REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,

- versus -

MANNASOFT TECHNOLOGY CORPORATION, HANS C. DEE, ROSALINDA B. DEE and **ALMA L. FERNANDEZ**, Accused.

CTA CRIM. CASE NOS. **O-790** and **O-791**

Members:

CASTAÑEDA, JR., *Chairperson*,
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated: FEB 16 2022

1:00 p.m.

x - x

RESOLUTION

For the Court's resolution is the Demurrer to Evidence[1] (**Demurrer**) filed by all accused herein on 15 June 2021, pursuant to Section 23[2], Rule 119 of the Rules of Court (**ROC**). *Per* Records Verification Report dated 04 October 2021, plaintiff did not file any comment or opposition.

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[1] Division Docket, pp. 317-322.

[2] ...

Sec. 23. *Demurrer to evidence*. — After the plaintiff rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the plaintiff the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.

If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the plaintiff. (15a)

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 plaintiff rests its case. The plaintiff 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 plaintiff may oppose the demurrer to evidence within a similar period from its receipt.

...

In the Demurrer, all the accused argue that plaintiff failed to adduce evidence that could prove their guilt beyond reasonable doubt for the crime of tax evasion penalized under Section 255, in relation to Sections 253 and 256, of the National Internal Revenue Code (**NIRC**) of 1997, as amended. The said provisions read:

> ...
> **SEC. 253.** ***General Provisions.*** –
> ...
>
> (d) In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and the employees responsible for the violation.
>
> ...
>
> **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.
>
> 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 (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years.
>
> **SEC. 256.** ***Penal Liability of Corporations.*** - Any corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000).
> ...

The Information[3] filed on 04 September 2019, reads:

> . . .
> That on or about November 25, 2015, in Makati City and within the jurisdiction of this Honorable court, accused **MANNASOFT TECHNOLOGY CORPORATION**, and its responsible corporate officers **HANS C. DEE, ROSALINDA B. DEE and ALMA L. FERNANDEZ**, being the President, Treasurer and AVP-Finance, respectively, of said corporation, a domestic corporation and a registered taxpayer with BIR Revenue District Office No. 047-East Makati City, with **Tax Identification No. 000-474-804-000**, and at that time required by law, rules and regulation to pay taxes for the said corporation, did then and there, willfully and knowingly fail to pay its **INCOME TAX** deficiency for taxable year 2010, despite prior and post notices, including final assessment and formal demands to pay, the latest being in the Final Notice Before Suit issued by the Bureau of Internal Revenues on November 25, 2015, to the damage and prejudice of the Government in terms of income tax deficiency in the amount of EIGHTY-ONE MILLION TWO HUNDRED SEVENTY-THREE THOUSAND FOUR HUNDRED NINETY-NINE PESOS and 08/100 (Php81,273,499.08), exclusive of surcharge and interest
> . . .

During the trial, plaintiff presented the testimonies of three (3) witnesses, namely: (**1**) Revenue Officer Hazel Manurac-Malonzo (**RO Malonzo**); (**2**) Group Supervisor Abdul Jalal Hilal (**GS Hilal**); and, (**3**) Revenue Officer Philip Demetrio M. Viduya (**RO Viduya**) who testified by way of their judicial affidavits.

On the witness stand, RO Malonzo testified on her involvement in the audit investigation against accused Mannasoft Technology Corporation (**Mannasoft**) and the factual and legal basis for the recommendation to issue the Final Assessment Notice (**FAN**). She also authenticated certain documents that were later on offered as evidence.[4]

As for GS Hilal, he testified that he participated in the reinvestigation of Mannasoft. He also explained the basis for his recommendation to issue the Final Decision on Disputed Assessment (**FDDA**).[5]

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[3] Division Docket, pp. 8-9.
[4] Judicial Affidavit of Revenue Officer Hazel Manurac-Malonzo, id., pp. 202-213.
[5] Judicial Affidavit of Group Supervisor Abdul Jalal Hilal, id., pp. 259-266.

Lastly, RO Viduya's testimony was offered to prove his verification of Mannasoft's non-payment of tax liabilities and demand for payment thereof, the liability of its officers for Mannasoft's refusal to pay despite demand, and the actions pursued by the Bureau of Internal Revenue (**BIR**) to enforce payment.[6]

After the presentation of the last witness (RO Viduya), plaintiff was given twenty (20) days to file its Formal Offer of Evidence (**FOE**) as contained in the Order of 08 February 2021.[7]

However, as *per* Records Verification dated 19 March 2021, plaintiff failed to file its FOE. On 19 May 2021, all the accused filed their "Motion to Deem Waived the Filing of Formal Offer of Evidence".[8] In a Resolution dated 26 May 2021[9], the Court granted the motion.

Thereafter, on 15 June 2021, all the accused filed a "Motion for Leave of Court to File Demurrer to Evidence"[10] (**Motion for Leave**) and the Demurrer.[11] The Court granted the Motion for Leave and admitted accused's Demurrer in a Resolution dated 28 June 2021.[12] In the said resolution, the Court also ordered plaintiff to file its comment/opposition thereto within ten (10) days from notice.

In another Records Verification dated 04 October 2021, plaintiff was shown to have failed to file its comment to accused's Demurrer. Thus, in a Resolution dated 17 November 2021[13], the Court submitted accused's Demurrer for resolution.

In their Demurrer, all the accused herein contend essentially that plaintiff, in the absence of evidence to support the charge, failed to discharge its burden of proof and thus, fell short of proving their guilt beyond reasonable doubt. They further maintain that plaintiff's case is hinged on documents below that aim to prove the following:

a. Due process was observed: Preliminary Assessment Notices (**PANs**), FANs;

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6 Judicial Affidavit of Revenue Officer Philip Demetrio M. Viduya, id., pp. 279-287.
7 Id., pp. 299-300.
8 Id., pp. 306-308.
9 Id., p. 311.
10 Id., pp. 312-315.
11 Id., pp. 317-322.
12 Id., pp. 325-326.
13 Id., p. 328.

b. Jurisdiction of the BIR revenue officers assigned: Memorandum of Assignment;

c. Amounts assessed: FDDA, Details of Discrepancies, Assessment Notices; and,

d. Even if the tax has prescribed: Waiver of Prescription.[14]

Likewise, they point out that plaintiff's testimonial evidence cannot even prove the service of the PAN and FAN on them.

We resolve in favor of herein accused.

The case of *Republic of the Philippines v. Alfredo R. De Borja*[15] (**De Borja**) explains the function of a demurrer to evidence in the following wise:

> . . .
>
> A demurrer to evidence is a motion to dismiss on the ground of insufficiency of evidence. It is a remedy available to the defendant, to the effect that the evidence produced by the plaintiff is insufficient in point of law, whether true or not, to make out a case or sustain an issue. The question in a demurrer to evidence is whether the plaintiff, by his evidence in chief, had been able to establish a *prima facie* case.
>
> . . .

From the foregoing, the Court, in resolving the present motion, only needs to find whether or not plaintiff has produced enough evidence to sustain the charges in the Information filed against accused. Unfortunately, with plaintiff's failure to offer its pieces of evidence, the Court could only grant the Demurrer.

Section 34 of Rule 132 of the Rules of Court, provides:

> . . .
>
> C. OFFER AND OBJECTION
>
> **Sec. 34**. *Offer of evidence.* — **The court shall consider no evidence which has not been formally offered**. The purpose for which the evidence is offered must be specified.[16]
>
> . . .

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14 Supra at note 1.

15 G.R. No. 187448, 09 January 2017; Citations omitted.

16 Emphasis supplied.

It is also propitious to emphasize that several documents were identified by plaintiff's witnesses in their direct testimony. However, none of the documents attached to the said witnesses' judicial affidavits have been marked nor offered. Neither do they appear to be originals or certified true copies of the documents they purport to be.

In *Republic of the Philippines v. Fe Roa Gimenez, et al.*[17], the Supreme Court explained the function of an FOE, to *wit*:

> ...
>
> The rule on formal offer of evidence is intertwined with the constitutional guarantee of due process. Parties must be given the opportunity to review the evidence submitted against them and take the necessary actions to secure their case. Hence, any document or object that was marked for identification is not evidence unless it was "formally offered and the opposing counsel [was] given an opportunity to object to it or cross-examine the witness called upon to prove or identify it.
>
> ...
>
> The Rules of Court provides that "the court shall consider no evidence which has not been formally offered." A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. *On the other hand, this allows opposing parties to examine the evidence and object to its admissibility.* Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.
>
> ...

What is left for this Court's consideration are the testimonies of plaintiff's witnesses. In *Quirico P. Ungab v. Hon. Vicente N. Cusi, Jr., et al.*[18], the Supreme Court ruled:

> ...
> The contention is made, and is here rejected, that an assessment of the deficiency tax due is necessary before the taxpayer can be prosecuted criminally for the charges preferred. The crime is complete when the violator has, as in this case, knowingly and willfully filed fraudulent returns with intent to evade and defeat a part or all of the tax.

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17 G.R. No. 174673, 11 January 2016; Citations omitted and italics in the original text.

18 G.R. Nos. L-41919-24, 30 May 1980; Citations omitted.

> An assessment of a deficiency is not necessary to a criminal prosecution for willful attempt to defeat and evade the income tax. A crime is complete when the violator has knowingly and willfuly filed a fraudulent return with intent to evade and defeat the tax. The perpetration of the crime is grounded upon knowledge on the part of the taxpayer that he has made an inaccurate return, and the government's failure to discover the error and promptly to assess has no connections with the commission of the crime.
>
> . . .

Although this Court has always adhered to the principle that an assessment is not required for conviction of an accused for tax evasion, it is nevertheless necessary that the tax due must first be proved.[19]

In *Commissioner of Internal Revenue v. The Estate of Benigno Toda, Jr.*[20], the Supreme Court explains, to *wit*:

> . . .
>
> Tax evasion connotes the integration of three factors: (1) the end to be achieved, i.e., the payment of less than that known by the taxpayer to be legally due, or the non-payment of tax when it is shown that a tax is due; (2) an accompanying state of mind which is described as being "evil," in "bad faith," "willful," or "deliberate and not accidental"; and (3) a course of action or failure of action which is unlawful.
>
> . . .

Given the lack of documentary evidence to prove the allegation of demandable deficiency income tax due to the accused, plaintiff miserably failed to prove the first factor of non-payment of tax. Thus, notwithstanding the personal knowledge (of the circumstances attending the offense charged) on the part of plaintiff's witnesses who testified, such knowledge is not enough to establish a *prima facie* case against the accused.

In the case at bar, all the accused were prosecuted for an alleged failure on the part of accused Manasoft to pay its income tax deficiency for taxable year 2010 "despite prior and post notices, including final assessment and formal demands to pay".[21]

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19 *Commissioner of Internal Revenue, et al. v. The Honorable Court of Appeals, et al.*, G.R. No. 119322, 04 June 1996.

20 G.R. No. 147188, 14 September 2004; Citation omitted.

21 Supra at note 3.

As it is, proof of accused Mannasoft's tax liabilities could only come by showing the findings contained in the various notices and details of discrepancies allegedly issued by the BIR to the accused.

On the other hand, accused Mannasoft's failure or refusal to pay could be evinced by the FDDA's finality, and its non-payment despite demand, regardless of the assessment's validity. This is in consonance with the Supreme Court's ruling in *Emilio E. Lim, Sr., et al. v. Court of Appeals, et al.*[22], where the Supreme Court ruled:

> ...
> Relative to Criminal Cases Nos. 1788 and 1789 which involved petitioners' refusal to pay the deficiency income taxes due, again both parties are in accord that by their nature, the violations as charged could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayers...
> ...

Likewise, Revenue Memorandum Circular (**RMC**) No. 101-90[23] states:

> ...
> 1. When cause of action for willful failure to pay deficiency tax occurs.
>
> The cause of action for willful failure to pay deficiency tax occurs when the final notice and demand for the payment thereof is served on the taxpayer. Prior thereto, no violation is committed. The offense is committed only after receipt is coupled with refusal to pay the tax within the allotted period.
> ...

Verily, without the FDDA or other document proving that accused Manasoft was actually served with a final demand to pay its alleged tax deficiency, the mere testimony of plaintiff's witnesses on the matter will not suffice to prove the existence of the first factor. With doubt as to the reality of any tax deficiency due to accused Mannasoft, the factors of willfulness and unlawfulness cannot be duly established.

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[22] G.R. Nos. L-48134-37, 18 October 1990.

[23] Determination of when cause of action for willful failure to pay deficiency tax occurs; and prescription under Section 280 of the Tax Code.

WHEREFORE, premises considered, the Demurrer to Evidence filed by accused, **MANNASOFT TECHNOLOGY CORPORATION, HANS C. DEE, ROSALINDA B. DEE** and **ALMA L. FERNANDEZ** on 15 June 2021 is hereby **GRANTED**. Accordingly, the Information filed against the accused on 04 September 2019 is **DISMISSED** and herein accused are **ACQUITTED** for lack of evidence to prove their guilt beyond reasonable doubt.

SO ORDERED.

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice