REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

CTA EB CRIM. NO. 080
(CTA Crim. Case Nos. O-599, O-601, O-603 and O-604)

- versus -

Present:

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

REBECCA S. TIOTANGCO,
Respondent.

Promulgated:
FEB 03 2022 2:40pm

x - x

DECISION

BACORRO-VILLENA, J.:

Assailing the First Division's Decision dated 13 November 2019[1] (**assailed Decision**) and Resolution dated 15 June 2020[2] (**assailed Resolution**), insofar as it denied the recovery of the civil aspects of CTA Crim. Case Nos. O-599, O-601, O-603 and O-604 all entitled *People of the Philippines v. Rebecca S. Tiotangco, Entrepreneur of Anilos Trading and Construction,* petitioner People of the Philippines (**petitioner**) filed the instant Petition for Review[3] pursuant to Rule 4,

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[1] Division Docket (CTA Crim. Case No. O-599), Volume IV, pp. 2124-2144; Penned by Associate Justice Esperanza R. Fabon-Victorino (retired), concurred by Associate Justice Catherine T. Manahan, with Presiding Justice Roman G. Del Rosario, dissenting.

[2] Id., pp. 2227-2234.

[3] Filed on 14 July 2020; *Rollo*, pp. 1-13.

Section 2(f)[4], in relation to Rule 9, Section 9(b)[5] of the Revised Rules of the Court of Tax Appeals[6] (**RRCTA**).

Respondent Rebecca S. Tiotangco (**respondent**) is a sole proprietor, doing business under the trade name of Anilos Trading and Construction, a company engaged in the business of construction and sale of construction supplies.[7] She is also a registered taxpayer of Revenue District Office (**RDO**) No. 36, Puerto Princesa, Palawan, with Taxpayer Identification Number (**TIN**) 121-252-527-000.[8]

FACTS OF THE CASE

Respondent was charged with violations of Section 255[9] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, for her failure to supply correct and accurate information in her Quarterly Value-Added Tax (**VAT**) Returns for the third (3rd) and fourth (4th) quarters of taxable year (**TY**) 2008 and the first (1st) and second (2nd) quarters of TY 2010. The Informations filed against her read as follows:

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4 **SECTION 2.** *Cases Within the Jurisdiction of the Court En Banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

...

(f) Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive original jurisdiction over cases involving criminal offenses arising from violations of the National Internal Revenue Code or the Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or Bureau of Customs;

...

5 **SECTION 9.** *Appeal; Period to Appeal.* — ...

...

(b) An appeal to the Court *en banc* in criminal cases decided by the Court in Division shall be taken by filing a petition for review as provided in Rule 43 of the Rules of Court within fifteen days from receipt of a copy of the decision or resolution appealed from. The Court may, for good cause, extend the time for filing of the petition for review for an additional period not exceeding fifteen days.

...

6 A.M. No. 05-11-07-CTA.

7 Pre-Trial Order, Division Docket (CTA Crim. Case No. O-599), Volume III, p. 1637.

8 Id.

9 **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 (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

...

CTA Crim. Case No. O-599[10]

...

"That on or about January 25, 2009 and thereafter, in Puerto Princesa City, and within the jurisdiction of this Honorable Court, the above-named accused, a registered taxpayer and entrepreneur of Anilos Trading and Construction, did then and there willfully, unlawfully and feloniously fail to supply correct and accurate information in the VAT return of the said business for the 4th quarter of 2008 filed with the Bureau of Internal Revenue by did and there not declaring other revenue in the amount of **Twenty Four Million Eight Hundred Fifty Four Thousand and Four Pesos and 80/100 (₱24,854,004.80)** subject to 12% VAT resulting in tax deficiency of **Two Million Nine Hundred Eighty Two Thousand Four Hundred Eighty Pesos and 58/100 (₱2,982,480.58)**, exclusive of surcharges and interests."

CONTRARY TO LAW.

...

CTA Crim. Case No. O-601[11]

...

"That on or about April 25, 2010 and thereafter, in Puerto Princesa City, and within the jurisdiction of this Honorable Court, the above-named accused, a registered taxpayer and entrepreneur of Anilos Trading and Construction, did then and there willfully, unlawfully and feloniously fail to supply correct and accurate information in the VAT return of the said business tax for the 1st quarter of 2010 filed with the Bureau of Internal Revenue by did then and there not declaring other revenue in the amount of **Thirteen Million Two Hundred Sixteen Thousand Eight Hundred Eighty Three Pesos and 33/100 (₱13,216,883.33)** subject to 12% VAT resulting in tax deficiency of **One Million Five Hundred Eighty Six Thousand and Twenty Six Pesos (₱1,586,026.00)**, exclusive of surcharges and interests."

CONTRARY TO LAW.

...

CTA Crim. Case No. O-603[12]

...

"That on or about October 25, 2008 and thereafter, in Puerto Princesa City, and within the jurisdiction of this Honorable Court, the above-named accused, a registered taxpayer and entrepreneur of Anilos Trading and Construction, did then and there willfully,

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10 Division Docket (CTA Crim. Case No. O-599), Volume I, pp. 6-7; Emphasis in the original text.
11 Division Docket (CTA Crim. Case No. O-601), Volume I, pp. 6-7; Emphasis in the original text.
12 Division Docket (CTA Crim. Case No. O-603), Volume I, pp. 6-7; Emphasis in the original text.

unlawfully and feloniously fail to supply correct and accurate information in the VAT return of the said business for the 3rd quarter of 2008 filed with the Bureau of Internal Revenue by did then and there not declaring other revenue in the amount of **Thirty Million Thirty Nine Thousand One Hundred Sixty Five Pesos and 7/100 (₱30,039,165.07)** tax deficiency of **Three Million Six Hundred Four Thousand Six Hundred Ninety Nine Pesos and 81/100 (₱3,604,699.81)**, exclusive of surcharges and interests."

CONTRARY TO LAW.

...

CTA Crim. Case No. O-604[13]

...

AMENDED INFORMATION

...

"That on or about July 25, 2010 and thereafter, in Puerto Princesa City, and within the jurisdiction of this Honorable Court, the above-named accused, a registered taxpayer and entrepreneur of Anilos Trading and Construction, did then and there willfully, unlawfully and feloniously fail to supply correct and accurate information in the VAT return of the said business tax for the 2nd quarter of 2010 with the Bureau of Internal Revenue by did then and there not declaring other revenue in the amount of **Nine Million Nine Hundred Seventy One Thousand Twelve Pesos and 97/100 (₱9,971,012.97)** subject to 12% VAT resulting in tax deficiency of **One Million One Hundred Ninety Six Thousand Five Hundred Twenty One Pesos and 56/100 (₱1,196,521.56)**, exclusive of surcharges and interests."

CONTRARY TO LAW.

...

Later, CTA Crim. Case Nos. O-601, O-603 and O-604 were consolidated with CTA Crim. Case No. O-599 then pending before the First Division.[14]

During the trial before the First Division, petitioner presented the Joint Complaint-Affidavit (**Joint Complaint-Affidavit**) of May F. Quiambao (**Quiambao**) and Jose Maria F. Reyes (**Reyes**) dated 11

[13] Division Docket (CTA Crim. Case No. O-604), Volume I, pp. 478-479; Emphasis in the original text.

[14] Order dated 01 February 2017, Division Docket (CTA Crim. Case No. O-599), Volume I, pp. 479-480.

September 2014.[15] This same affidavit was previously filed with the Department of Justice (**DOJ**) during the preliminary investigation. Said Joint Complaint-Affidavit contained the following computations of alleged deficiency VAT for TY 2008[16] and 2010[17]:

> ...
>
> 19. The estimated deficiency VAT liabilities of MS. TIOTANGCO amounting to TWENTY-FOUR MILLION SEVEN HUNDRED EIGHTEEN THOUSAND FIVE HUNDRED SEVENTY-EIGHT 46/100 PESOS (₱24,718,578.46) covering taxable years 2008 and 2010, inclusive of surcharges and interests, are broken down as follows:

REBECCA SOLINA TIOTANGCO (ANILOS TRADING)
COMPUTATION OF VAT
TY 2008

TAXABLE YEAR	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	TOTAL
COMPUTATION OF DEFICIENCY TAX					
	-	10,380,383.59	34,694,228.57	31,115,382.38	76,189,994.54
	869,621.64	3,887,695.20	4,655,063.50	6,261,377.58	15,673,757.92
UNDER DECLARATION OF REVENUE	(869,621.64)	6,492,688.39	30,039,165.07	24,854,004.80	60,516,236.62
PERCENTAGE OF UNDER DECLARATION					386%
GROSS RECEIPTS PER INVESTIGATION:					
CITY GOV'T OF PALAWAN	-	10,380,383.59	34,694,228.57	31,115,382.38	76,189,994.54
LESS: GROSS RECEIPTS PER VAT	869,621.64	3,887,695.20	4,655,063.50	6,261,377.58	15,673,757.92
	(869,621.64)	6,492,688.39	30,039,165.07	24,854,004.80	60,516,236.62
VAT RATE					12%
OUTPUT TAX DUE					7,261,948.39
PENALTIES:					
SURCHARGE (50%)					3,630,974.20
INTEREST (UP TO SEPT. 10, 2014)					8,169,194.55
VAT DEFICIENCY					19,062,117.14

REBECCA S. TIOTANGCO
VAT COMPUTATION
Taxable Year 2010

TAXABLE YEAR	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	TOTAL
COMPUTATION OF DEFICIENCY TAX					
GROSS RECEIPTS PER INVESTIGATION	13,216,883.33	16,345,338.22	1,229,435.90	835,422.90	31,627,080.35
GROSS RECEIPTS PER VAT RETURN	-	6,374,325.35	4,066,854.45	-	10,441,179.80
UNDER DECLARATION OF REVENUE	13,216,883.33	9,971,012.87	(2,837,418.55)	835,422.90	21,185,900.55
PERCENTAGE OF UNDER DECLARATION					203%
GROSS RECEIPTS PER INVESTIGATION:					
PER CERT ISSUED BY PROV ACCOUNTANT	13,216,883.33	16,345,338.22	1,229,435.90	835,422.90	31,627,080.35
LESS: GROSS RECEIPTS PER VAT	-	6,374,325.35	4,066,854.45	-	10,441,179.80
	13,216,883.33	9,971,012.87	(2,837,418.55)	835,422.90	21,185,900.55
VAT RATE					12%
OUTPUT TAX DUE					2,542,308.07
ADD: PENALTIES					
SURCHARGE (50%)					1,271,154.03
INTEREST (UP TO SEPT. 10, 2014)					1,842,999.22
					5,656,461.32

15 Exhibit "P-1", id., Volume II, pp. 508-518.
16 Exhibit "P-1c", id., p. 515.
17 Exhibit "P-1d", id., p. 516.

Subsequently, the First Division promulgated the assailed Decision[18], absolving respondent of civil liabilities but convicting her for three (3) counts of violation of Section 255[19] of the NIRC of 1997, as amended. The last paragraph and the dispositive portion of the assailed Decision reads:

> ...
>
> As to the civil aspects of the instant consolidated cases, which were deemed instituted with the criminal prosecution, it is unfortunate that the prosecution failed to present any evidence that an assessment has been issued by the BIR against accused. The presentation of the computation of the unreported income cannot be used as basis for the determination of the civil liabilities of accused. While an assessment of the tax before a criminal action is not necessary, a civil action for collection of the tax requires that the assessment procedures be first complied with. As such, no proper determination of the civil liabilities can be made by the Court.
>
> **WHEREFORE**, the Court finds accused Rebecca S. Tiotangco **GUILTY BEYOND REASONABLE DOUBT** on three (3) counts of violation of Section 255 of the National Internal Revenue Code of 1997, as amended, and sentences her **for each of the offense charged** in CTA Criminal Case No. O-599, CTA Criminal Case No. O-603, and CTA Criminal Case No. O-604, to suffer an indeterminate penalty of one (1) year, as minimum, to two (2) years as maximum term of imprisonment, and is **ORDERED TO PAY** a fine in the amount of Php10,000.00, with subsidiary imprisonment in case she has no property with which to meet such fine pursuant to Section 280 of the NIRC of 1997, as amended.
>
> Accused Rebecca S. Tiotangco is [,] however[,] **ACQUITTED** in CTA Criminal Case No. O-601, for failure of the prosecution to prove her guilt beyond reasonable doubt.
>
> **SO ORDERED.**
>
> ...

With both parties dissatisfied with the above action, petitioner filed a Motion for Partial Reconsideration[20] (**MPR**) on 28 November 2019, seeking the review of the dismissal of the civil actions to collect the tax deficiencies while respondent filed, on the same day, a Motion for Reconsideration[21] (**MR**) on her conviction.

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18 Supra at note 1.
19 Supra at note 9.
20 Division Docket (CTA Crim. Case No. O-599), Volume IV, pp. 2155-2164.
21 Id., pp. 2202-2207.

In its MPR, petitioner attached plain copies of the Preliminary Assessment Notice (**PAN**) dated 18 June 2018[22] and of the Formal Letter of Demand[23] (**FLD**) with Details of Discrepancies and Audit Result/Assessment Notice (**AN**) all dated 13 July 2018.[24]

Unconvinced of both parties' arguments in their respective motions, the First Division denied both the MPR and MR. The dispositive portion of the assailed Resolution[25] reads as follows:

> ...
>
> **WHEREFORE,** the parties' respective *Motions for Reconsideration* are **DENIED**, for lack of merit.
>
> **SO ORDERED.**
>
> ...

To the assailed Resolution, respondent did not appeal her conviction before the Court *En Banc*.[26] Instead, she filed an Application for Probation.[27] In other words, she ultimately acceded to the verdict on her criminal culpability. On the other hand, petitioner elevated the civil aspects of the prior consolidated cases before the Court *En Banc* through the instant Petition for Review.[28]

On 29 October 2020, respondent posted her Comment/ Opposition[29] thereto. Thereafter, the Court *En Banc* submitted the case for decision on 06 January 2021.[30]

ISSUES

In support of the instant Petition for Review, petitioner assigns the following errors on the First Division's actions:

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22 Id., pp. 2165-2167.

23 Note that petitioner denominated the same in its pleadings as Final Assessment Notice (FAN).

24 Division Docket (CTA Crim. Case No. O-599), Volume IV, pp. 2168-2176.

25 Supra at note 2.

26 See Resolution dated 14 October 2020, Division Docket (CTA Crim. Case No. O-599), Volume IV, pp. 2244-2246.

27 Id., pp. 2237-2240.

28 Supra at note 3.

29 Received on 18 November 2020; *Rollo,* pp. 89-93.

30 Id., pp. 96-97.

I.

THE HONORABLE COURT OF TAX APPEALS (CTA) FIRST DIVISION ERRED IN HOLDING THAT THE PRESENTATION OF THE COMPUTATION OF THE UNREPORTED INCOME CANNOT BE USED AS BASIS FOR THE DETERMINATION OF THE CIVIL LIABILITIES OF RESPONDENT; AND,

II.

THE HONORABLE COURT OF TAX APPEALS (CTA) FIRST DIVISION ERRED IN HOLDING THAT THE FINAL DETERMINATION OF THE COMMISSIONER OF INTERNAL REVENUE (CIR) AS TO THE TAX LIABILITY IS NECESSARY FOR THE COURT TO RULE ON THE CIVIL LIABILITY OF RESPONDENT.

With the foregoing, the key issue to be resolved by the Court *En Banc* may thus be restated as —

WHETHER THE COURT MAY AWARD ANY CIVIL LIABILITY UPON A VIOLATION OF SECTION 255 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED, BASED ON THE COMPUTATION OF DEFICIENCY TAXES ALLEGED IN THE JOINT COMPLAINT-AFFIDAVIT (FILED BEFORE THE DEPARTMENT OF JUSTICE [DOJ]) AND/OR IN THE ABSENCE OF AN ASSESSMENT FROM THE COMMISSIONER OF INTERNAL REVENUE (CIR)?

In support of the assigned errors above, petitioner claims that in case of no return or false or fraudulent returns, the tax may be collected in court without an assessment.

According to petitioner, the First Division erroneously held that an assessment is necessary before respondent's civil liability may be imposed and that the computation of unreported income cannot be used as a basis for the determination of the said civil liability.

Petitioner submits that as a general rule, collection of taxes *via* a court proceeding cannot be done without an assessment. However, by way of exception provided in Section 222[31] of the NIRC of 1997, as

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31 **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 amended, in case of false or fraudulent return with intent to evade tax, a proceeding in court for the collection of such tax may be filed even without an assessment.

Petitioner adds that from the decisions of American courts relative to the pertinent provisions of the United States Revenue Code (from which we borrowed the aforementioned provision), the consistent ruling is that an assessment is not needed before the Internal Revenue Service (**IRS**) could sue to collect taxes. Since our income tax laws are of American origin, such interpretation has persuasive effect on our laws.

Petitioner further contends that the rationale for the exception dispensing the need for an assessment before collection is rooted in logic. Thus, if the tax liability has been proved beyond reasonable doubt in court, it does not stand to reason that the same liabilities need to be proven again by the lesser standard required in the assessment process.

According to petitioner, Section 7(b)(1)[32] of Republic Act (**RA**) No. 9282[33] is also consistent with the exceptions provided in the

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omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

(c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.

(d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5)-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

(e) *Provided, however*, That nothing in the immediately preceding and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax return filed in accordance with the provisions of any tax amnesty law or decree.

[32] **Sec.** 7. *Jurisdiction.* - The CTA shall exercise:

...

b. Jurisdiction over cases involving criminal offenses as herein provided:

1. Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of

aforementioned Section 222[34] of the NIRC of 1997, as amended, as it provides that the filing of the criminal action necessarily carries with it the filing of the civil action. Upon the filing of the criminal action against respondent, the CIR acceded to the computation and amount of her VAT liabilities as reflected in the Joint Complaint-Affidavit dated 11 September 2014.[35] The CIR's approval thereof is in harmony with Sections 220[36] and 221[37] of the NIRC of 1997, as amended.

Petitioner adds that even with the disallowance of the presentation of the assessment notices, the said Joint Complaint-Affidavit nevertheless contains the computations which the First Division should have used as the basis for respondent's civil liabilities. In essence, petitioner maintains that the computations provided in the Joint-Complaint Affidavit are competent and sufficient evidence to prove respondent's tax liabilities.

Petitioner likewise avers that accused was afforded due process as she was duly informed of her tax deficiencies or civil liabilities. She also had every opportunity to contest the same during the proceedings before the DOJ up to the trial in the First Division. In fact, respondent had every opportunity to confront and even cross-examine the revenue

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Internal Revenue or the Bureau of Customs: Provided, however, That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate. Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filling of such civil action separately from the criminal action will be recognized.

...

33 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

34 Supra at note 31.

35 Supra at note 15.

36 **SEC. 220.** *Form and Mode of Proceeding in Actions Arising under this Code.* - Civil and criminal actions and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and shall be conducted by legal officers of the Bureau of Internal Revenue but no civil or criminal action for the recovery of taxes or the enforcement of any fine, penalty or forfeiture under this Code shall be filed in court without the approval of the Commissioner.

37 **SEC. 221.** *Remedy for Enforcement of Statutory Penal Provisions.* - The remedy for enforcement of statutory penalties of all sorts shall be by criminal or civil action, as the particular situation may require, subject to the approval of the Commissioner.

officers (**ROs**) who testified to prove the said tax deficiencies or civil liabilities.

Petitioner also claims that the PAN and the FLD were reserved as its documentary evidence in the Pre-Trial Order.[38] However, said assessment notices were only issued subsequently and were not allowed to be presented and identified for being irrelevant.

Given that the said assessment notices were not yet available at that time but nevertheless were subsequently issued against respondent, assessment procedures and due process were properly observed regarding her tax liabilities.

Specifically, the PAN and the FLD were validly issued on 18 June 2018 and 13 July 2018, respectively, and served accordingly to respondent in her registered business address.

On the other hand, respondent, in her Comment/Opposition[39], maintains that the BIR did not issue any formal assessment and that petitioner's arguments are recycled and mere reiterations of its previous submissions.

<u>RULING OF THE COURT *EN BANC*</u>

After a thorough consideration of the arguments raised by the parties *vis-à-vis* the pertinent laws, rules and regulations, the Court *En Banc* finds no merit in the instant Petition for Review.

As earlier stated, what appears to be the crux of the present case is whether the computations provided in the Joint Complaint-Affidavit may serve as the basis for the Court to impose civil liability upon respondent relative to her conviction for violations of Section 255[40] of the NIRC of 1997, as amended, as a result of her failure to supply correct and accurate information in her Quarterly VAT Returns for the 3rd and 4th quarters of TY 2008 and the 1st and 2nd quarters of TY 2010.

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38 Pre-Trial Order, Division Docket (CTA Crim. Case No. O-599), Volume III, pp. 1642-1643.
39 Supra at note 29.
40 Supra at note 9.

Petitioner argues mainly that: *first*, an assessment is *not* necessary before the civil liability of respondent may be imposed; and, *second*, even without an assessment, the CIR, upon the filing of the criminal action against respondent, already acceded to the computation and amount of her VAT liabilities as reflected in the Joint Complaint-Affidavit. Respondent, however, maintains otherwise as there was no formal assessment issued by the BIR then.

We agree with petitioner.

Section 222(a) of the NIRC of 1997, as amended, provides:

> ...
>
> **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 of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.[41]
>
> ...

From the foregoing, it is clear that a proceeding in court for the collection of tax may be filed without an assessment in case of a false return.

As found by the First Division in the assailed Decision, petitioner was able to prove, beyond reasonable doubt, that respondent committed three (3) counts of violation of Section 255[42] of the NIRC of 1997, as amended, for her failure to supply correct and accurate information in the VAT returns for the 3rd and 4th quarters of TY 2008 and 2nd quarter of TY 2010. As such, the above-quoted Section 222(a) of the NIRC of 1997, as amended, applies as a result of the filing of false returns; therefore, it is not necessary that an assessment be issued in order to hold respondent civilly liable for her deficiency taxes.

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41 Emphasis supplied.

42 Supra at note 9.

Nevertheless, while we agree that assessment is *not* necessary before the civil liability of respondent may be imposed, it is still incumbent upon petitioner to provide competent evidence on which the amount of such civil liability may be based [insofar as the aforementioned three (3) taxable periods are concerned].

In the case at bar, the Court *En Banc* finds that the computations in the subject Joint Complaint-Affidavit are not sufficient to fix with definiteness the civil liabilities of respondent relative to the taxable periods under consideration.

Firstly, it is evident from the wordings of the said Joint Complaint-Affidavit[43] that such computations are *mere estimates*, as stated in the introductory paragraph thereof, to wit:

> ...
>
> 19. The **estimated** deficiency VAT liabilities of MS. TIOTANGCO amounting to TWENTY-FOUR MILLION SEVEN HUNDRED EIGHTEEN THOUSAND FIVE HUNDRED SEVENTY-EIGHT 46/100 PESOS (P24,718,578.46) covering taxable years 2008 and 2010, inclusive of surcharges and interests, are broken down as follows:
>
> ...

Secondly, said computations include other taxable periods *not* included in the consolidated criminal actions before the First Division. It must be noted that respondent was prosecuted for her failure to supply correct and accurate information in her Quarterly VAT Returns for the 3rd and 4th quarters of TY 2008 and 1st and 2nd quarters of TY 2010. However, said computations pertain to respondent's alleged tax liabilities for the **entire** TYs 2008 and 2010, which necessarily included computations for other taxable periods not pertinent to the case at hand.

As a result, the computations for surcharges and interests (aside from being computed only until 10 September 2014) encompassed the periods which are *not* the subject of the prior consolidated criminal actions before the First Division, specifically, the 1st and 2nd quarters of TY 2008 and the 3rd and 4th quarters of TY 2010.

[43] Supra at note 15; Emphasis and underscoring supplied.

From the foregoing, the Court *En Banc* thus holds that while an assessment is not necessary to enforce tax collection, as recognized in Section 222(a) of the NIRC of 1997, as amended, petitioner nevertheless failed to present the necessary evidence (during trial before the First Division) showing the precise computation of respondent's tax liabilities.

In further advancing its argument for the imposition of civil liabilities against respondent, petitioner also contends that the PAN and the FLD were subsequently issued and served accordingly upon respondent in her registered business address. In fact, petitioner attached photocopies thereof in its MPR[44] on the assailed Decision. *However*, it must be emphasized that the said PAN and FLD, aside from being mere photocopies, were *not* offered as evidence for petitioner.

While it is likewise true that on 04 April 2018, petitioner moved for the recall of one of its witnesses, Reyes, to identify the supposed PAN and FLD, the First Division denied the same as petitioner admitted that, as of that date, the BIR has not yet issued an FLD. Moreover, the First Division likewise noted that, contrary to the said supposed additional testimony, Reyes testified previously that no PAN or letter of demand was ever issued in the prior consolidated cases. Consequently, as petitioner cannot be permitted to impeach its own witness, the First Division denied its plea to recall Reyes.[45]

Aside from that, the records are bereft of any indication that petitioner made an offer of proof or a tender of excluded evidence on Reyes' supposed testimony identifying the PAN and the FLD after the First Division denied petitioner's motion to recall Reyes to the witness stand and its MR on such denial.

In *Fortune Tobacco Corporation v. Commissioner of Internal Revenue*[46], the Supreme Court explained the consequence of failure to make an offer of proof or tender of excluded evidence, to wit:

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44 Supra at note 20.

45 See Order dated 04 April 2018; Division Docket (CTA Crim. Case No. O-599), Volume III, p. 1765.

46 G.R. No. 192024, 01 July 2015; Citations omitted and emphasis supplied.

...
At any rate, even if the Court should find fault in the ruling of the CTA Division in denying the admission of petitioner's evidence, the result would be the same because petitioner failed to offer any proof or tender of excluded evidence. As aptly discussed by the CTA *En Banc*:

> Petitioner posits that if their exhibits, specifically Exhibits "G", "G-1" to "G-7" and Exhibit "H", are admitted together with the testimony of their witness, the same would sufficiently prove their claim. A closer scrutiny of the records shows that petitioner did not file any offer of proof or tender of excluded evidence.
>
> Section 40, Rule 132 of the Rules of Court provides:
>
>> Sec. 40. Tender of excluded evidence. – If documents or things offered in evidence are excluded by the court, the offeror may have the same attached to or made part of the record. If the evidence excluded is oral, the offeror may state for the record the name and other personal circumstances of the witness and the substance of the proposed testimony.
>
> **The rule is that evidence formally offered by a party may be admitted or excluded by the court. If a party's offered documentary or object evidence is excluded, he may move or request that it be attached to form part of the records of the case. If the excluded evidence is oral, he may state for the record the name and other personal circumstances of the witness and the substance of the proposed testimony. These procedures are known as offer of proof or tender of excluded evidence and are made for purposes of appeal. If an adverse judgment is eventually rendered against the offeror, he may in his appeal assign as error the rejection of the excluded evidence.**
>
> It is of record that the denial of the excluded evidence was never assigned as an error in this appeal. Thus, this Court cannot pass upon nor consider the propriety of their denial. Moreover, this Court cannot and should not consider the documentary and oral evidence presented which are not considered to be part of the records in the first place. Thus, Exhibits "G", "G- 1" to "G-7" and Exhibit "H", together with the testimony of

> petitioner's witness thereon, cannot be admitted and be given probative [value].
>
> It has been repeatedly ruled that where documentary evidence was rejected by the lower court and the offeror did not move that the same be attached to the record, the same cannot be considered by the appellate court, as documents forming no part of proofs before the appellate court cannot be considered in disposing the case. For the appellate court to consider as evidence, which was not offered by one party at all during the proceedings below, would infringe the constitutional right of the adverse party – in this case, the CIR, to due process of law.
>
> It also bears pointing out that at no point during the proceedings before the CTA *En Banc* and before this Court has petitioner offered any plausible explanation as to why it failed to properly make an offer of proof or tender of excluded evidence. Instead, petitioner harps on the fact that respondent CIR simply refused its claim for refund on the ground that RR 17-99 was a valid issuance. **Thus, for its failure to seasonably avail of the proper remedy provided under Section 40, Rule 132 of the Rules of Court, petitioner is precluded from doing so at this late stage of the case. Clearly, estoppel has already stepped in.**
>
> ...

Similar to the prior consolidated cases, as petitioner herein failed to make an offer of proof or tender of excluded evidence, the Court *En Banc* cannot consider on appeal the FLD subsequently issued against respondent.

Quite unfortunately, even if the Court *En Banc* would take the said FLD into consideration, the same would not alter the outcome of the instant case (insofar as the civil aspect is concerned) since petitioner still failed to prove with definiteness respondent's civil liabilities inasmuch as the amounts stated therein do not coincide with the computations provided in the Joint Complaint-Affidavit. Specifically, the alleged undeclared sales of respondent in the FLD are higher when compared with the computations in the Joint Complaint-Affidavit, to wit:

	Computations in the Joint Complaint-Affidavit	**FLD[47]**	**Difference**
2008 Undeclared Sales	₱60,516,236.62[48]	₱61,385,858.26	(₱869,621.64)

47 Supra at note 24, p. 2169.
48 Supra at note 16.

2010 Undeclared Sales	₱21,185,899.82[49]	₱23,023,319.20	(₱1,837,419.38)

Such differences in the amounts of the supposed undeclared sales only bolster petitioner's admission in the Joint Complaint-Affidavit that the computations appearing thereon are *mere estimates*; hence, uncertain. As the alleged civil liabilities of respondent cannot be determined with accuracy, the Court *En Banc* could not proceed to impose any civil liability.

While it is true that the First Division had found respondent guilty beyond reasonable doubt in the prior consolidated criminal cases against her (and that she had foregone appeal on her criminal conviction when she applied for probation) where the quantum of proof required to prove the same is higher than that for the civil aspect, that is, a mere preponderance of evidence; still, the absence of a precise computation ties the hands of the Court *En Banc* and prevents it from decreeing the resulting civil liabilities.[50]

With the foregoing disquisitions, the Court *En Banc* finds no reason to disturb the assailed Decision and Resolution.

WHEREFORE, with the foregoing, the instant Petition for Review filed by petitioner People of the Philippines on 14 July 2020 is hereby **DENIED** for lack of merit. Accordingly, the First Division's Decision and Resolution dated 13 November 2019 and 15 June 2020, respectively, in CTA Crim. Case Nos. O-599, O-601, O-603 and O-604, all entitled *People of the Philippines v. Rebecca S. Tiotangco, Entrepreneur of Anilos Trading and Construction,* are hereby **AFFIRMED.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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49 Supra at note 17.

50 See *Commissioner of Internal Revenue v. Fitness By Design, Inc.* (G.R. No. 215957, 09 November 2016) where the Supreme Court struck down an assessment due to lack of *definite* amount of tax liability for which the taxpayer is accountable.

WE CONCUR:

(See Separate Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

(I join the Presiding Justice's Separate Opinion)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

C E R T I F I C A T I O N

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

PEOPLE OF THE PHILIPPINES, *Petitioner,*	**CTA EB CRIM. NO. 080** *(CTA Crim. Case Nos. O-599, O-601, O-603 and O-604)*
	PRESENT:
-versus-	**DEL ROSARIO**, *P.J.*, **CASTAÑEDA, JR.**, **UY**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, *and* **CUI-DAVID**, *JJ.*
REBECCA S. TIOTANGCO, *Respondent.*	**PROMULGATED:** FEB 03 2022 2:48

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SEPARATE OPINION

DEL ROSARIO, P.J.:

I submit that no civil liability may be adjudged against respondent in *CTA Crim. Case Nos. O-599, O-601, O-603 and O-604.*

The following pronouncements in *Macario Lim Gaw, Jr. vs. Commissioner of Internal Revenue*[1] have become doctrinal:

1. While the **taxpayer's obligation to pay tax** is an obligation that is created by law and does not arise from the offense of tax evasion, it is **not deemed instituted in the criminal case**;

2. The Government cannot seek satisfaction of the taxpayer's tax liability in a criminal proceeding; otherwise stated, since the civil liability is not deemed included in the criminal action,

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

acquittal of the taxpayer in the criminal proceeding does not necessarily entail exoneration from his liability to pay the taxes (citing *Republic of the Philippines v. Patanao*[2]);

3. The duty to pay tax is imposed by statute prior to and independently of any attempts by the taxpayer to evade payment. **The obligation is neither a consequence of the felonious acts charged nor a mere civil liability arising from crime** that could be wiped out by the judicial declaration of non-existence of the criminal acts charged (*Id.*);

4. While the institution of the criminal action automatically carries with it the institution of the civil action for the recovery of civil liability, the case for the **collection** of unpaid customs duties and taxes **cannot be simultaneously instituted and determined in the same criminal proceedings** (citing *Proton Pilipinas Corp. v. Republic of the Phils.*[3]).

5. Under Sections 254 and 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, **the crime of tax evasion is committed by the mere fact that the taxpayer knowingly and willfully filed a fraudulent return with intent to evade and defeat a part or all of the tax.**

6. While the tax evasion case is pending, the BIR is not precluded from issuing an FDDA. In order to prevent the assessment from becoming final, executory and demandable, the taxpayer may file with the CTA a Petition for Review within 30 days from receipt of the decision or the inaction of the CIR. **The remedy of the taxpayer to appeal the disputed assessment is not deemed instituted with the criminal case. To rule otherwise would be to render nugatory the procedure in assailing the tax deficiency assessment.**

Patanao, supra, is explicit anent the incongruity of the factual premises and foundation principles of criminal cases under the Penal Code *vis-à-vis* criminal cases under the NIRC, *viz.*:

> "In applying the principle underlying the civil liability of an offender under the Penal Code to a case involving the collection of taxes, the court *a quo* fell into error. The two cases are circumscribed by factual premises which are **diametrically opposed** to each other, and are founded on entirely different philosophies. Under the Penal Code, the civil liability is incurred by reason of the offender's criminal act. Stated differently, **the criminal liability gives birth to the civil obligation such that generally, if one is not criminally liable under the Penal Code, he cannot become civilly liable thereunder**. **The situation under the income tax law is the exact opposite**. **Civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not**

[2] 127 Phil. 105 (1967).
[3] 535 Phil. 521 (2006).

> **because of any criminal act committed by him. The criminal liability arises upon failure of the debtor to satisfy his civil obligation. <u>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</u>.**" *(Boldfacing and underscoring supplied)*

With the pronouncements in *Lim Gaw,* the collateral issue to be addressed is: *what is the civil liability arising from crime that is deemed instituted in a criminal case for violation of Section 254 or Section 255 of the NIRC of 1997, as amended?*

I am of the view that **there is only one instance when collection of tax may be allowed in a criminal case, that is -- when the criminal indictment alleges failure to pay tax deficiencies incorporated in a final and executory assessment**. Section 205 of the NIRC of 1997, as amended, explicitly provides:

> "SECTION 205. **Remedies for the Collection of Delinquent Taxes.** — The civil remedies for the collection of internal revenue taxes, fees, or charges, and any increment thereto resulting from **delinquency** shall be:
>
> (a) xxx; and
>
> (b) **By civil or criminal action.**
>
> xxx
>
> **The judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case as <u>finally decided</u> by the Commissioner.**
>
> xxx." *(Boldfacing and underscoring supplied)*

When Section 205 of the NIRC of 1997, as amended, stated that a civil or criminal action may be availed as modes of collection, it presupposes that **there is a final and executory assessment which was finally decided by the Commissioner of Internal Revenue upon which the collection is based**. Necessarily, the existence of a final and executory assessment at the time of criminal indictment or the filing of Information is indispensable.

If the Information does not pertain to an accused's failure to pay a **final and executory assessment** -- the **government cannot convert a criminal proceeding into an assessment proceeding under the NIRC.**

The procedural due process in the issuance of a tax assessment is outlined in Section 228 of the NIRC of 1997, as amended, wherein the taxpayer is given the opportunity to reply to a Preliminary Assessment Notice (PAN), protest a Final Assessment Notice (FAN), appeal to the CIR a decision on the protest by the latter's representative, and ultimately, appeal to the CTA. **There are specified periods within which each stage of the assessment process may be taken. This entire process should not be ignored lest a taxpayer's right to due process is violated.**

Reasonably construed, when Section 222(a) of the NIRC of 1997, as amended, provides that no assessment is required in criminal actions, it simply rationalizes the object of a criminal case, that is, to penalize the accused-taxpayer, and not to hold him or her liable for deficiency taxes. It is worthy to emphasize that the prescriptive period to assess a taxpayer is generally limited to **<u>three (3) years</u>**. To allow collection of deficiency taxes in a criminal case (which prescribes after **<u>five (5) years</u>**[4]) tramples upon the right to refute an assessment of deficiency taxes under Section 228 of the NIRC of 1997, as amended. In a sense, Section 228, *supra*, can totally be ignored and its provisions become useless. **Worse, the failure to assess a taxpayer within the prescriptive period is unjustifiably "cured" by the mere filing of a criminal case.**

In sum, under Section 205 of the NIRC of 1997, as amended, a delinquent tax may be **collected** by criminal action in Court when it involves a deficiency tax assessment that has **become final, executory and demandable. The civil liability arising from crime is the deficiency tax liability contained in the final and executory deficiency tax assessment**.

In *CTA Crim. Case Nos. O-599, O-601, O-603 and O-604*, respondent was charged for violation of Section 255 of the NIRC of 1997, as amended, **for failure to supply correct and accurate information** in her Value Added Tax Returns for the 3rd and 4th quarters of taxable year 2008 and 1st and 2nd quarters of taxable year 2010. Notably, there is nothing in the Informations filed against respondent that alleged that there were final assessment notices issued against her that have become final and executory. Thus, the conviction of respondent by the Court in Division does not have for its consequence the assessment and collection in such criminal cases of the deficiency taxes; to do so, as **repeatedly expounded**, would deprive respondent of the remedy to appeal the disputed assessments,

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[4] Section 281 of the NIRC of 1997, as amended.

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thus, rendering nugatory the procedure in assailing a tax deficiency assessment under Section 228 of the NIRC of 1997, as amended. **Indeed, institution of a criminal case is not the proper remedy to assess and collect the tax liability of respondent in this case, if any.**

All told, I VOTE to DENY the present Petition for Review for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice