidence that GJM indeed received the assessment** in the due course of mail. It has been settled that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee." (*Boldfacing supplied*)

With accused's categorical denial of receipt of the PAN, FLD and ANs, it is incumbent upon the prosecution to establish the fact that the said documents were **actually received** by accused.

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[69] *Marie Callo-Claridad vs. Philip Ronald P. Esteban and Teodora Alyn Esteban*, G.R. No. 191567, March 20, 2013.
[70] Memorandum for the Accused, Docket, Vol. II, pp. 752-755.
[71] G.R. No. 202695, February 29, 2016.

Section 3.1.6 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, provides that substituted service of assessment notices may be made on the taxpayer's clerk or a person having charge of the taxpayer's place of business, *viz.*:

> "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:
>
> (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**:
>
> The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.
>
> **If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof**. x x x" (*Boldfacing supplied*)

Examination of the PAN, FLD and ANs shows that said notices were received by a certain Cristina E. Ellosa. Upon clarificatory questioning, accused admitted that Cristina E. Ellosa was his **employee** in charge of certain functions of the business, *viz.*:

> "JUSTICE FAJARDO:
>
> Yes. Do you know a certain Cristina E. Ellosa?
>
> MR. RODOLFO QUEZON REYES:
>
> A. *Opo.*
>
> JUSTICE FAJARDO:
>
> *Sino po sila?*

MR. RODOLFO QUEZON REYES:

A. *Katulong po iyon sa gawaan namin.*

JUSTICE FAJARDO:

So, katulong po?

MR. RODOLFO QUEZON REYES:

A. ***Tumutulong po sa pagma*-manage *ng mga* delivery, *o kaya pagtanggap din po ng mga* raw material *na dini-*deliver *sa gawaan*.**

x x x x x x x x x

JUSTICE MANAHAN:

Katulong or an employee (Interrupted).

MR. RODOLFO QUEZON REYES:

A. **Employee po. Employee.**

JUSTICE MANAHAN:

Employee of Celia's Handbag?

MR. RODOLFO QUEZON REYES:

A. ***Opo.***"[72] (*Boldfacing supplied*)

With the accused's admission that Cristina E. Ellosa is his employee, there was valid substituted service of the PAN, FLD and ANs. Accused cannot then feign ignorance that he was not able to receive the assessment notices when substituted service was made upon his employee in accordance with RR No. 12-99, as amended.

Notwithstanding the substituted service of the PAN, FLD and ANs, the assessment is void for being issued beyond the three (3)-year prescriptive period under Section 203 of the NIRC of 1997, as amended

Accused argues that the assessment was issued beyond the three (3)-year prescriptive period. He maintains that he did not receive the assessment, but assuming that he did, the FLD was served upon

[72] TSN, August 3, 2022, pp. 21-22.

accused after five (5) years from the last day within which to file the return for TY 2011, thus the same has already prescribed.[73]

The prosecution alleges that accused filed a false or fraudulent return as there was an under-declaration of sales by more than 30% based on the LN issued against accused, thus the applicable prescriptive period is ten (10) years. Accordingly, the FLD was timely issued.[74]

The Court finds accused's argument meritorious.

As a general rule, the BIR has three (3) years from the filing of the return to assess taxpayers. Section 203 of the NIRC of 1997, as amended, provides:

> "SEC. 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 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." (*Boldfacing supplied*)

As stated in the above provision, Section 222(a) of the NIRC of 1997, as amended, provides for exceptions to the general rule that assessments should be issued within three (3) years from the filing of the return. It provides that in case of a false or fraudulent return with intent to evade tax or of failure to file a return, the assessment may be made within ten (10) years from the discovery of the falsity, fraud or omission, *viz.*:

> "SEC. 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 in a fraud assessment which has become final and executory, the fact

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[73] Memorandum for the Accused, Docket, Vol. II, pp. 748-752.
[74] TSN, April 27, 2022, p. 21.

01

of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof. x x x" (*Boldfacing supplied*)

Relatedly, Section 248(B) of the NIRC of 1997, as amended, provides that substantial under-declaration of sales, *i.e.*, under-declaration in an amount exceeding thirty percent (30%) of that declared per return, shall constitute *prima facie* evidence of a false or fraudulent return, to wit:

> "SEC. 248. *Civil Penalties.* -
>
> (A) 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 the 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 under-declaration 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 (30%) of actual deductions, shall render the taxpayer liable for substantial under-declaration of sales, receipts or income or for overstatement of deductions, as mentioned herein.**" (*Boldfacing supplied*)

The Supreme Court differentiated between a false and fraudulent return in the oft-cited case of *Jose B. Aznar vs. Court of Tax Appeals*[75] in this wise:

> "To our minds we can dispense with these controversial arguments on facts, although we do not deny that the findings of facts by the Court of Tax Appeals, supported as they are by very substantial evidence, carry great weight, by resorting to a proper interpretation of Section 332 of the NIRC. We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the (1) falsity, (2) fraud, (3) omission. **Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent**

[75] G.R. No. L-20569, August 23, 1974.

> **to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely 'falsity', 'fraud' and 'omission'. That there is a difference between 'false return' and 'fraudulent return' cannot be denied. While the first merely implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due.**" (*Boldfacing supplied*)

Before the *prima facie* evidence that the taxpayer filed a false or fraudulent return is applied, it is incumbent upon the prosecution to establish by competent evidence that the taxpayer substantially under-declared its sales in an amount exceeding thirty (30%) of that declared in the return. As explained by the Supreme Court in *Modesto "Moody" Mabunga vs. People of the Philippines*,[76] a presumption cannot be founded on another presumption, but must be based on "another fact or group of facts found or otherwise established in the action".

In *Bureau of Internal Revenue vs. Court of Appeals*,[77] the Supreme Court found that the taxpayer under-declared sales based on the evidence presented by the prosecution, to wit:

> "And since the under[-]declaration is more than 30% of respondent spouses' reported or declared income, which under Section 248(B) of the NIRC constitutes as *prima facie* evidence of false or fraudulent return, petitioner recommended the filing of criminal cases against respondent spouses under Sections 254 and 255, in relation to Section 248(B) of the NIRC.
>
> The CA, however, found no probable cause to indict respondent spouses for tax evasion. It agreed with Acting Justice Secretary Devanadera that petitioner failed to make "a categorical finding of the exact amount of tax due from [respondent spouses]" and "to show sufficient proof of a likely source of [respondent spouses'] income that enabled them to purchase the real and personal properties adverted to x x x."
>
> We find otherwise.
>
> **The amount of tax due from respondent spouses was specifically alleged in the Complaint-Affidavit. The computation, as well as the method used in determining the tax liability, was also clearly explained. The revenue officers likewise showed that the under declaration exceeded 30% of the reported or declared income.**
>
> **The revenue officers also identified the likely source of the unreported or undeclared income in their Reply-Affidavit.** x x x" (*Boldfacing supplied*)

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[76] G.R. No. 142039, May 27, 2004.
[77] G.R. No. 197590, November 24, 2014.

Evidently, the prosecution must, first and foremost, prove that the taxpayer substantially under-declared its sales. Without the establishment of such fact, the presumption that the taxpayer filed a false or fraudulent return would not apply.

In this case, evidence is wanting to prove that accused under-declared its sales for TY 2011 that made him liable for deficiency income tax. Although the LN[78] issued against accused found that he under-declared sales in the amount of ₱12,632,377.74 based on the SLP submitted by accused's customers, such SLP was never offered in evidence. Plaintiff likewise failed to provide the names of these customers nor offer any confirmation from them that they indeed made purchases from or payments to accused that would have formed part of the latter's sales.

As admitted by plaintiff's witness, RO Benedicto Augusto M. Cruz, upon clarificatory questioning, the alleged SLP was used as basis in finding that accused under-declared sales, but such crucial piece of evidence was not presented in court, *viz.*:

"JUSTICE DEL ROSARIO:

So, is that the theory of the government here, of the BIR that purchases are actually income that should have been reflected in an Income Tax Return and corresponding taxes should have been made?

MR. CRUZ:

A. Your Honors, the Letter Notice was based on purchases submitted by the taxpayer's customers reflecting as sales.

JUSTICE DEL ROSARIO:

To your purchases, can you see that?

MR. CRUZ:

A. Yeah, purchases by the customers, Sir.

JUSTICE DEL ROSARIO:

They are purchases not made by the taxpayer, referring to the accused here, but it refers to purchases made by the customers of the taxpayer?

---

[78] Exhibit "P-1", Docket, Vol. I, p. 490.

CM

MR. CRUZ:

A. Yes, your Honors.

JUSTICE DEL ROSARIO:

I see.

In which event, did you enumerate the customers who supposedly submitted the purchases? Is there any document or a listing of these customers?

MR. CRUZ:

A. **I believe, your Honors, there is a Summary List of Purchases of customers attached in the tax case docket.**

JUSTICE DEL ROSARIO:

Can you produce that? Do you have it with you?

ATTY. LOPEZ:

Your Honors, as of right now we don't have the tax docket of the case, your Honors.

JUSTICE DEL ROSARIO:

So, we are just going to take the supposed statement here in the Affidavit Complaint without allowing the accused to be confronted of whether these are indeed the customers of the, you know, of the accused here? You don't have it.

So, anyway, thank you for, more or less, enlightening the Court."[79] (*Boldfacing supplied*)

With plaintiff's failure to offer any credible evidence, there is no basis to rule that accused under-declared his sales. As such, there is no false or fraudulent return that would trigger the application of the ten (10)-year prescriptive period under Section 222(a) of the NIRC of 1997, as amended.

As explained by the Supreme Court in *Commissioner of Internal Revenue vs. Philippine Daily Inquirer, Inc.*,[80] fraud must be proved and never imputed, to wit:

"In *Commissioner of Internal Revenue v. Javier*, this Court ruled that fraud is never imputed. The Court stated that it will not

[79] TSN, April 27, 2022, pp. 22-24.
[80] G.R. No. 213943, March 22, 2017.

sustain findings of fraud upon circumstances which, at most, create only suspicion. The Court added that the mere understatement of a tax is not itself proof of fraud for the purpose of tax evasion. The Court explained:

> x x x. The fraud contemplated by law is actual and not constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some legal right. Negligence, whether slight or gross, is not equivalent to fraud with intent to evade the tax contemplated by law. It must amount to intentional wrongdoing with the sole object of avoiding the tax. x x x."

More importantly, an assessment issued beyond the prescriptive period is no longer valid and effective as it is already time-barred.[81] Here, accused filed his Annual ITR for TY 2011 on August 17, 2012,[82] or beyond the prescribed date of its filing on April 15, 2012. As such, the three (3)-year prescriptive period shall be reckoned from August 17, 2012, so the BIR had until August 17, 2015 within which to issue the assessment against accused. Considering that the FLD and ANs were served upon accused's employee on June 30, 2017,[83] or beyond the prescriptive period, the assessment is void.

Assuming that the FLD was issued within the prescriptive period, the assessment is still void as the FLD and ANs bear no due date for payment

Assuming *arguendo* that the FLD was issued and served upon accused within the prescriptive period, the assessment nonetheless remains void for being violative of accused's right to due process of law.

In *Commissioner of Internal Revenue vs. Fitness by Design, Inc.*,[84] the Supreme Court ruled that failure of the FLD to provide a due date for payment of deficiency tax renders the assessment void, *viz.*:

> "The disputed Final Assessment Notice is not a valid assessment.

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[81] *Universal Weavers Corporation vs. Commissioner of Internal Revenue*, G.R. No. 233990, May 12, 2021.
[82] Exhibit "A-5", Docket, Vol. I, pp. 249-252.
[83] Exhibits "P-9" to "P-9-2", Docket, Vol. I, pp. 504-509.
[84] G.R. No. 215957, November 9, 2016.

x x x x x x x x x

> Second, **there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment.** Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:
>
> > In view thereof, you are requested to pay your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled within the time shown in the enclosed assessment notice.
>
> However, based on the findings of the Court of Tax Appeals First Division, the enclosed assessment pertained to remained unaccomplished.
>
> Contrary to petitioner's view, April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. **The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay.**
>
> **Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation.**" (*Boldfacing supplied*)

A close perusal of the FLD and ANs reveals that both failed to demand payment of the basic deficiency income tax. The FLD specifically states that accused is only "**requested**" to pay his aforesaid deficiency tax liabilities in a duly authorized agent bank using the electronic BIR Payment Form without specifying the due date for payment. **The enclosed <u>ANs</u>, on the other hand, conspicuously left blank the space provided for that would have indicated the due date within which the tax deficiency should be paid.**

EXHIBIT " P-9-2 "
FEB 2 3 2022 (CTC)

BIR

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Revenue Region No. 7 - Quezon City

Demand No.: [illegible]
Date Issued: JUN 3 0 2017
Due Date: [illegible]

FORMAL LETTER OF DEMAND

MR. RODOLFO QUEZON REYES (CELIA'S HANDBAG)
No. 28 Gen. F. Santos Street
Calumpang
1801 Marikina City
TIN: 100-149-400-000

Sir

Please be informed that after computerized matching conducted by the Bureau on information/data provided by third party sources against your declaration per Income/VAT returns per **Electronic Letter of Authority** (eLA) No. **201100093022/Letter of Authority (LOA) No. 045-2014-00000351** dated September 29, 2014 and **Letter Notice** (LN) No. **045-RLF-11-00-00322**, there has been found due from you deficiency **Income Tax** and **Value-Added Tax**, for the **taxable year 2011** to wit

I. INCOME TAX

Taxable Income per Income Tax Return (ITR)		P -
Add: Adjustments per investigation:		
Undeclared Sales/Income (Schedule 1)		12,632,377.74
Adjusted Taxable Income		P 12,632,377.74
Less: Personal Exemption		50,000.00
Net Taxable Income		P 12,582,377.74
Income Tax Due (Sec. 24A)		P 3,991,360.88
Less: Allowed Tax Credits/Payments		-
Deficiency Income Tax		P 3,991,360.88
Add: 50% Surcharge	P 1,995,680.44	
Interest (04/16/2012 to 7/21/2017)	4,205,691.49	6,201,371.[illegible]
TOTAL AMOUNT DUE		P 10,192,732.81

CARATINA C. EVORO
6-30-17

II. VALUE-ADDED TAX

Vatable Sales per Returns		P 197,593.[illegible]
Add: Adjustments per investigation:		
Undeclared Sales (Schedule 2)		12,434,[illegible]
Adjusted Vatable Sales		P 12,632,[illegible]
Output Tax Due (12%)		P 1,515,[illegible]
Less: Allowed Tax Credits/Payments		
Input Tax on Current Purchases	P 19,372.[illegible]	
Payments	14,843.46	34,[illegible]
Deficiency Value-Added Tax		P 1,481,[illegible]
Add: 50% Surcharge	P 740,834.[illegible]	
Interest (01/26/2012 to 7/21/2017)	1,626,994.5[illegible]	[illegible]
TOTAL AMOUNT DUE		P 3,849,498.39

Please note that the interest and the total amount due will have to be adjusted if paid after the due date [illegible]

The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying **ANNEX-A** of this letter

[illegible]

The fifty-percent (50%) surcharge has been imposed pursuant to the provisions of Section 248(B) of the National Internal Revenue Code (NIRC) of 1997, as amended, on **Income Tax**, in view of your willful neglect to file the return within the period prescribed by law and on **Value Added Tax**, for failure to report sales or income in an amount exceeding thirty percent (30%) of that declared per return which is a prima facie evidence of a false or fraudulent return.

The twenty percent (20%) interest per annum has been imposed pursuant to the provisions of Section 249 (B) of the NIRC of 1997, as amended.

In view thereof, you are requested to pay your aforesaid deficiency tax liabilities in a duly authorized agent bank in which you are enrolled using the electronic BIR Payment Form (eBIR Form 0611-A). Afterwards, submit proof of payment thereof to the Office of The Regional Director, this Region, located at 5th Floor (Roof Deck) Mezzanine Fisher Mall Bldg. Quezon Avenue Corner Roosevelt Avenue, Brgy. Sta. Cruz, 1104, Quezon City for updating of your records and cancellation of the herein PLD, if warranted.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

By:

MARINA C. DE GUZMAN
OIC - Regional Director

BIR-Revenue [illegible]
[illegible]
CERTIFIED [illegible]

ATTY. [illegible]
Chief, Legal Division

Cristina Quezon

6-30-17

MVR
ASC
EDGM
MVC
RR7-1

SN eLA201100093022 / LOA 045-2014-00000351 dated September 29, 2014
LN No. 045-RLF-11-00-00322

0000507

EXHIBIT " P-9 "

ASSESSMENT DIV'S COPY

FEB 23 2022 (CTC)

BIR FORM NO. 1708
REVISED FEBRUARY, 1994

REPUBLICA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

ASSESSMENT NOTICE

50% SC

Demand No. / Assessment No. 45-2017-B031-11

TAXPAYER IDENTIFICATION NUMBER	100-149-400-000	DATE ISSUED JUN 30 2017	PERIOD COVERED 20131
NAME OF TAXPAYER	MR. RODOLFO QUEZON REYES (CELIA'S HANDBAG)		
ADDRESS	No. 26 Gen. F Santos Street, Calumpang 1801 Marikina City		

PLEASE BE INFORMED THAT YOUR INTERNAL REVENUE TAX LIABILITY HAS BEEN ASSESSED BASED ON:

[ ] a THE RETURN FILED [ ] 1 AFTER PRE-AUDIT [ ] 2 AFTER AUDIT [ ] 3 AFTER PRE-AUDIT
[ ] b NO RETURN FILED

DETAILS OF ASSESSMENT

CHECK KIND OF TAX		PARTICULARS		AMOUNT
[x] A INCOME	[ ] F CAPITAL GAINS	1. TAX DUE	P	3,991,360.88
[ ] B WITHHOLDING ewt	[ ] G DOC. STAMPS pc	2. ADD: SURCHARGE (25%)		1,995,680.44
[ ] C VAT	[ ] H FRINGE BENEFIT	INTEREST from 04.16.12 to 07.21.17		4,205,691.49
[ ] D PERCENTAGE	[ ] I MISCELLANEOUS	Compromise Penalty		
[ ] E DONOR'S	[ ] J COMPROMISE	TOTAL		10,192,732.81

PLEASE PRESENT THIS NOTICE TO THE NEAREST REVENUE DISTRICT OFFICE OR OTHER DULY AUTHORIZED ISSUING OFFICE FOR THE ISSUANCE OF PAYMENT FORM (BIR FORM NO. 0605) AND PAY THE TOTAL AMOUNT PAYABLE ON OR BEFORE ______ TO ANY ACCREDITED BANK WHERE YOU ENROLLED OR TO THE CHIEF, ASSESSMENT DIVISION, 5th FLOOR, (ROOF DECK) FISHERMALL BLDG., QUEZON AVENUE CORNER ROOSEVELT AVENUE BRGY. STA. CRUZ, 1104 QUEZON CITY

IMPORTANT

IF YOU DISAGREE WITH THIS ASSESSMENT, FILE YOUR PROTEST IN WRITING (WITH FACTUAL AND LEGAL BASIS) WITH THE COMMISSIONER OF INTERNAL REVENUE OR WITH THE AUTHORIZED BIR OFFICIAL WITHIN THIRTY (30) DAYS FROM RECEIPT HEREOF. OTHERWISE, THE SAME BECOMES FINAL AND UNAPPEALABLE PURSUANT TO THE PERTINENT PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED.

FAILURE TO PAY THIS ASSESSMENT ON TIME WILL FURTHER SUBJECT THE TOTAL AMOUNT DUE TO ADDITIONAL PENALTIES FOR LATE PAYMENT.

CAESAR R. DULAY
COMMISSIONER OF INTERNAL REVENUE

RECOMMENDING APPROVAL: APPROVED:

ANALYN S. CHU
OIC-Chief Assessment Division

MARINA C. DE GUZMAN
OIC-Regional Director

MPT: ____
EDCM ____
NFCR ____
JAD ____

OCT 30 2017
Posted in Form-40 Collectible Accounts

Please see attached Formal Letter of Demand for the factual and legal bases of assessment.
* You may file your protest in writing to the Regional Director Mezzanine (Roof Deck) Fishermall Bldg., Quezon Avenue Corner Roosevelt Avenue Brgy. Sta. Cruz, 1104 Quezon City
* Please attach photo copy of this notice to your protest letter

CRISTINA E. EMANO
SECRETARY
11-30-17

BIR-Revenue Region No. 7A-East NCR
Legal Division
CERTIFIED TRUE COPY

ATTY. OSCAR A. AGUILAR
Chief, Legal Division

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Incidentally, while the following entry appears on the upper right hand corner of the FLD -- "Due Date: July 29, 2017" -- said information appears too equivocal *sans* any statement that it is the **due date for <u>payment</u>**. Truth to tell, such entry may even refer to the due date when the FLD and ANs should be released to the taxpayer.

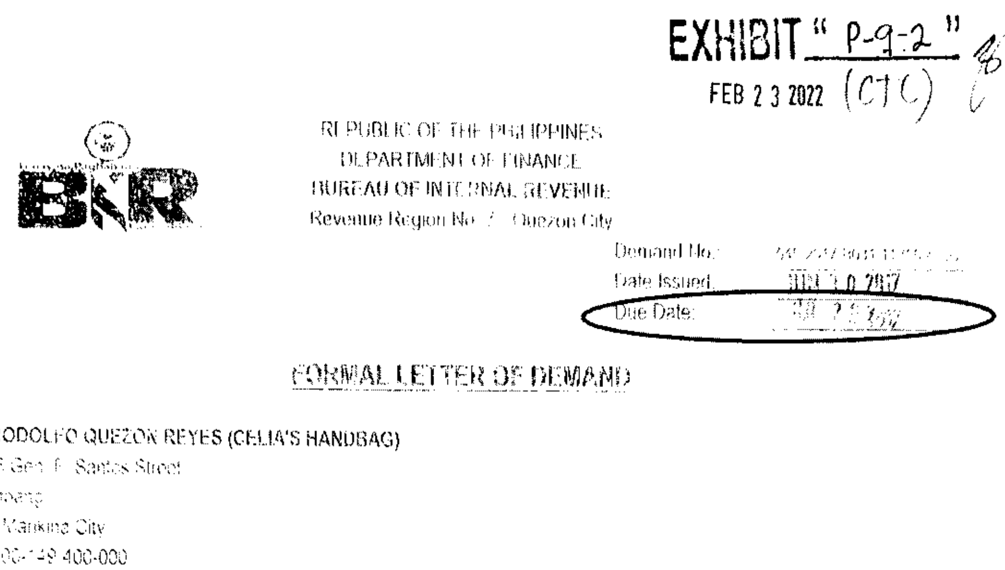
EXHIBIT " P-9-2 "
FEB 23 2022 (CTC)

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Revenue Region No. 7 Quezon City

Demand No.:
Date Issued:
Due Date:

FORMAL LETTER OF DEMAND

MR. RODOLFO QUEZON REYES (CELIA'S HANDBAG)

The requirement to indicate a fixed and definite period or a date certain within which a taxpayer must pay the assessed deficiency tax liabilities is indispensable to the validity of the assessment. Otherwise stated, an assessment *sans* a categorical demand for payment within a specific date or period is, in legal contemplation, void.

In fine, the assessment subject of this case is void for having been issued beyond the three (3)-year prescriptive period. Even assuming that the FLD was issued within the prescriptive period, the assessment is still void for lacking a due date for payment in violation to accused's right to due process.

For the failure of the prosecution to satisfy that the third element of the crime of *Willful Failure to Pay Tax* under Section 255 of the NIRC of 1997, as amended, was met, the Court has no recourse but to acquit accused. There is thus no compelling reason to discuss the other two (2) elements of the crime.

Accused is not civilly liable to pay deficiency income tax

In *Macario Lim Gaw, Jr. vs. Commissioner of Internal Revenue*,[85] the Supreme Court elucidated on the civil liabilities that arise from a criminal violation of the NIRC of 1997, as amended, to wit:

[85] G.R. No. 222837, July 23, 2018.

"The civil action filed by the petitioner to question the FDDA is not deemed instituted with the criminal case for tax evasion

Rule 9, Section 11 of A.M. No. 05-11-07-CTA, otherwise known as the Revised Rules of the Court of Tax Appeals (RRCTA), states that:

> SEC. 11. *Inclusion of civil action in criminal action.* – In cases within the jurisdiction of the Court, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall be deemed jointly instituted in the same proceeding. The filing of the criminal action shall necessarily carry with it the filing of the civil action. No right to reserve the filing of such civil action separately from the criminal action shall be allowed or recognized.

Petitioner claimed that by virtue of the above provision, the civil aspect of the criminal case, which is the Petition for Review *Ad Cautelam*, is deemed instituted upon the filing of the criminal action. Thus, the CTA had long acquired jurisdiction over the civil aspect of the consolidated criminal cases. Therefore, the CTA erred in dismissing the case.

We do not agree.

Rule 111, Section 1(a) of the Rules of Court provides that what is deemed instituted with the criminal action is only the action to recover civil liability arising from the crime. **Civil liability arising from a different source of obligation, such as when the obligation is created by law, such civil liability is not deemed instituted with the criminal action.**

It is well-settled that **the taxpayer's obligation to pay the tax is an obligation that is created by law and does not arise from the offense of tax evasion, as such, the same is not deemed instituted in the criminal case**.

In the case of *Republic of the Philippines v. Patanao*, We held that:

> Civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him. The criminal liability arises upon failure of the debtor to satisfy his civil obligation. **The incongruity of the factual premises and foundation principles of the two cases is one of the reasons for not imposing civil indemnity on the criminal infractor of the income tax law**. x x x

Further, in a more recent case of *Proton Pilipinas Corp. v. Republic of the Phils.*, We ruled that:

> While it is true that according to the aforesaid Section 4, of Republic Act No. 8249, the institution of the criminal action automatically carries with it the institution of the civil action for the recovery of civil liability, however, in the case at bar, **the civil case for the collection of unpaid customs duties and taxes <u>cannot be simultaneously instituted and determined in the same proceedings</u> as the criminal cases before the Sandiganbayan, as it cannot be made the civil aspect of the criminal cases filed before it. It should be borne in mind that the tax and the obligation to pay the same are all created by statute; so are its collection and payment governed by statute. The payment of taxes is a duty which the law requires to be paid.** x x x." (*Boldfacing and underscoring supplied*)

As the assessment herein is void for being issued beyond the prescriptive period and without a due date for payment in violation of accused's right to due process of law, there is no reason to adjudge accused liable to pay deficiency income tax pursuant to the void FLD and ANs.

Accused's failure to pay the deficiency income tax assessed in the void FLD and ANs does not give rise to any criminal or civil liability on the part of the accused. Indubitably, evidence is wanting of the fact upon which civil liability *ex delicto* may arise. In view of the prosecution's failure to prove the guilt of the accused beyond reasonable doubt for violation of Section 255 of the NIRC of 1997, as amended, accused cannot be held civilly liable.

WHEREFORE, premises considered, accused **RODOLFO QUEZON REYES** is hereby **ACQUITTED** of the crime of violation of Section 255 of the National Internal Revenue Code of 1997, as amended, for failure of the prosecution to prove his guilt beyond reasonable doubt, without any civil liability.

The cash bail bond of accused is hereby **CANCELLED** and ordered **RELEASED** to him, upon presentation of proper documents, in accordance with usual accounting rules and regulations.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

CATHERINE T. MANAHAN
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