REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA CRIM. CASE NOs. O-615 & O-616

-versus-

Members:

UY, *Chairperson, and*
RINGPIS-LIBAN, *JJ.*

SOFTWARE LABORATORIES INC.,
MIGUEL F. CERVANTES,
GIDEON DANTE T. GALANG,
Accused.

Promulgated:

OCT 15 2018
8:32 a.m.

x---x

RESOLUTION

For resolution is the "Demurrer to Evidence"[1] filed by accused Software Laboratories, Inc. (Software), Miguel F. Cervantes (Cervantes), and Gideon Dante T. Galang (Galang), without plaintiff's comment, praying that the criminal cases against them be dismissed for lack of evidence and that they be acquitted of the crimes charged.

ANTECEDENTS

Accused Software, Cervantes, and Galang were charged with the crime of violations of Section 255 of the 1997 National Internal Revenue Code (NIRC), as amended, allegedly committed in the following Informations:

Criminal Case No. O- 615:

> "That on or prior to May 2014 and thereafter, in Makati City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused. Miguel F. Cervantes and Gideon Dante T. Galang, President and Treasurer, respectively, and corporate

[1] Docket, pp. 478-500.

and responsible officers of Software Laboratories, Inc. with Tax Identification No. 000-144-099-000, required by law to file income tax return and pay corresponding tax, did then and there wilfully, unlawfully, and feloniously, in confederation with each other, fail to pay the corporation's deficiency income tax for taxable year 2010 in the amount of Ten Million Two Hundred Four Thousand Seven Hundred One Pesos and Thirty Three Centavos (Php10,204,701.33) exclusive of surcharge and interest, despite final assessment notice, including prior and post notices and formal and final demand to pay, the last being in the nature of final notice/demand before suit issued by the Bureau of Internal Revenue in May 2014, to the damage and prejudice of the government.

CONTRARY TO LAW."

Criminal Case No. O-616:

"That prior to May 2014 and thereafter, in Makati City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Miguel F. Cervantes and Gideon Dante T. Galang, President and Treasurer, respectively, and corporate and responsible officers of Software Laboratories, Inc. with tax Identification No. 000-144-099-000, required by law to file value added tax return and pay corresponding tax, did then and there wilfully, unlawfully, and feloniously, in confederation with each other, fail to pay the corporation's deficiency value added tax for taxable year 2010 in the amount of Eight Million Five Hundred Six Thousand Six Hundred Ninety Two Pesos and Eighty Six Centavos (Php8,506,692.86) exclusive of surcharge and interest, despite final assessment notice, including prior and post notices and formal and final demand to pay, the last being in the nature of final notice/demand before suit issued by the Bureau of Internal Revenue in May 2014, to the damage and prejudice of the government.

CONTRARY TO LAW."

On November 18, 2016, accused through their counsel, filed a "Motion to Quash Information with Prayer to Defer Arraignment and/or Suspend Proceedings."[2] In the said motion, accused alleged that the Court did not acquire jurisdiction over the case on the ground that the alleged assessments for income tax and value-added tax deficiencies have not yet attained finality;

---

[2] Docket, pp. 116-122.

that the filing of criminal cases based on incomplete assessment is tantamount to lack or absence of probable cause; the corporation has already paid the compromise penalty and the compromise amount thereby negating any claim of fraud, deliberate and wilful intention to evade the payment of taxes; that the Bureau of Internal Revenue (BIR) is already estopped from filing of the cases after it accepted unconditionally the payment of compromise penalty and compromise amount; and that the right of accused to due process was violated when the BIR filed the instant cases without proof that accused actually received the assessment notices.

On December 27, 2016, the plaintiff filed its "Opposition/Comment" to the Motion to Quash Information with Prayer to Defer Arraignment and/or Suspend Proceedings."[3]

On December 9, 2016, accused Miguel F. Cervantes filed his "Reply"[4] to plaintiff's "Opposition/ Comment."

On February 14, 2017, both accused filed an "Urgent Addendum Motion to Dismiss/Defer Arraignment"[5] stating that they have entered into a compromise settlement with the BIR for the corporation's tax deficiencies for taxable year 2010 subject of the instant criminal cases in the amounts of P3,198,985.15 for Income Tax, P2,552,007.82 for Value Added Tax mad P287,329.14 for Improperly Accumulated Earnings Tax.

In the Resolution[6] of the Court dated February 15, 2017, the Court denied the "Motion to Quash Information with Prayer to Defer Arraignment and/or Suspend Proceeding", and "Notice of Appearance with Urgent Motions to Defer Arraignment, Quash Information or Reinvestigation." In the same Resolution, the Court ordered the consolidation of the instant cases.

During the arraignment on May 3, 2017, accused Cervantes and Galang assisted by their counsel de parte, entered a plea of not guilty to the crimes charged.

The Pre-Trial Conference of these cases was held on September 6, 2017. The Court issued a Pre-Trial Order on September 15, 2017.[7]

During trial, the plaintiff presented Revenue Officers Raul Marie M. Aquino, Aileen R. Sarreal and Philip Demetrio M. Viduya as witnesses to establish the cases against accused Software, Cervantes and Galang.

---

[3] Docket, pp. 149-151.
[4] Ibid., pp. 142-143.
[5] Ibid., pp-157-165.
[6] Ibid., pp. 167-169.
[7] Docket, pp. 288-295.

On November 9, 2017, the plaintiff filed a "Formal Offer of Evidence (For the Prosecution)."[8]

On November 29, 2017, accused through their counsels, filed a "Comment/Objection (To the Plaintiff's Formal Offer of Evidence)."[9]

On December 21, 2017, the Court issued a Resolution on the plaintiff's Formal Offer of Evidence[10] admitting Exhibits "P-1". "P-1-a", "P-1-b", "P-2", "p-2-a", "P-2-b", "P-3", "P-3-a", "P-4", "p-5", "P-5-a", "P-5-b", "P-6", "P-6-a", "P-6-b", "P-7", "P-8", "P-9", "P-10", "P-10-a", "P-10-b", "P-11", "P-11-a", "P-11-b", "P-12", "P-12-a", "P-12-b", "P-13", "P-13-b", "P-14", "P-14-a", "P-14-b", "P-15", "P-16" and "P-17" subject to the Court's final evaluation and appreciation of their purposes, materiality, relevancy and probative value to the issues involved in the instance cases.

On January 19, 2018, Atty. Ferdinand M. Bacobo, lead counsel for all accused, filed a "Motion for Leave of Court to File Demurrer to Evidence,"[11] stating that the said motion is filed in accordance with Section 23, Rule 119, of the Revised Rules of Criminal Procedure.

On March 9, 2018, the Court issued a Resolution[12] granting the "Motion for Leave of Court to File Demurrer to Evidence." Hence, accused was given a period of ten (10) days within which to file the Demurrer to Evidence.

On March 20, 2018, accused through their counsels, filed a "Demurrer to Evidence" stating the following grounds:

1. The prosecution failed to prove that accused Cervantes and Galang are the responsible corporate officers of Software Laboratories, Inc. to justify their indictment in the present cases; and
2. The prosecution failed to prove that Software Laboratories, Inc. was duly served with notices particularly the Preliminary Assessment Notice (PAN) and Final Assessment Notice (FAN).

ALLEGATIONS OF ACCUSED

Accused Software, Cervantes and Galang aver that the plaintiff failed to prove that the accused are the responsible corporate officers of Software Laboratories, Inc. Accused Cervantes and Galang were not proven to be either the President, General Manager, Branch Manager, Treasurer, Officer-in-Charge

[8] Ibid., pp. 399-404.
[9] Ibid., pp. 443-454.
[10] Ibid., pp. 452-453.
[11] Ibid., pp. 455-456.
[12] Ibid., pp. 474-476.

or employee responsible for the violation of Software for taxable year 2010. None of the prosecution witnesses identified accused Cervantes and Galang as the responsible officers of accused corporation. The photocopy of the General Information Sheet of Software cannot be given any probative value because it was not marked nor formally offered by the plaintiff.

Accused denies having received the assessment notices. Hence, the burden is shifted to the plaintiff to show that accused corporation, through its officers, actually received the assessment notices. The plaintiff failed to prove that the notices, particularly the PAN and FAN, were indeed received by accused corporation. No witnesses was presented to substantiate receipt of the PAN and FAN by accused corporation.

<u>EVIDENCE PRESENTED BY THE PLAINTIFF</u>

The evidence of the plaintiff is summarized as follows:

Software Laboratories, Inc. is a Philippine corporation primarily engaged in electronic data processing and related services and is registered with the BIR with Tax Identification No. 000-144-099-000.[13] Its registered business address is at 5/F Vicente Madrigal Bldg., 6793 Ayala Ave., Salcedo Village, Makati City.

Plaintiff's first witness, *Revenue Officer Raul Marie M. Aquino*, Revenue Officer III, Revenue District Office No. 44, Taguig/Pateros, testified that among his duties is to verify and examine the books of accounts and other accounting records of a particular taxpayer pursuant to a Letter of Authority. Based on electronic Letter of Authority (eLOA)[14] 050-2011-00000232 issued on July 21, 2011, he examined the books of accounts and other accounting records of accused corporation. The eLOA was addressed to Software. Accused Cervantes and Galang were charged in these cases because they are the President and Treasurer of accused Software. He personally served the eLOA together with Checklist of Requirements[15] to the registered address of the corporation on July 27, 2011 and the same was received by Shiela Paulino and Grace Sta. Cruz. Accused did not comply with the requirements asked by the BIR. Hence, on November 28, 2011, the BIR issued to Software a Letter Notice No. 050—RLF-10-00-00164.[16] The said Letter Notice was issued because of the discrepancies that were discovered in a computerized matching conducted by the BIR on information/data provided by third party sources against the declarations in the VAT returns of Software. Attached to the said Letter Notice was a List of the Details of Taxpayer's Customers' Records[17] consisting of 11 pages. He personally served the said Letter Notice at the

---

[13] Docket, Pre-Trial Order, p. 341.
[14] Exhibit "P-1".
[15] Exhibit "P-2".
[16] Exhibit "P-3".
[17] Exhibit "P-4."

registered address of accused Software, and the same was received by Shiela Paulino. Despite receipt of the notices, accused Software, Cervantes and Galang refused to submit any of the documents required by the BIR. Thereafter, the BIR issued a Follow-Up Letter[18] dated July 31, 2012 signed by Revenue District Officer Ricardo B. Espiritu to give accused the last chance to settle the discrepancies. The said Follow-Up Letter was received by Ann Seña on August 8, 2012. Then a Notice of Informal Conference[19] dated January 16, 2013 duly signed by Revenue District Officer Espiritu was issued to the President of Software Laboratories, Inc. The Notice of Informal Conference was received by Janine Ann Agana. On December 13, 2013, the Preliminary Assessment Notices (Part I and Part II) were issued to the President of Software, which were received by Grace Sta. Cruz[20] on December 16, 2013. Accused Software did not file any protest to the PAN. On January 10, 2014, the Assessment Notices with FAN (Part I and Part II) with Details of Discrepancies,[21] were issued by then Regional Director Nestor S. Valeroso, assessing accused Software and demanding payments for its tax liabilities for taxable year 2010. The Assessment Notices were received by Azel Ingalla on January 13, 2014.[22] He identified his Judicial Affidavit marked as Exhibit "P-15."

On cross-examination, he testified that he does not know who caused the printing of the LOA. He conducted the investigation on accused Software by virtue of the LOA issued to him. The investigation was for taxable year 2010. He is not sure if accused Cervantes and Galang were the President and Treasurer of accused Software for taxable year 2010. During the conduct of his investigation, he is concerned with the officers of the corporation. It was only during the Preliminary Investigation with the DOJ that he learned the names of the officers of accused Software. He did not go to the Securities and Exchange Commission (SEC) to secure the required documents in order to verify the officers of accused corporation. He did not inquire the authority of Shiela Paulino and Grace Sta. Cruz who received the LOA. He cannot remember if he is the one who personally served the PAN. He did not verify the authority of Grace Sta. Cruz, who received the PAN. Likewise, he cannot recall if the is the one who personally served the FAN. The FAN was received by a certain "Hazel Ingara," whose authority to receive documents on behalf of the corporation was not indicated. It was merely indicated that her position was "reception."

He further testified that his main participation in this case is the preparation of report to recommend the issuance of PAN.

---

[18] Exhibit "P-5."
[19] Exhibit "P-6."
[20] Exhibit "P-7."
[21] Exhibit "P-8."
[22] Exhibit "P-9."

The plaintiff's second witness, *Revenue Officer Aileen R. Sarreal,* Revenue Officer II, Collection Division, Revenue Region No. 8, Makati City, testified that her duty was to submit written report based on her investigation of cases assigned and re-assigned to her. Pursuant to Memorandum of Assignment (MOA#2014-03-343-DL)[23] issued on March 12, 2014, she was instructed to: 1. Conduct verification whether the account of accused Software has already been paid or settled, 2. Serve to the taxpayer concerned and/or bank/s concerned or its authorized representative the summary processes and execute the same immediately against whatever properties the taxpayer may have, 3. Conduct an intensive search of property holdings, real as well as personal properties of the taxpayer, and 4. Submit the report on the action taken thereon. On May 3, 2014, the Preliminary Collection Letter (PCL)[24] signed by Zenaida U. Floresca, Chief of Collection Division, was issued against accused corporation. It was sent through registered mail on April 14, 2014 at the registered business address accused at 6793 Vicente Madrigal Bldg. Ayala Avenue, Makati City. Then on May 5, 2014 a Final Notice Before Seizure (FNBS) signed by Zenaida U. Floresca, Chief of Collection Divison was issued to accused corporation. The FNBS was sent through registered mail at the registered business address of accused corporation. His proof that the FNBS was received was the Registry Return Receipt[25] that returned to their office. He identified the Judicial Affidavit he executed marked as Exhibit "P-16."

On cross examination, she testified that she has no actual participation or personal knowledge in the audit or investigation conducted against accused corporation. Her responsibility as revenue officer is to collect delinquent taxes assigned to her. She does not know the positions held by accused Cervantes and Galang. She has no knowledge whether accused Cervantes and Galang are officers of the corporation and she has not seen them in person. She mailed the PCL at the Makati Post. She has no knowledge if the PCL was received by accused corporation because she has no Registry Return Card to prove that the PCL was actually received by accused corporation. She also sent by registered mail the FNBS. She presented the Registry Return Receipt as proof that the FNBS was received by accused Software. However, the name and signature of the person who received the FNBS cannot be read.

The plaintiff's last witness, *Revenue Officer Demetrio M. Viduya,* Revenue Officer II, Collection Division, Revenue Region No. 8, Makati City, testified that among her duties and responsibilities is to investigate certain individuals and entities that have committed violations of the provision of the NIRC, and to collect deficiency taxes thereon, and to recommend the institution of complaint against taxpayers who violated the NIRC. Pursuant to Memorandum of Assignment (MOA #2014-09-1366-DL)[26] signed by Raquel A. Manalang, Head of ARREARS Management Team, he was instructed to: 1. conduct verification whether the account of accused Software has already been paid or

[23] Exhibit "P-10."
[24] Exhibit "P-11."
[25] Exhibit "P-12-b."
[26] Exhibit "P-13."

settled, 2. Serve to the taxpayer and/or bank/s concerned its authorized representative the summary processes and execute the same immediately against whatever properties the taxpayer may have, 3. Conduct an intensive search of property holdings, real as well as personal properties of the taxpayer, and 4. Submit the report on the action taken thereon. On September 30, 2014, a Warrant of Distraint and/or Levy[27] was issued to accused corporation to further demand payment of deficiency taxes considering that it failed and refused to pay the deficiency taxes despite the demands made by the BIR. On October 1, 2014, he personally served at the registered business address of accused Software the Warrant of Distraint and/or Levy. The warrant was received by a certain "Azel Ingalla." He identified his Judicial Affidavit marked as Exhibit "P-17."

On cross–examination, he testified that he has no actual participation or personal knowledge in the investigation and audit conducted by the BIR against the accused corporation. His responsibility is to collect the delinquent account. He has no personal knowledge whether accused Cervantes and Galang are officers of accused Software. When he personally served the Warrant of Distraint at the office of accused Software, he handed the warrant to a certain Azel Ingalla. He asked Azel Ingalla if there is an authorized person who will receive the warrant, however, when the warrant was returned to him, Azel Igalla already affixed her signature. He was not allowed to enter the premises of the corporation. The warrant was addressed to accused Software and not to accused Cervantes nor to accused Galang.

The documentary evidence admitted pursuant to the Court's Resolution[28] dated December 21, 2017 are the following:

EXHIBIT	DESCRIPTION
"P-1", "P-1-a", "P-1-b"	electronic Letter of Authority (eLOA) 050-2011-00000232 issued on July 21, 2011
"P-2", "P-2-a", "P-2-b"	Checklist of Requirements dated July 21, 2011
"P-3", "P-3-a"	Letter Notice (LN) No. 050-RLF-10-00-00164
"P-4"	Details of Taxpayer's Costumers' Records
"P-5", "P-5-a", "P-5-b"	Follow-Up Letter dates July 31, 2012
"P-6", P-6-a", "P-6-b"	Notice of Informal Conference dated January 16, 2013
"P-7"	Proof of Receipt of the Preliminary Assessment Notice issued on December 13, 2013 by the accused

[27] Exhibit "P-14."
[28] Docket, pp. 452-453.

"P-8"	Assessment Notices dated January 10, 2014 together with the FAN (Part 1 and Part II) with Details of Discrepancies
"P-9"	Proof of Receipt of the Assessment Notices dated January 10, 2014 together with the FAN (Part 1 and Part II) with details of Discrepancies
"P-10", "P-10-a", P-10-b"	Memorandum of Assignment (MOA#2014-03-343-DL issued on March 12, 2014)
"P-11", P-11-a", P-11-b"	Preliminary Collection Letter dated March 3, 2014
"P-12", "P-12-a", "P-12-b"	Final Notice Before Seizure dated May 5, 2014
"P-13", "p-13-a", "P-13-b"	Memorandum of Assignment (MOA#2014-09-1366-DL) issued on September 5, 2014
"P-14", "P-14-a", "P-14-b	Warrant of Distraint and/or Levy (No. WDL-RR8-2014-09-0383)
"P-15"	Judicial Affidavit of Revenue Officer Raul M. Aquino
"P-16"	Judicial Affidavit of Revenue Officer Aileen R. Sarreal
"P-17"	Judicial Affidavit of Revenue Officer Philip Demetrio M. Viduya

RULING OF THE COURT

Section 23, Rule 119 of the Rules of Court provides:

"***Demurrer to evidence.*** – After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.

If the court denied the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its

> case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.
>
> If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.
>
> The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by certiorari before judgment."

A demurrer to evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is *competent* or *sufficient* evidence to sustain the indictment or to support a verdict of guilt.[29]

The relevant provisions of the NIRC of 1997, as amended are applicable:

> "**Sec. 255. Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.** – Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by laws 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 (P10,000.00) 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 failed a return or statement, 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 an internal revenue office wherein the same was actually filed

[29] Soriquez vs. Sandiganbayan, G.R. No. 153526, October 25, 2005, citing Gutib vs. Court of Appeals, G.R. No. 131209, August 13, 1999.

> shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (P10,000.00) but not more than Twenty thousand pesos (P20,000.00) and suffer imprisonment of not less than one (1) year but not more than three (3) years."
>
> "**Section 253. General Provisions**. – xxx
>
> > (d) In the case of associations, partnerships or corporation, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and the employees responsible for the violation."
>
> "**Section 256. Penal Liability of Corporation**. – Any corporation, association or general co-partnership liable for any of the acts or omission penalized under this Code, in addition to the penalties imposed herein, upon the responsible corporate officers, partners, or employees, shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000.00) but not more than One hundred thousand pesos (P100,000.00)."

The following are the elements of the crime of violation of Section 255 that must be proven by the plaintiff:

1. The accused is the person required under the tax code or by rules and regulations to file a return, to pay the tax and supply correct and accurate information;

2. The accused failed to file a return, to pay the tax and supply correct and accurate information at the time required by law; and

3. Such failure was willful.

It is thus necessary for the plaintiff to prove that accused Software was a registered taxpayer in 2010, that accused Cervantes and Galang are the responsible officers of the corporation, that the BIR issued the subject assessment notices pursuant of Section 228 of the NIRC, and that accused corporation, through its responsible officers or authorized representatives received the same.

Under Section 256 of the NIRC, the penal liability for violations of Section 255 is pinned upon the responsible officers of the corporation. Hence, it is necessary that the persons charged are indeed the responsible officers of the accused corporation.

An examination of the documentary exhibits presented by the plaintiff shows that all the notices issued by the BIR are addressed to accused Software or to the President of Software. However, none of the plaintiff's evidence revealed the names of the responsible officers of Software Laboratories, Inc. The prosecution did not present the Articles of Incorporation and the General Information Sheet of accused Software to show that accused are the responsible officers during the taxable year 2010. Hence, absent any proof of their capacities, accused Cervantes and Galang cannot be held criminally responsible for the acts of the accused Software for taxable year 2010.

Moreover, none of the plaintiff's witnesses have personal knowledge of the positions held by accused Cervantes and Galang. They testified that when the investigation was conducted, they are merely concerned with the liabilities of accused corporation and that it was only during the preliminary investigation before the DOJ that the names of accused Cervantes and Galang appeared.

Revenue Officer Raul Marie M. Aquino made the following declarations during his cross- examination:[30]

ATTY. MONTENEGRO

Q And are you saying in your answer that the accused Miguel F. Cervantes and Gideon T. Galang were President and Treasurer in 2010, taxable year 2010, is this correct?

MR. AQUINO

A I cannot readily say in the affirmative if they were the President and Treasurer at that time? *(sic)*

ATTY. MONTENEGRO

Q Okay. In 2010?

MR. AQUINO

A In 2010.

ATTY. MONTENEGRO

Q So will you qualify your answer in your answer 9 that you are not sure whether they are responsible officers?

MR. AQUINO

A Yes.

xxx

[30] TSN dated September 27, 2017, Docket, pp. 362-367.

JUSTICE VICTORINO

Where did you get this information that the accused Galang and Cervantes were the President and Treasurer, respectively of Software Laboratories for taxable year 2010? Where did you get that information?

MR. AQUINO

During the course of my examination, I was not really concerned with these persons because I'm just concerned with Software Laboratories. In the preparation of the PAN and the FAN, I do not yet know them at that time. It's only when there was a RATE case in the DOJ that their names came up. So I was not personally *(sic)* the person who identified them as President and Treasurer of that ... interrupted

JUSTICE VICTORINO

So at the time of the examination or audit, you concentrated on the company only... interrupted

MR. AQUINO

Yes.

JUSTICE VICTORINO

Without considering the responsible officers of the said company?

MR. AQUINO

Yes.

JUSTICE VICTORINO

And it was only later during the time of the preliminary Investigation before the DOJ that you learned about these two officers of Software Laboratories, Inc.?

MR. AQUINO

Yes, your Honor.

xxx

ATTY. MONTENEGRO

Q Now, Mr. Witness, you mentioned you learned that the alleged position or capacity of the accused as President of Software later on during the preliminary investigation. What would be the basis for this information? What document were you able to check? Answer? You can consult the records.

MR. AQUINO

A. There is a GIS from the SEC showing the names of Miguel Cervantes as President and Gideon Galang as CFO.

ATTY. MONTENEGRO

I'd like to manifest, your Honors, that the witness is referring to a photocopy of alleged screen shot, your Honors.

xxx

ATTY. MONTENEGRO

Yes, screen shot, you Honors, of a website but it is not, no indication that it is a document sourced from the Securities and exchange Commission.

JUSTICE VICTORINO

So where did you get that screen shot?

MR. AQUINO

I just got this document today from my consultant... interrupted.

ATTY. MONTENEGRO

Would the Court like to see and check the document?

JUSTICE VICTORINO

This is the General Information Sheet of Software Laboratories.

ATTY. MONTENEGRO

If I may manifest, your Honors, there is no year involved, no indication of, it's only a portion, your Honors, even a portion of a page.

JUSTICE VICTORINO

Where did you secure that document?

MR. AQUINO

I have no knowledge about where this was secured. I only saw it now, today.

xxx

JUSTICE VICTORINO

All right. Did you not go to the Securities and exchange Commission or SEC to secure the required documents in order to ascertain the officers of Software Laboratories, Inc.?

MR. AQUINO

No, I did not.

As regards the liability of accused Software, the evidence of the plaintiff shows that Software was a duly registered domestic corporation with Tax Identification No. 000-144-099-000. During the Pre-Trial Conference, it was admitted by the parties that the BIR received the payments representing the 10% compromise agreement for Income Tax, VAT and Improperly Accumulated Earnings Tax (IAET) paid by accused Software through BIR Form 0605 and DBP BIR Tax payment deposit slips starting May 2015 to October 2015, that the BIR received the Application for Compromise Settlement (40% of basic tax for 2010 on the ground of "doubtful validity of assessment") dated February 8, 2017 addressed to Atty. Mario A. Saldevar, Chief, Legal Division, Revenue Region No. 8, Makati City and signed by accused Galang, duly received by the BIR on the same date, and that Software field BIR Forms No. 0605 dated February 6, 2017 and paid through DBP BIR Tax Payment Deposit Slips of same date representing 30% remaining balance of compromise settlement for Income Tax and Vat and 100% for IAET for 2010.[31]

Despite the compromise settlement, it is still incumbent upon the Court to determine the criminal liability of accused corporation because payment of compromise penalty does not extinguish the criminal liability.[32]

Now, to hold accused Software liable for willful non-payment tax deficiencies, it is incumbent upon the plaintiff to prove that accused Software was properly notified of the assessment notices pursuant to Section 228 of the NIRC.

Section 228 of the NIRC, as amended, in relation to Section 3 of Revenue Regulations No. 12-99, provides the due process requirements in an assessment. Thus:

> ***Protesting of Assessment*** – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall notify first the taxpayer of his findings: *Provided, however,* That a pre-assessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayer shall be informed in writing of the law and facts on which the assessment is made; otherwise, the assessment shall be void.

[31] Pre-trial order, Docket, p. 341.
[32] Article 2034 of the Civil Code.

> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

To prove that accused corporation was properly assessed for deficiency taxes and that notices were issued and sent to accused corporation, the plaintiff thru its witnesses, presented the following documents: electronic Letter of Authority (eLOA) 050-2011-00000232 issued on July 21, 2011, Checklist of Requirements dated July 21, 2011, Letter Notice (LN) No. 050-RLF-10-00-00164, Details of Taxpayer's Costumers' Records, Follow-Up Letter dates July 31, 2012, Notice of Informal Conference dated January 16, 2013, Proof of Receipt of the Preliminary Assessment Notice issued on December 13, 2013 by the accused, Assessment Notices dated January 10, 2014 together with the FAN (Part 1 and Part II) with Details of Discrepancies, Proof of Receipt of the Assessment Notices dated January 10, 2014 together with the FAN (Part 1 and Part II) with Details of Discrepancies, Memorandum of Assignment (MOA#2014-03-343-DL issued on March 12, 2014), Preliminary Collection Letter dated March 3, 2014, Final Notice Before Seizure dated May 5, 2014, Memorandum of Assignment (MOA#2014-09-1366-DL) issued on September 5, 2014, Warrant of Distraint and/or Levy (No. WDL-RR8-2014-09-0383)

Sections 3.1.4 and 3.1.5 of Revenue Regulations No. 12-99 implementing the aforesaid provision, states:

> "3.1.4 *Formal Letter of Demand and Assessment Notice.* – The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or

taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void* xxx. The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.

3.1.5 *Disputed Assessment.* – The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. xxx

In ***Barcelon Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue,***[33] the Supreme Court held:

> In its Decision, the CTA resolved the issues raised by the parties thus:
>
> Jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The onus probandi was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail. The Supreme Court has consistently held 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 and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee (*Republic vs. Court of Appeals, 149 SCRA 351*). Thus as held by the Supreme Court in *Gonzalo P. Nava vs. Commissioner of Internal Revenue, 13 SCRA 104, January 30, 1965:*
>
> > **"The facts to be proved to raise this presumption are (a) that the letter was properly addressed with postage prepaid, and (b) that it was mailed. Once these facts are proved, the presumption is that the letter was received by**

[33] G.R. No. 157064, August 7, 2006.

> **the addressee as soon as it could have been transmitted to him in the ordinary course of the mail.** But if one of the said facts fails to appear, the presumption does not lie. (VI, Moran, Comments on the Rules of Court, 1963 ed, 56-57 citing *Enriquez vs. Sunlife Assurance of Canada, 41 Phil 269*)."
>
> xxx xxx xxx
>
> xxx. What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized representative. And if said documents cannot be located, Respondent at the very least, should have submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts. xxx *(Emphasis supplied)*

Since accused Software denied receipt of the notices, the burden is shifted to the BIR to prove by contrary evidence that accused Software received the assessment notices in the due course of mail.

However, the totality of the evidence of the plaintiff failed to convince the Court that the notices, i.e. PAN and FAN were properly issued, sent and received by accused corporation. It was not established how the notices were issued and sent to accused Software. Moreover, the authority of the persons who received the notices were not authenticated by the plaintiff's witnesses. Hence, it is not clear whether the notices were indeed received by accused Software.

CONCLUSION

The burden of proof lies with the plaintiff to prove that there was indeed deficiency tax liabilities of accused Software for taxable year 2010. The verdict of accused Software, Cervantes and Galang must rest on the strength of the plaintiff's evidence.

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 to say, with bad purpose either to obey or to disregard the law.[34]

---

[34] Black's Law Dictionary, 6th Edition, p. 1599.

To attribute to accused "willful failure to pay the corresponding tax" it must be shown that such failure or omission by accused was done knowingly, intentionally and with the specific intent not to pay the tax. In other words, "it must be shown that accused was aware" of his obligation to pay the tax, but it nevertheless voluntarily, knowingly and intentionally failed to do the same.

A scrutiny of the pieces of evidence before this Court clearly shows that there is not enough competent evidence to support the verdict of guilt of all the accused. Plaintiff failed to prove all the elements of the crimes charged against accused Software, Cervantes and Galang. By mere presenting the documents covering the alleged tax liabilities of accused corporation is not substantial proof that there are violations of the NIRC for which accused corporation should be held liable.

In criminal cases, the burden is on the prosecution to prove, beyond reasonable doubt, the essential elements of the offense with which the accused is charged; and if the proof fails to establish any of the essential elements necessary to constitute a crime, the accused is entitled to acquittal. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding the possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. At best, the evidence proffered by the prosecution only goes so far to create a suspicion that accused probably perpetrated the crime charged. But suspicion alone is insufficient, the required quantum of evidence being proof beyond reasonable doubt. When the People's evidence fail to indubitably prove the accused's authorship of the crime of which he stands accused; then it is the Court's duty, and the right of the accused, to proclaim his innocence.[35]

WHEREFORE, premises considered, the "Demurrer to Evidence" is **GRANTED**. Accordingly, CTA Criminal Case Nos. O-615 and O-616 are **DISMISSED** for insufficiency of evidence.

SO ORDERED.

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[35] *Darwin vs. Court of Appeals, et al.,* G.R. No. 125044, July 13, 1998.