23-000373-0038

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NOS. O-1071 & O-1072

PEOPLE OF THE PHILIPPINES ,
Plaintiff,

- versus -

TECHTRENDS CORPORATION
Unit 1B Ground Floor, L & F Bldg.,
107 Aguirre St., Legaspi Village
Makati City

RAYMOND PATRICK ALBERT
2483 Fernandez Street, Singalong,
Manila

DARIUS DELAS ALAS
150 Monvrovia St., Laguna Bel-air 1
Brgy. Don Bosco, Sta. Rosa, Laguna;
and U-206 Cityland Condominium 10
Tower 156 HV Dela Costa St., Bel-air,
Makati City,

Accused.

NOTICE OF RESOLUTION

To:

PROS. GEN. BENEDICTO A. MALCONTENTO
ASST. STATE PROSECUTOR LUDMILIA L. CALO
Department of Justice
Padre Faura Street, Ermita, Manila

ATTY. ALBERT C. ARPON
ATTY. CARL FITRI A. HUSSIN
ATTY. RAUL SJ. DE GUZMAN
ATTY. JOCELYN P. LUMBRES
Bureau of Internal Revenue
Revenue Region No. 8A - Makati City
36th Floor, Export Bank Plaza Building
Sen. Gil Puyat Avenue corner Don Chino Roces Avenue
Makati City

RAYMOND PATRICK ALBERT
2483 Fernandez Street, Singalong
Manila

MUSICO LAW OFFICE
2nd Floor, PAX Building
India corner France Streets
Better Living Subdivision
Parañaque City

DIRECTOR
National Bureau of Investigation
Taft Avenue, Ermita, Manila

REGIONAL DIRECTOR
National Bureau of Investigation
STA ROSA - LAGDO
NBI LAGDO, JP Rizal Blvd.
Sta. Rosa City, Laguna

PNP CHIEF
Thru: CIDG
Philippine National Police
National Headquarters
Camp General Rafael Tagle Crame
EDSA, Quezon City

CHIEF, WARRANT AND SUBPOENA SECTION
Manila City Police District
United Nations Avenue, Ermita
Manila

CHIEF, WARRANT AND SUBPOENA SECTION
Makati City Police Station
Makati Avenue Extension corner Yakal Street
Makati City

CHIEF, WARRANT AND SUBPOENA SECTION
Sant Rosa City Police Station
Brgy. Tagapo, Sta. Rosa City
Laguna

MS. JUDITH V. LAROCO
Chief Judicial Staff Officer - Cash Division
Court of Tax Appeals
G/F, CTA Building 1, National Government Center
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

GREETINGS:

You are hereby notified by these presents that on **May 30, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **June 3, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES
Plaintiff,

- versus -

TECHTRENDS CORPORATION
Unit 1B Ground Floor, L & F Bldg.
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150 Monvrovia St., Laguna Bel-air 1
Brgy. Don Bosco, Sta. Rosa, Laguna;
ar U-206 Cityland Condominium 10
Tower 156 HV Dela Costa St., Bel-air
Makati City,
Accused.

CTA Crim. Case Nos. O-1071 & O-1072
(NPS Docket No. XVI-INV-23B-00088)

For: Violation of Section 255 in relation to Sections 253(d) and 256, of the NIRC of 12997, as amended

Present:

DEL ROSARIO, *P.J. & Chairperson*
BACORRO-VILLENA, and
CUI-DAVID, *JJ.*

Promulgated:

MAY 30 2024, 2:15PM

x- -x

RESOLUTION

For resolution are the following:

1. The **Motion to Admit (Supplemental Demurrer to Evidence)** posted by the counsel for accused Raymond Patrick Albert[1] on May 2, 2024, and received by this Court on May 8, 2024;

2. Plaintiff's **Motion to Admit Comment (To Demurrer to Evidence)** posted on April 11, 2024 and received by this Court on April 22, 2024; and,

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[1] Accused Raymond Patrick Albert was arraigned on November 22, 2023. He was charged with violation of Section 255 (Willful Failure to Pay Tax) in relation to Sections 253(d) and 256 of the National Internal Revenue Code of 1997, as amended, together with co-*accused Techtrends Corporation and co-accused Darius Delas Alas who is still at-large.*

3. The **Demurrer to Evidence (Demurrer)** filed by accused Albert on March 11, 2024 pursuant to Section 23, Rule 119 of the Revised Rules of Criminal Procedure, without plaintiff's comment.[2]

Motion to Admit (Supplemental Demurrer to Evidence)

On February 28, 2024 hearing, counsel for accused Albert moved for leave of court to file a Demurrer to Evidence on the ground of prescription of the crime charged, but the motion was denied by the Court as there was *prima facie* evidence to justify a finding of guilt against the accused. Despite the Court's denial, said counsel then manifested that he would still be filing a Demurrer **without leave of Court**; thus, he was given a **NON-EXTENDIBLE** period of **ten (10) days**, or until **March 11, 2024**, within which to file the Demurrer.

While counsel for accused Albert already filed the Demurrer to Evidence on March 11, 2024, he claims that he did not have enough time to research on decisions rendered by the Court that are applicable to the present case in view of the limited period to file the Demurrer and due to work pressure; thus, he seeks that the Supplemental Demurrer to Evidence attached to his present motion be admitted.

It bears stressing that a demurrer to evidence is an instrument for the **expeditious termination of an action**; thus, abbreviating judicial proceedings.[3] The filing by the counsel of accused Albert of the present Motion to Admit (Supplemental Demurrer to Evidence) including the Supplemental Demurrer to Evidence itself, which is twenty-two (22) days after the deadline to file the Demurrer, is not sanctioned by the Revised Guidelines for Continuous Trial of Criminal Cases.[4]

Considering the foregoing, the Court finds no reason to grant accused Albert's Motion to Admit (Supplemental Demurrer to Evidence) because to do so would condone an inexcusable laxity if not non-compliance with a court order which, in effect, would encourage needless delays and derail the speedy administration of justice.[5]

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[2]Per Resolution dated April 3, 2024, the Court denied plaintiff's Urgent Motion to Extend Period to File Comment/Opposition to Accused's Demurrer to Evidence posted on March 21, 2024.
[3] *Heirs of Pedro Pasag, et al. vs. Sps. Parocha, et al.,* G.R. No. 155483, April 27, 2007.
[4] A.M. No. 15-06-10-SC, April 25, 2017.
[5] Note 3, *supra, citing Constantino v. Court of Appeals,* G.R. No. 116018, November 13, 1996.

Plaintiff's Motion to Admit Comment (To Demurrer to Evidence)

In its Motion to Admit Comment (To Demurrer to Evidence), the prosecution avers that plaintiff's motion for extension of time to comment on demurrer to evidence was denied in the April 3, 2024 Resolution as found in the CTA website; hence, it filed the present Motion to Admit Comment.

The Court is constrained to **DENY** the aforesaid motion considering that it is an indirect attempt to file an overdue pleading.

The motion is a plain circumvention of the Revised Guidelines for Continuous Trial of Criminal Cases,[6] mandating the filing of comment to demurrer to evidence within a **NON-EXTENDIBLE PERIOD** of ten (10) calendar days from receipt of the demurrer to evidence,[7] and the Resolution of the Court promulgated on April 3, 2024, denying plaintiff's Urgent Motion to Extend Period to File Comment/Opposition to Accused's Demurrer to Evidence filed on March 21, 2024.

Here, plaintiff received the Demurrer to Evidence on March 12, 2024; thus, the prosecution has a non-extendible period of ten (10) days, or only until March 22, 2024 to file the required comment.

What cannot be done directly cannot be done indirectly. This rule is basic and, to a reasonable mind, does not need explanation.[8]

Demurrer to Evidence

Accused Techtrends Corporation, Raymond Patrick Albert and Darius Delas Alas are charged before this Court with violation of Section 255, in relation to Sections 253(d) and 256, of the National Internal Revenue Code (NIRC) of 1997, as amended, under two (2) separate Informations, both filed on August 10, 2023, docketed as CTA Crim. Case Nos. O-1071 and O-1072.

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[6]A.M. No. 15-06-10-SC, April 25, 2017.

[7] Item III(13)(d) of the Revised Guidelines for Continuous Trial of Criminal Cases provides:
The demurrer to evidence shall be filed within a **non-extendible period** of ten (10) calendar days from the date leave of court is granted, and the corresponding comment shall be filed within a non-extendible period of ten (10) calendar days counted from the date of receipt of the demurrer to evidence. xxx (Boldfacing supplied)

[8] *Tawang Multi-Purpose Cooperative v. La Trinidad Water District,* G.R. No. 166471, March 22, 2011.

On September 5, 2023, Amended Informations both dated August 30, 2023 were filed, the accusatory portions of which read:

CTA Crim. Case No. O-1071:

"That on or about 07 January 2022, in Makati City, and within the jurisdiction of this Honorable Court, accused **TECHTRENDS CORPORATION**, a domestic corporation duly organized and existing under the Philippine laws and registered with Revenue Region No. 8 – Makati City, with Tax Identification No. 006-712-632-0000, and its president and treasurer, **RAYMOND PATRICK ALBERT** and **DARIUS DELAS ALAS** respectively, did then and there, willfully, and unlawfully, refuse to pay its basic deficiency value added tax for taxable year 2016 in the amount of **Fifteen Milllion Two Hundred Eighty Thousand One Hundred Twenty-Two Pesos and Forty-Seven Centavos (PhP15,280,122.47)**, exclusive of surcharge and interest, despite notice and service of final assessment, without formally protesting against or appealing the tax assessment within the prescribed period, and despite repeated demands made upon them to pay, the latest being in the nature of a Collection Letter issued on 07 January 2022, to the damage and prejudice of the Government of the Republic of the Philippines."

CONTRARY TO LAW.

xxx xxx xxx

CTA Crim. Case No. O-1072:

"That on or about 07 January 2022, in Makati City, and within the jurisdiction of this Honorable Court, accused **TECHTRENDS CORPORATION**, a domestic corporation duly organized and existing under the Philippine laws and registered with Revenue Region No. 8 – Makati City, with Tax Identification No. 006-712-632-0000, and its president and treasurer, **RAYMOND PATRICK ALBERT** and **DARIUS DELAS ALAS** respectively, did then and there, willfully, and unlawfully, refuse to pay their basic deficiency income tax for taxable year 2016 in the amount of **Twelve Million Eight Hundred Ninety-Six Thousand Seven Hundred Forty-Nine Pesos and Fifty-Seven Centavos** (PhP12,896,749.57), exclusive of charges and penalty, despite notice and service of final assessment, without formally protesting against or appealing the tax assessment within the prescribed period, and despite repeated demands made upon them to pay, the latest being in the nature of a Collection Letter issued on 07 January 2022, to the damage and prejudice of the Government of the Republic of the Philippiones."

CONTRARY TO LAW.

xxx xxx xxx

Resolutions were issued on September 15, 2023 finding probable cause against the accused. Thus, on September 19, 2023, Warrants of Arrest were issued against accused Raymond Patrick Albert and Darius Delas Alas.

On September 25, 2023, accused Raymond Patrick Albert voluntarily appeared and submitted to the jurisdiction of the Court. Accused Albert posted the required bail bond in the amount of ₱60,000.00 each for the two (2) criminal cases.[9] Meanwhile, accused Darius Delas Alas remained at large.

The Preliminary Conference was held on November 8, 2023.[10]

On November 17, 2023, the BIR counsels, who were deputized to assist the public prosecutors, and accused Raymond Patrick Albert filed their respective Pre-Trial Briefs[11] with the Court. On even date, the BIR counsels filed a Motion to Consolidate CTA Criminal Cases,[12] which was approved in the Order issued on November 22, 2023.[13]

During his arraignment, accused Raymond Patrick Albert, with the assistance of his counsel, waived the reading of the Amended Informations and pleaded *"Not Guilty"* in the consolidated case.[14]

To prove the allegations in the aforementioned Informations, the prosecution presented during trial the testimonies of the following witnesses: Revenue Officer (RO) Jose R. Magsambol III,[15] RO Rosauro Alex Basco,[16] and RO Assanodin D. Ala.[17]

RO Magsambol III testified that after due and valid investigation, evaluation, and verification of the documents submitted by the accused, it was revealed that tax deficiencies are due from accused Techtrends Corporation; and that the accused corporation did not communicate with the BIR in relation to the assessment, after the

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[9] *Order*, CTA Crim. Case No. O-1071 Docket, pp. 155-156; *Order,* CTA Crim. Case No. O-1072 Docket, pp. 160-161.
[10] *Preliminary Conference Report*, CTA Crim. Case No. O-1071 Docket, pp. 165-166 and 267-268 and CTA Crim. Case No. O-1072 Docket, pp. 170-171.
[11] CTA Crim. Case No. O-1071 Docket, pp. 341-352, 501-505; CTA Crim. Case No. O-1072 Docket, pp. 348-359, 508-512.
[12] CTA Crim. Case No. O-1071 Docket, pp 489 to 491; CTA Crim. Case No. O-1072 Docket, pp. 496-498.
[13] CTA Crim. Case No. O-1071 Docket, pp 587-590.
[14] *Order* dated November 22, 2023, CTA Crim. Case No. O-1071 Docket, pp 587-590.
[15] *Judicial Affidavit of Revenue Officer Jose R. Magsambol III*, marked and identified as Exhibit "P-30", CTA Crim. Case No. O-1071 Docket, pp. 359 to 375.
[16] *Judicial Affidavit of Revenue Officer Rosauro Alex Basco*, marked and identified as Exhibit "P-31", CTA Crim. Case No. O-1071 Docket, pp. 447 to 453.
[17] *Judicial Affidavit of Revenue Officer Assanodin D. Ala*, marked and identified as Exhibit "P-32", CTA Crim. Case No. O-1071 Docket, pp. 465 to 472.

Action on Protest Letter dated September 7, 2019 was issued by the BIR.

As part of his testimony, RO Magsambol III identified the Letter of Authority (eLA 201500086574 and AUDM35/017499/2018) issued on March 2, 2018, and the signature, date, and registry receipts indicated therein. In additon, he also identified the following documents: three copies of the First Notice dated June 19, 2018; Second and Final Notice dated July 6, 2018; Recommendation for Issuance of Subpoena Duces Tecum dated August 14, 2018; Subpoena Duces Tecum dated September 4, 2018 and the details therein; Transmittal Notice; Notice of Informal Conference dated December 12, 2018 and attached registry receipts; Memorandum dated February 1, 2019; Preliminary Assessment Notice (PAN) dated June 24, 2019 and attached registry receipts; Reply to Preliminary Assessment Notice dated June 24, 2019; Final Notice of Assessment (FAN); Details fo Discrepancies; Assessment Notices for Income Tax (IT), Value-added Tax (VT), Withholding Tax on Compensation (WC), and Expanded Withholding Tax (WE); registry receipts attached to the FAN; Reply to Final Assessment Notice and Formal Letter of Demand dated July 29, 2019; Action on the Protest Letter dated September 7, 2019; and, document dates stamped October 11, 2019.

As for RO Basco's testimony, she testified that she came to know of accused Techtrends Corporation since its case docket was assigned to her, through a Memorandum of Assignment, for verification, evaluation and enforcement of the assessment. According to her, she found that no valid protest was filed against the FAN issued against accused Techtrends Corporation, and with the lapse of time, the FAN became due and demandable; thus, the Warrant Distraint and/or Levy, and Warrants of Garnishment were subsequently issued.

RO Basco identified the Warrant of Distraint and/or Levy (WDL) with No. RR8A-WDL-2020-0100005 dated January 15, 2020, and Warrants of Garnishments issued on different dates to ten (10) different banks.

Plaintiff's last witness, RO Ala, testified that upon evaluation of the tax case docket of Techtrends Corporation for taxable year 2016, he learned that the tax assessment against the corporation was due and demandable and that enforcement through the WDL and WOG had already been issued. He further testified that he prepared access letters to various Assessor's Offices, Land Transportation Office, Business Permits and Licensing Offices in order to determine whether accused Techtrends Corporation has any property to satisfy its delinquent tax liabilities for TY 2016. According to RO Ala, he also secured a General Information Sheet (GIS) of the Techtrends Corporation for 2019 but the same was not available. Thus, he requested for the corporation's GIS for the year 2018 in order to determine the responsible corporate officers and to whom demand letters must be served.

As part of his testimony, RO Ala identified the following: General Information Sheet for period 2018; SEC Certification of Corporate Filing/Information and its QR Code; letter dated January 7, 2022 addressed to Raymond Patrick Albert; two letters dated January 7, 2022 addressed to Darius Delas Alas; and, registry receipts.

The documentary Exhibits identified by the aforesaid witnesses are more particularly described as follows:

Exhibit	Description
P-1	Certified True Copy (CTC) of the General Information Sheet of Techtrends Corporation for taxable year 2018
P-2	Certified True Copy of the Letter of Authority dated March 2, 2018 with eLA201500086574 issued to Techtrends Corporation
P-2-1	Name and Signature of Crisandria Roa dated May 28, 2018
P-2-2	Registry Receipt with No. 046488 dated 01 June 2018
P-3	Notice issued to Techtrends Corporation dated June 19, 2018 addressed to Raymond P. Albert
P-3-1	Registry Receipt with No. 051589 dated June 19, 2018
P-4	First Notice issued to Techtrends Corporation dated June 19, 2018 addressed to Norman C. Quiaem
P-4-1	Registry Receipt with No. 051588 dated June 19, 2018
P-5	First Notice issued to Techtrends Corporation dated June 19, 2018 addressed to Eric L. Madrinan
P-5-1	Registry Receipt with No. 051590 dated June 19, 2018
P-6	Second and Final Notice issued to Techtrends Corporation dated July 6, 2018
P-6-1	Registry Receipt with No. 004247 dated July 12, 2018
P-6-2	Name of Ella Tansico and date July 12, 2018
P-6-3	Name and Signature of Lorenzo Quiaem and date July 12, 2018
P-7	Memorandum for the Regional Director dated August 14, 2018 requesting for the issuance of Subpoena Duces Tecum to Raymond P. Albert and

	Norman C. Quiaem, the officers of Techtrends Corporation
P-8	Subpoena Duces Tecum with No. RR8-RDO-047-2018-000131 issued on September 4, 2018
P-8-1	Name and signature of Crisandia Roa and date September 10, 2018
P-9	Legal Transmittal Notice from Techtrends Corporation
P-10	CTC of Notice of Informal Conference dated December 12, 2018
P-11	CTC of Mailing through Registered Mail: Registry Receipt Nos. 050615, 050614, and 050616, all dated December 14, 2018, respectively addressed to Raymond P. Albert, Norman Quiaem, and Eric L. Madrinan
P-12	CTC of Memorandum for the Regional Director dated February 1, 2019
P-13	CTC of PAN with Details of Discrepancies dated June 24, 2019 for TY 2016
P-14	Registry Receipts RE093320061 ZZ, RE093320058 ZZ, and RE093320089 ZZ, all dated July 5, 2019, respectively addressed to Raymond P. Albert, Norman Quiaem, and Eric L. Madrinan
P-15	CTC of Reply to Preliminary Assessment Notice dated June 24, 2019 received by the Regional Director's Office on July 24, 2019
P-16	CTC of FAN with Details of Discrepancies dated July 29, 2019 issued to Techtrends Corporation for TY 2016
P-17	CTC of Assessment Notice - IT ELA86574-16-19-509 dated July 29, 2019 for Income Tax for TY 2016
P-18	CTC of Assessment Notice - VT ELA86574-16-19-509 dated July 29, 2019 for VAT for TY 2016
P-19	CTC of Assessment Notice - WC ELA86574-16-19-509 dated July 29, 2019 for Withholding Tax on Compensation for TY 2016
P-20	CTC of Assessment Notice - WE ELA86574-16-19-509 dated July 29, 2019 for Expanded Withholding Tax for TY 2016
P-21	Registry Receipts: RE 102 616 994 ZZ, RE 102 616 985 ZZ, and RE 102 617 005, all dated July 31, 2019, respectively addressed to Raymond P. Albert, Norman Quiaem, and Eric L. Madrinan
P-22	CTC of Reply to FAN and Formal Letter of Demand dated July 29, 2019 filed with the Director's Office on September 19, 2019
P-23	CTC of the letter for Techtrends Corporation dated October 11, 2019 addressed to the President as Action on the Protest dated September 7, 2019 filed against the FAN/FLD dated July 29, 2019
P-24	CTC of Registry Receipt No. RE128254294 ZZ dated October 11, 2019 addressed to Techtrends Corporation

P-25	WDL No. RR8A WDL 2020-01-0005 issued on January 15, 2020
P-26	Warrant of Garnishment (WOG) addressed to the Development Bank of the Philippines dated March 3, 2020 and served on October 19, 2020
P-26-1	WOG addressed to United Coconut Planters Bank dated January 15, 2020 and served on August 26, 2020
P-26-2	WOG addressed to Union Bank of the Philippines dated March 3, 2020 and served on October 9, 2020
P-26-3	WOG addressed to Bank of Commerce dated March 3, 2020 and served on March 4, 2020
P-26-4	CTC of WOG addressed to Philippine Bank of Communications dated March 3, 2020 and served on July 27, 2020
P-26-5	CTC of WOG addressed to Asia United Bank dated March 3, 2020 and served on March 4, 2020
P-26-6	CTC of WOG addressed to Metropolitan Bank & Trust Company dated January 15, 2020 and served on March 30, 2020
P-26-7	CTC of WOG addressed to BPI-Family Bank dated January 15, 2020 and served on March 5, 2020
P-26-8	CTC of WOG addressed to Philippine National Bank/Allied Banking Corporation dated March 3, 2020 and served on March 6, 2020
P-26-9	CTC of WOG addressed to Security Bank dated January 15, 2020 and served on March 12, 2020
P-27	Reminder Letter dated January 7, 2022 addressed to Raymond P. Albert
P-28	Certification of Corporate Filing/Information from the Securities and Exchange Commission (SEC) dated January 31, 2023
P-28-1	QR Code on the Certification which verifies the document issued by the SEC
P-29	Registry Receipt RE577095839ZZ placed beside the name and address of Darius Delas Alas, Don Bosco, Sta. Rosa, Laguna
P-29-1	Registry Receipt RE577095771ZZ placed beside the name and address of Darius Delas Alas, Bel-Air Makati

After the plaintiff completed the presentation of its evidence on February 28, 2024, it made an oral formal offer of the aforementioned documentary exhibits, particularly Exhibits "P-1" to "P-32", inclusive of sub-markings. The Court admitted all the exhibits orally offered, subject to the Court's final evaluation and/or appreciation of their probative value to the issues involved in the present consolidated cases. Thereafter, counsel for accused Albert moved for leave to file demurrer to evidence, which the Court denied on a finding that *prima facie* evidence exist showing accused Albert's culpability on the basis of the plaintiff's evidence. Despite the Court's denial of the motion, counsel of accused Albert manifested that a Demurrer to Evidence would still be filed.[18]

As aforementioned, the Demurrer was filed by accused Albert on March 11, 2024. The Demurrer was based on the following grounds:

> "I.
> With all due respect, the Constitutional right of the accused to due process has been violated when complainant Bureau of Internal Revenue (BIR) proceeded with the collection of their alleged deficiency taxes for taxable year 2016 without ruling on the protest filed by the accused.
>
> II.
> With all due respect, the action for collection by complainant BIR against accused for their alleged tax deficiencies for taxable year 2016 has already prescribed."

In criminal cases, a demurrer to evidence partakes of the nature of a motion to dismiss the case for failure of the prosecution to prove his guilt beyond reasonable doubt. Under Section 23, Rule 119 of the Revised Rules of Criminal Procedure, as amended, the trial court may dismiss the action on the ground of insufficiency of evidence upon a demurrer to evidence filed by the accused with or without leave of court.[19] A judicial action on a motion to dismiss on demurrer to evidence rests within the sound discretion of the court.[20]

A demurrer to evidence is defined as 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. In passing upon the sufficiency of the evidence raised in a demurrer, the court is merely required to ascertain whether there is competent or sufficient proof to sustain the indictment or to support a verdict of guilt.[21] The determination of the sufficiency or insufficiency of the evidence presented by the prosecution as to establish a *prima facie case* against an accused is left to the exercise of sound judicial discretion.[22] At any rate, an order denying the demurrer is not considered adjudication on the merits but merely an evaluation of the sufficiency of the

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[18] Order dated February 28, 2024, CTA Crim. Case Docket O-1071, pp. 683 to 684.
[19] *People v. Sandiganbayan,* G.R. No. 140633, February 04, 2002.
[20] *Katigbak v. Sandiganbayan,* G.R. No. 140183, July 10, 2003.
[21] *Rivera v. People of the Philippines,* G.R. No. 163996, June 9, 2005.
[22] *Soriquez v. Sandiganbayan,* G.R. No. 153526, October 25, 2005.

prosecution's evidence to determine whether or not a full-blown trial would be necessary to resolve the case.[23]

In the Demurrer, accused Albert claims that there was violation of due process when the BIR denied the Reply (Protest) of accused Techtrends Corporation to the Final Assessment Notice (FAN) and Formal Letter of Demand (FLD) for being filed beyond the 30-day reglementary period and proceeded with its administrative and judicial actions without ruling on the Protest since the filing thereof before the Office of the Commisioner of Internal Revenue (CIR) was perfectly valid and on time, there being no hierarchy of deparments or divisions in the BIR that exercises power, authority and jurisdiction separately and distinctly from each other. Accused Albert further ratiocinates that the actions taken or decisions rendered by Revenue Region No. 8 are not reviewable by the Office of the CIR.

Accused Albert further asserts that the judicial action for collection by the BIR against the accused of the alleged deficiency income tax and value-added tax for taxable year 2016 is time barred. He posits that the Informations were filed on February 2, 2023 or beyond the three (3)-year period to collect internal revenue taxes, reckoned from receipt by accused Techtrends Corporation of the FAN on August 16, 2019. Accused Albert stresses the point that while the BIR was able to initiate an administrative remedy by way of distraint or levy within the three (3)-year prescriptive period, the same did not toll the prescriptive period for initiating the judicial action for collection.

Accused Albert's arguments are bereft of merit.

No violation of accused's right to due process exists.

Records reveal that in a Letter dated October 11, 2019, the BIR, through its Regional Director Maridur V. Rosario, **responded to the Protest** filed by the accused. The accused were informed of the BIR's denial of the Protest and its subsequent action to proceed with the enforcement of collection through summary remedies provided for by law. The BIR's letter cannot be any clearer, *viz*: [24]

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[23] *Te vs. Court of Appeals,* G.R. No. 126746, November 29, 2000.
[24] Exhibit "P-23", CTA Crim. Case No. O-1071 Docket, p. 252.

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Revenue Region No. 8A – Makati City
Office of the Regional Director

EXHIBIT "P-23" (CTC)
NOV 08 2023
ANNEX "W"

OCT 11 2019

The President
TECHTRENDS CORPORATION
Unit 1B Ground Floor, L & F Building 107 Aguirre St.,
Legaspi Village, Makati City
TIN: 006-712-632-000

SUBJECT: **Action on protest letter dated September 7, 2019 filed against the Formal Assessment Notice/Formal Letter of Demand (FAN/FLD) dated July 29, 2019**

Sir/Madam:

This has reference to your protest letter dated September 7, 2019 which we received on September 19 and 23, 2019, relative to our Final Assessment Notice/Formal Letter of Demand (FAN/FLD) dated July 29, 2019 and received by your authorized representative on August 16, 2019 covering deficiency **Income Tax, Valued-Added Tax, Withholding Tax on Compensation and Expanded Withholding Tax** in the amounts of **P17,337,471.44, P21,211,321.79, P760,257.36** and **P461,161.07**, respectively, inclusive of statutory increments for Taxable Year 2016.

In reply, please be informed that pursuant to Revenue Memorandum Circular No. 39-2013, all letters of protest, requests for reinvestigation/reconsideration and similar correspondences shall be filed with the Office of the concerned Regional Director, who signed the Preliminary Assessment Notices (PANs), FANs and FLDs for proper recording and evaluation. Thus, your request for reinvestigation dated September 9, 2019, which was filed at the Office of the Commissioner, is considered void and without force and effect.

Likewise, the same protest letter was received by our Office on September 19, 2019, which was beyond the 30-day reglementary period. Hence, your request is hereby **DENIED**, and the assessment became final, executory and demandable. We shall proceed with the enforcement of collection through summary remedies provided for by law.

Please address all your communications and concerns to the Chief, Collection Division.

Very truly yours,

MARIDUR V. ROSARIO
Regional Director

GMB
MRU 10.7.19
HRR
JRMG

BIR-Revenue Region No. 8-A Makati City
Legal Division
CERTIFIED TRUE COPY

CARL FITRI A. HUSSIN
Asst. Chief, Legal Division

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00000252

Section 228 of the NIRC of 1997, as amended, specifies the taxpayer's remedy once its protest is denied by the BIR, *viz.:*

> "Section 228. *Protesting of Assessment*. – xxx
>
> **If the protest is denied** in whole or in part, or is not acted upon within one hundred eighty days (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.**" (Boldfacing supplied)

xxx xxx xxx

The foregoing provision of the NIRC of 1997, as amended, is implemented by Section 3 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, which provides:

"SEC. 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. — xxx

3.1.3 Formal Letter of Demand and Final Assessment Notice (FLD/FAN). — **The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner <u>or</u> his duly authorized representative**. The FLD/FAN 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 assessment shall be void (see illustration in ANNEX "B" hereof).

3.1.4 Disputed Assessment. — The taxpayer or its authorized representative or tax agent may **protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof**. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows: xxx

If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable.

If the protest is denied, in whole or in part, <u>by the Commissioner's duly authorized representative</u>, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.

If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may

> either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.
>
> If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.
>
> If the protest or administrative appeal is not acted upon by the Commissioner within one hundred eighty (180) days counted from the date of filing of the protest, the taxpayer may either: (i) appeal to the CTA within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision.
>
> It must be emphasized, however, that in case of inaction on protested assessment within the 180-day period, the option of the taxpayer to either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner or his duly authorized representative on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, are mutually exclusive and the resort to one bars the application of the other. *(Boldfacing and underscoring supplied)*

Undisputedly, accused Techtrends Corporation received the FAN issued by Regional Director Maridur V. Rosario of BIR Revenue Region 8A on **August 16, 2019**. From receipt of the FAN, accused Techtrends Corporation's appropriate recourse was to file a timely and valid protest on the FAN before the same BIR Regional Office that issued the FAN, and not before any office of the BIR.

To be sure, RR No. 12-99, as amended by RR No. 18-2013 illuminates that it is the CIR's duly authorized representative, which in this case, Regional Director Rosario, who will decide on the protest to the FAN issued by the said CIR's duly authorized representative, and that the taxpayer's subsequent recourse therefrom is either to appeal before the CTA, or file an administrative appeal before the CIR, within thirty (30) days from receipt of the decision, *viz.:*

> **"If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision."**

Applying the aforequoted provision of RR No. 12-99, as amended by RR No. 18-2013, since accused Techtrends Corporation received the FAN on August 16, 2019, it has thirty (30) days therefrom, or until **September 15, 2019**, to file before the CIR's duly authorized representative, Regional Director Rosario, a protest on the FAN.

Since accused Techtrends Corporation's "Reply to Final Assessment Notice and Formal Letter of Demand dated July 29, 2019"[25] *(Protest)* was filed before BIR Revenue Region 8A only on **September 19, 2019**, the same was clearly filed beyond the prescribed period, as correctly pointed out in the BIR's Letter dated October 11, 2019.[26]

The BIR's right to collect has not prescribed.

Accused stressed that the BIR's **right to collect** the subject deficiency taxes has already prescribed and that the administrative remedy by way of distraint or levy initiated by the BIR within the three (3)-year prescriptive period did not toll the prescriptive period for initiating the judicial action.

On this point, suffice it to say that the merit or demerit of such contentions may affect only the civil aspect of the consolidated criminal cases and, not the criminal aspect.

At any rate, a judicious review of the records discloses that the Warrant of Distraint and/or Levy (WDL) dated January 15, 2020 was

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[25] Exhibit "P-22"; CTA Crim. Case No. O-1071 Docket, pp. 229-242.
[26] Exhibit "P-23"; CTA Crim. Case No. O-1071 Docket, p. 252.

served constructively to accused Techtrends Corporation on February 3, 2020.[27]

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

BIR FORM NO. 0700
REVISED JULY MAY, 1997

ANNEX "Y"

WARRANT OF DISTRAINT AND/OR LEVY

(ACCOMPLISH IN QUADRUPLICATE)

TO: The Chief, Arrears Management Section
&/or his/her duly authorized representative
Revenue Region No. 8A, Makati City

NO. RR8A-WDL-2020-01-0006

EXHIBIT "P-25 (CTC)"
NOV 08 2023

WHEREAS, THERE IS DUE FROM TECHTRENDS CORPORATION (NAME OF TAXPAYER)

WITH TAXPAYER IDENTIFICATION NO. 006-712-632-000 OF UNIT 1B G/F L&F BLDG. 107 AGUIRRE ST LV MAKATI CITY (ADDRESS)

THE SUM OF P 39,770,211.66 AS INTERNAL REVENUE TAXES SHOWN HEREUNDER PLUS ALL INCREMENTS INCIDENT TO DELINQUENCY.

ASSESSMENT DEMAND NO.	DATE ISSUED	KIND OF TAX	YEAR	AMOUNT
IT-ELA88574-16-19-509	07/29/2019	IT	2016	P17,337,471.44
VT-ELA88574-16-19-509	07/29/2019	VT	2016	21,211,321.79
WC-ELA88574-16-19-509	07/29/2019	WC	2016	760,257.36
WE-ELA88574-16-19-509	07/29/2019	WE	2016	461,161.07
TOTAL				P39,770,211.66

WHEREAS, THE SAID TAXPAYER FAILED AND REFUSED AND STILL FAILS AND REFUSES TO PAY THE SAME NOTWITHSTANDING THE DEMANDS MADE BY THIS OFFICE.

NOW, THEREFORE, PURSUANT TO SECTION 205 AND IN ACCORDANCE WITH:

[X | A] SECTIONS 207-211 OF THE NATIONAL INTERNAL REVENUE CODE AS AMENDED, YOU ARE HEREBY COMMANDED TO DISTRAIN THE GOODS, CHATTELS OR EFFECTS, AND OTHER PERSONAL PROPERTY OF WHATEVER CHARACTER OF THE DELINQUENT TAXPAYER.

[X | B] SECTIONS 213-217 OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, YOU ARE HEREBY COMMANDED TO LEVY UPON THE REAL PROPERTY AND INTEREST IN/OR RIGHTS TO REAL PROPERTY OF THE DELINQUENT TAXPAYER;

AND SELL AND/OR FORFEIT IN FAVOR OF THE REPUBLIC OF THE PHILIPPINES SO MUCH OF SUCH PERSONAL/REAL PROPERTY AS MAY BE NECESSARY TO SATISFY IN FULL THE SUM OR SUMS DUE AS SET FORTH ABOVE; AND TO COVER SUCH EXPENSES AS MAY BE INCURRED IN MAKING THIS DISTRAINT/LEVY. YOU WILL SAFELY KEEP ALL PROPERTY SO DISTRAINED/TAKE CHARGE OF THE REAL PROPERTY SO LEVIED UPON AND DO ALL THINGS NEEDFUL AND NECESSARY TO BE DONE IN THE PREMISES AS REQUIRED BY LAW BEFORE THE SALE THEREOF. FOR SO DOING, THIS SHALL BE YOUR WARRANT OF WHICH MAKE DUE SERVICE AND MAKE RETURN OF YOUR PROCEEDINGS TO ME AT THIS OFFICE.

WITNESS MY HAND AT THE CITY OR MUNICIPALITY OF MAKATI CITY PHILIPPINES, THIS ____ DAY OF JAN 15 2020

CAESAR R. DULAY
COMMISSIONER OF INTERNAL REVENUE

ADDITIONAL INCREMENTS FOR LATE PAYMENT COMPUTED AS FOLLOWS:

BY: GREG M. BUHAIN
AUTHORIZED INTERNAL REVENUE OFFICER (SIGNATURE OVER PRINTED NAME)
Asst. Regional Director
POSITION/TITLE

SERVICE OF THE WARRANT

HEREBY CERTIFY THAT ON THE 3rd DAY OF Feb 2020 A COPY OF THE WARRANT OF DISTRAINT AND/OR LEVY WAS

[| A] SERVED TO THE TAXPAYER OR HIS REPRESENTATIVE AS ACKNOWLEDGED HEREUNDER

TAXPAYER OR HIS REPRESENTATIVE (SIGNATURE OVER PRINTED NAME)

[✓ | B] SERVED CONSTRUCTIVELY BECAUSE THE TAXPAYER OR HIS REPRESENTATIVE REFUSED TO ACKNOWLEDGE THE SERVICE OF THE WARRANT, OR WAS NOT IN THE PREMISES

WITNESSED BY:
RENATO P. GUTIERREZ
(SIGNATURE OVER PRINTED NAME)
T.I.N.

ANGELICA DULAYA
SIGNATURE OVER PRINTED NAME
T.I.N. 195-578-378

ROSAURO ALEX B. BASCO
REVENUE OFFICER (SIGNATURE OVER PRINTED NAME)
Revenue Region 8A Makati- Collection Division, AMS
REV. REGION/DIVISION/REG. DIST. OFFICE
8856-6608 / 8850-3015
Tel. No.

BIR-Revenue Region No. 8-A Makati City
Legal Division
CERTIFIED TRUE COPY

TTARL FITRI A. HUSSIN
Asst. Chief, Legal Division

00000254

The service of the WDL on **February 3, 2020** is within the 3-year prescriptive period reckoned from the issuance of the FAN on **August 16, 2019**. Such service of the WDL is an instance which suspends the running of the statute of limitations to begin a proceeding in court for the collection of deficiency taxes, pursuant to Section 223 of the NIRC of 1997, as amended, which provides:

[27] Exhibit "P-25", CTA Crim. Case No. O-1071 Docket p. 254.

> "**Section 223.** *Suspension of Running of Statute of Limitations.* – The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy **or a proceeding in court for collection**, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter; when the taxpayer requests for a reinvestigation which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: Provided, that, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; **when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located**; and when the taxpayer is out of the Philippines." *(Boldfacing supplied)*

Ostensibly, one instance which suspends the running of the statute of limitations to begin a proceeding in court for collection is when the WDL is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located.

Here, it appears that the conditions under the law to suspend the statute of limitations to begin a proceeding in court for collection have been complied with.

First, it was shown that the WDL was served within the three (3) prescriptive period. *Second,* the circumstances of this case lead to the conclusion that no property of accused Techtrends Corporation were located, despite the service of the WDL.

Relevantly, Section 281 of the NIRC of 1997, as amended, provides:

> "SEC. 281. *Prescription for Violations of any Provision of this Code.* – **All violations** of any provision of this Code shall **prescribe after five (5) years**.
>
> Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.
>
> The prescription shall be interrupted when proceedings are instituted against the guilty persons and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

> The term of prescription shall not run when the offender is absent from the Philippines." (Boldfacing supplied)

In the case of *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines* ("*Lim*"),[28] the Supreme Court ruled that the crime of failure to pay tax is committed only after receipt of the final notice and demand for payment, coupled with the willful refusal to pay the taxes due within the allotted period, *viz*.:

> "Inasmuch as the final notice and demand for payment of the deficiency taxes was served on petitioners on July 3, 1968, it was only then that the cause of action on the part of the BIR accrued. **This is so because prior to the receipt of the letter-assessment, no violation has yet been committed by the taxpayers. The offense was committed only after receipt was coupled with the willful refusal to pay the taxes due within the allotted period**. **The two criminal informations, having been filed on June 23, 1970, are well within the five-year prescriptive period and are not time-barred**." (*Boldfacing supplied*)

As aforementioned, the FAN became final and executory on **September 16, 2019,** after the lapse of the deadline to file a valid protest to the FAN on September 15, 2019. The prosecution has five (5) years from **September 16, 2019, or until September 16, 2024,** within which to institute a judicial proceeding (criminal action) against all the accused.

As the present Informations in these consolidated criminal cases were filed on **August 10, 2023**, the same are well within the five (5)-year prescriptive period under Section 281 of the NIRC of 1997, as amended.

<u>Clearly, basing solely on the grounds relied upon by counsel of accused Albert, the present Demurrer must be denied.</u>

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

The CTA is a court of record under Section 8 of Republic Act No. 1125.[29] As cases filed before it are litigated *de novo*, party litigants should prove every minute aspect of their cases.[30]

As this is a consolidated criminal cases, Section 2, Rule 133 of the Revised Rules of Court provides the degree of proof necessary to convict an accused for the offense charged, *viz*:

> "Rule 133
>
> Sec. 2. *Proof beyond reasonable doubt*. - In a criminal case, the accused is entitled to an acquittal unless **his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty.** Moral certainty only is required or that degree of proof which produces conviction in an unprejudiced mind." (Boldfacing supplied)

It is well-settled that the burden of proof is on the prosecution, and unless it discharges this burden, the accused need not even offer evidence in his/her behalf and he/she would be entitled to an acquittal.[31]

As a court of record, the CTA can look into matters of records *albeit* not raised by the parties in their pleadings. The declaration in *Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue*,[32] is instructive:

> For tax cases before the CTA, the Court pronounced in *Commissioner of Internal Revenue v. Eastern Telecommunications Phils., Inc.* that "[t]he appellate **court may, in the interest of justice, properly take into consideration in deciding the case <u>matters of record</u> having some bearing on the issue submitted which the parties failed to raise** or the lower court ignored, although they have not been specifically raised as issues by

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[29] Section 8 of Republic Act No. 1125 (An Act Creating the Court of Tax Appeals) provides:
SEC. 8. Court of record; seal; proceedings. — The Court of Tax Appeals shall be a **court of record** and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.
[30] *Commissioner of Internal Revenue v. Manila Mining Corporation,* G.R. No. 153204, August 31, 2005.
[31] *Villarosa v. People of the Philippines,* G.R. Nos. 233155-63, June 23, 2020.
[32] G.R. No. 249153, September 12, 2022.

the pleadings. This is in consonance with the liberal spirit that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them." *(Boldfacing and underscoring supplied)*

Furthermore, Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals (RRCTA), empowers the CTA to rule upon related issues necessary to achieve an orderly disposition of a case, *viz.:*

"SECTION 1. Rendetion of judgment. - xxx

In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case."

Commissioner of Internal Revenue v. Lancaster Philippines, Inc.[33] affirms the CTA's authority to resolve an issue which was not raised by the parties pursuant to the aforesaid provision of RRCTA, *viz:*

"On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.

Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but **may also rule upon related issues necessary to achieve an orderly disposition of the case.** The text of the provision reads:

SECTION 1. *Rendition of judgment.* - x x x

In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA **even though the parties had not raised the same in their pleadings or memoranda.** The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter."

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[33] G.R. No. 183408, July 12, 2017.

A more careful scrutiny of the records reveals that there is a ground that the counsel for accused Albert has failed to raise in the Demurrer that would warrant the dismissal of the consolidated cases.

As earlier mentioned, accused *Techtrends Corporation, Albert and Delas Alas,* are charged with violation of Section 255 (Willful Failure to Pay Tax) in relation to Section 253(d) and 256 of the NIRC of 1997, as amended. The indictments in both criminal cases are anchored on the accusatory phrase that accused **"willfully, and unlawfully, refuse to pay ... basic deficiency value added tax (in Criminal Case O-1071)/income tax (in Criminal Case O-1072) ... despite notice and service of final assessment, without formally protesting against or appealing the tax assessment within the prescribed period ..."**

To sustain a conviction for willful failure to pay tax under the respective Informations, as aforestated, the following elements must be established:

1. A valid final assessment was issued against the accused finding them liable to pay tax;

2. The final assessment was duly served upon the accused;

3. The final assessment became final and executory as no protest or appeal was made therefrom; and,

4. The accused failed or refused to pay tax.

After a judicious review of the case, the Court finds the evidence offered by the prosecution to be **insufficient to sustain a conviction for failure to pay tax** under Section 255 of the NIRC of 1997, as amended.

The liability of the accused to pay tax is predicated on the validity of the assessment finding accused liable therefor. **Parenthetically, it is the assessment issued against the accused that imposed upon them the obligation to pay. Without a valid assessment, the alleged refusal to pay the tax specified in the assessment notice does not have legal moorings.**

To be sure, in order for the an assessment to be valid, Section 228 of the NIRC of 1997, as amended, requires that the taxpayer be informed in writing of the facts and the law upon which the assessment is based, *viz.:*

> "SEC. 228. *Protesting of Assessment.* – xxx
>
> xxx xxx xxx
>
> **The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> xxx xxx xxx" (Boldfacing supplied)

Section 3.1.3 of Revenue Regulation (RR) 12-99,[34] as amended by RR No. 18-2013,[35] implementing Section 228 of the NIRC of 1997, as amended, further provides:

> "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx
>
> 3.1.3 Formal Letter of Demand and Final Assessment Notice (FLD/FAN). - The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. **The FLD/FAN 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 assessment shall be void** (see illustration in ANNEX 'B' hereof). xxx." (Boldfacing supplied)

Informing the taxpayer of the facts, the law, rules and regulations, or jurisprudence on which an assessment is based is **an integral part of due process in the issuance of tax assessments**.

In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.,*[36] *and Avon Products Manufacturing, Inc. v. The*

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[34] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayers Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

[35] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

[36] G.R. No. 201398-99, October 3, 2018.

Commissioner of Internal Revenue,[37] the Supreme Court emphasized the right of the taxpayer to be informed in writing of the law and the facts on which an assessment is made, **the BIR's duty to consider the explanations or defenses raised by the taxpayer in connection with the assessment and to communicate to the taxpayer the reason for the rejection of such explanations or defenses, lest the assessment be deemed void**, *viz*:

> "**Tax assessments issued in violation of the due process rights of a taxpayer are null and void**. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.
>
> xxx xxx xxx
>
> **The importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void.** Section 3.1.2 of Revenue Regulations No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, Section 3.1.4 requires that the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void. Finally, Section 3.1.6 specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the Final Decision on Disputed Assessment.
>
> xxx xxx xxx
>
> On the other hand, **the taxpayer is explicitly given the opportunity to explain or present his or her side throughout the process, from tax investigation through tax assessment**. xxx
>
> xxx xxx xxx
>
> The facts demonstrate that Avon was deprived of due process. It was not fully apprised of the legal and factual bases of the assessments issued against it. **The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with the Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon.** Thus, **Avon was left unaware on how the**

[37] G.R. No. 201418-19, October 3, 2018.

Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments. There was clear inaction of the Commissioner at every stage of the proceedings.

xxx xxx xxx

Upon receipt of the Preliminary Assessment Notice, Avon submitted its protest letter and supporting documents, and even met with revenue examiners to explain. **Nonetheless, the Bureau of Internal Revenue issued the Final Letter of Demand and Final Assessment Notices, <u>merely reiterating the assessments in the Preliminary Assessment Notice</u>.** There was no comment whatsoever on the matters raised by Avon, or discussion of the Bureau of Internal Revenue's findings in a manner that Avon may know the various issues involved and the reasons for the assessments.

xxx xxx xxx

It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. However, **when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.**

Indeed, the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process. **The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason**.

xxx xxx xxx

The Commissioner's total **disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices**, and Collection Letter **<u>null and void, and of no force and effect</u>**." (Boldfacing and underscoring supplied)

The Preliminary Assessment Notice (PAN) dated June 24, 2019[38] was received by accused Techtrends Corporation on July 8, 2019. Accused Techtrends Corporation then filed a Reply[39] thereto on July 17, 2019 which was received by the BIR on July 24, 2019. In said Reply, accused Techtrends Corporation protested the PAN, and raised the following grounds: (i) invalidity of the Letter of Authority (LOA); (ii) improper service of the LOA; (iii) lack of jurisdiction; and, (iv) erroneous assessment. Thereafter, a Formal Assessment Notice (FAN)[40] dated July 29, 2019 was issued by the BIR.

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[38] Exhibit "P-13", CTA Crim. Case No. O-1071 Docket, pp. 200-204.
[39] Exhibit "P-15", CTA Crim. Case No. O-1071 Docket, pp. 206-218.
[40] Exhibit "P-16", CTA Crim. Case No. O-1071 Docket, pp. 219-223.

An examination of the FAN shows that it is a verbatim reproduction of PAN, save for the adjusted interests, as shown below:

PAN dated June 24, 2019		FAN dated July 29, 2019	
I. Income Tax		**I. Income Tax**	
Basic Tax Due	**₱12,896,749.57**	**Basic Tax Due**	**₱12,896,749.57**
Add:		Add:	
20% Interest (04.16.2017 to 12.31.2017)	1,830,278.43	20% Interest (04.16.2017 to 12.31.2017)	1,837,345.14
12% Interest (01.01.2018 to 07.19.2019)	2,391,375.37	12% Interest (01.01.2018 to 09.06.2019)	2,603,376.73
TOTAL AMOUNT DUE	17,118,403.37	TOTAL AMOUNT DUE	17,337,471.44
II. Value Added Tax		**II. Value Added Tax**	
Basic VAT Due	**15,280,122.47**	**Basic VAT Due**	**15,280,122.47**
Add:		Add:	
20% Interest (01.26.2017 to 12.31.2017)	2,838,335.08	20% Interest (01.26.2017 to 12.31.2017)	2,846,707.75
12% Interest (01.01.2018 to 07.19.2019)	2,833,311.48	12% Interest (01.01.2018 to 09.06.2019)	3,084,491.57
TOTAL AMOUNT DUE	20,951,769.03	TOTAL AMOUNT DUE	21,211,321,79
III. Withholding Tax on Compensation		**III. Withholding Tax on Compensation**	
Basic Tax Due	**545,517.69**	**Basic Tax Due**	**545,517.69**
Add:		Add:	
20% Interest (01.16.2017 to 12.31.2017)	104,320.92	20% Interest (01.16.2017 to 12.31.2017)	104,619.83
12% Interest (01.01.2018 to 07.19.2019)	101,152.43	12% Interest (01.01.2018 to 09.06.2019)	110,119.84
TOTAL AMOUNT DUE	750,991.04	TOTAL AMOUNT DUE	760,257.36
IV. Expanded Withholding Tax		**IV. Expanded Withholding Tax**	
Basic Tax Due	**330,903.10**	**Basic Tax Due**	**330,903.10**
Add:		Add:	
20% Interest (01.16.2017 to 12.31.2017)	63,279.55	20% Interest (01.16.2017 to 12.31.2017)	63,460.87
12% Interest (01.01.2018 to 07.19.2019)	61,357.59	12% Interest (01.01.2018 to 09.06.2019)	66,797.10
TOTAL AMOUNT DUE	455,540.24	TOTAL AMOUNT DUE	461,161.07

The details of discrepancy appearing in the PAN are no different from the details of discrepancy as written in the FAN. Both provide the same amounts and items of assessment that were considered in computing the basic deficiency taxes, and the same justifications for their inclusion in the assessment.[41]

In other words, the basic deficiency taxes provided in the FAN were practically lifted from the PAN. **The FAN did not consider the arguments raised by accused Techtrends Corporation** in its Reply, nor was said Reply even mentioned in the FAN. Needless to say, accused Techtrends Corporation was left unaware on how the BIR appreciated its protest -- a deplorable transgression of accused Techtrends Corporation's right to due process.

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[41] CTA Crim. Case No. O-1071 Docket, pp. 202-204 and 221-223.

The law and pertinent regulations are clear on the requirements of procedural due process anent the issuance of assessment for deficiency taxes. While full and complete compliance with these requirements is mandatory to ensure the validity of the assessment, **a void assessment bears no valid fruit**.[42]

In view of the invalidity of the assessment upon which the obligation to pay arose, as elucidated in *Avon, supra,* **accused Techtrends Corporation and its responsible officers may not be held liable for the alleged deficiency taxes for the subject taxable year.** As oft-repeated, the first (1st) element of the crime of Willful Failure to Pay Tax under Section 255 of the NIRC of 1997, as amended, is not present.

In fine, the prosecution's evidence failed to prove the guilt of the accused beyond reasonable doubt. With this pronouncement, the Court will no longer belabor on the other requisites of the offense charged.

WHEREFORE, accused's **Motion to Admit (Supplemental Demurrer to Evidence)** and plaintiff's **Motion to Admit Comment (To Demurrer to Evidence)** are both **DENIED** for lack of merit, while the **Demurrer to Evidence** filed on March 11, 2024 is **GRANTED**, not on the ground raised by the accused but on the finding that the facts upon which the criminal liability might arise did not exist. The corresponding civil actions which are deemed jointly instituted in these consolidated proceedings, pursuant to Section 11, Rule 9 of the Revised Rules of the Court of Tax Appeals, are **DISMISSED**.

Consequently, accused Techtrends Corporation, and accused Raymond Patrick Albert are hereby **ACQUITTED** in CTA Crim. Case Nos. O-1071 and O-1072 for failure of the prosecution to prove their guilt beyond reasonable doubt, while the Informations against accused Darius Delas Alas in CTA Crim. Case Nos. O-1071 and O-1072 are **DISMISSED**.

Perforce, the bail bond posted by accused Raymond Patrick Albert in the amount of ₱60,000.00 each for the two (2) criminal cases are **CANCELLED** and **RELEASED**, subject to accounting rules and regulations. The Alias Warrant of Arrest, dated March 25, 2024, issued against accused Delas Alas is **CANCELLED** and **SET ASIDE**.

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[42] *Commissioner of Internal Revenue vs. Unioil Corporation*, G.R. No. 204405, August 4, 2021.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ON LEAVE
LANEE S. CUI-DAVID
Associate Justice