REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

PEOPLE OF THE PHILIPPINES, Petitioner,	**CTA EB CRIM. NO. 084** (CTA Crim. Case No. O-639)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
ROBIEGIE CORPORATION and **GRACE G. SUCKSUPHAN,** Respondents.	Promulgated: JUN 30 2022 4:30pm

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DECISION

BACORRO-VILLENA, J.:

In a Decision dated 17 June 2020[1] (**assailed Decision**), the Court's First Division made the following declarations in CTA Crim. Case No. O-639, entitled *People of the Philippines v. Robiegie Corporation and Grace G. Sucksuphan,* to wit:

(1) as respondent Robiegie Corporation[2] (**respondent corporation/Robiegie**) was not arraigned, the Court did not acquire jurisdiction over it;

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[1] *Rollo*, pp. 34-87.

[2] In the case caption of the prior Petition for Review, Information and Amended Information filed before the Court's First Division, respondent was referred to as **Robigie Corporation**. In the case

(2) since respondent corporation may not be held criminally liable *sans* arraignment, no civil liability arising from the criminal violation may be adjudged against it;

(3) it has no jurisdiction over the offense charged as the Amended Information[3] failed to allege facts sufficient to qualify the case as one falling within the exclusive jurisdiction of the Court of Tax Appeals (**CTA**);

(4) even assuming that it has jurisdiction over the case, respondent corporation and Grace G. Sucksuphan (**respondent/Sucksuphan**) are acquitted for failure of petitioner People of the Philippines (**petitioner**) to prove their guilt beyond reasonable doubt there being no proof of respondent corporation's receipt of the Letter of Authority (**LOA**) and assessment notices in violation of its right to due process; and,

(5) since the assessment notices are void, no civil liability for deficiency internal revenue taxes may be adjudged against respondent corporation and, more so, upon Sucksuphan as the facts upon which liability arising from law may arise do not exist.

For the above reasons, the First Division dismissed for lack of jurisdiction the criminal case that petitioner filed against respondents for violation of Section 255[4], in relation to Section 256[5], of the National Internal Revenue Code (**NIRC**) of 1997, as amended, for their alleged refusal and failure to pay the deficiency internal revenue tax liabilities for the taxable year (**TY**) 2011 in the aggregate amount of ₱3,850,524.77 *per* Assessment Notice (**AN**) Nos. 31-11-IT-7070[6] and 31-11-WE-7072.[7]

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caption of the present Petition for Review and the parties' respective documentary evidence, including the 13 June 2017 Resolution of the Office of the City Prosecutor of Manila (OCP-Manila), however, respondent's name was spelled as **Robiegie Corporation**. As explained in the assailed Decision, since the parties have admitted respondent's identity, the caption and the Amended Information are deemed amended to refer to respondent as **Robigie** Corporation.

[3] Id., pp. 168-169.

[4] **SEC. 255.** *Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.*

[5] **SEC. 256.** *Penal Liability of Corporations.*

[6] Exhibit "P-1", Division Docket, Volume I, p. 518.

[7] Exhibit "P-3", id., p. 520.

In its bid for the Court *En Banc* to: (1) reverse the dismissal of the case for lack of jurisdiction; (2) uphold the validity of the assessments; and, (3) order respondent corporation to pay the deficiency taxes therein assessed, petitioner filed the present Petition for Review[8] before the Court *En Banc* pursuant to Section 2(f)[9], Rule 4, in relation to Section 9(b)[10], Rule 9 of the Revised Rules of the Court of Tax Appeals[11] (**RRCTA**). Petitioner seeks thus the nullification of the assailed Decision[12] and the subsequent Resolution dated 21 September 2020[13] (**assailed Resolution**), denying petitioner's "Motion for Reconsideration on the Civil Aspect of the Decision"[14] (**MR**), both rendered by the Court's First Division, respectively, in said CTA Crim. Case No. O-639. The dispositive portions thereof read:

<u>Assailed Decision dated 17 June 2020</u>

...

WHEREFORE, premises considered, the present case is **DISMISSED** for lack of jurisdiction.

Moreover, even assuming that the Court has jurisdiction over the case, accused **ROBIEGIE CORPORATION and GRACE G. SUCKSUPHAN** are hereby **ACQUITTED** of the offense charged in CTA Crim. Case No. O-639 for failure of the prosecution to prove their guilt beyond reasonable doubt, without any civil liability.

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8 Filed *via* registered mail on 29 October 2020, *Rollo*, pp. 5-22.

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

...

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

...

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

...

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

...

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

12 Supra at note 1.

13 *Rollo*, pp. 92-94.

14 Division Docket, Volume II, pp. 829-840.

> The cash bail bond of accused **GRACE G. SUCKSUPHAN** is hereby **CANCELLED** and ordered **RELEASED** to her upon presentation of proper documents, in accordance with usual accounting rules and regulations.
>
> **SO ORDERED.**
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> ...

Assailed Resolution dated 21 September 2020

> ...
>
> **WHEREFORE**, in light of the foregoing premises, plaintiff's **Motion for Reconsideration on the Civil Aspect of the Decision** is **DENIED** for lack of merit.
>
> **SO ORDERED.**
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> ...

PARTIES OF THE CASE

Petitioner is represented by complainant Bureau of Internal Revenue (**BIR**), the government agency primarily responsible for the assessment and collection of all national and internal revenue taxes, with office address at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Respondent Sucksuphan is the Treasurer of respondent Robiegie, a domestic corporation duly organized and existing under and by virtue of Philippine laws.[15]

FACTS OF THE CASE

Respondent corporation or Robiegie filed its Annual Income Tax Return[16] (**AITR**) for the taxable year (**TY**) 2011 on 16 April 2012 with the BIR, Revenue Region (**RR**) No. 6 - Manila, Revenue District Office (**RDO**) No. 31 - Sta. Cruz.

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15 Item No. 1, II. A. Facts, Pre-Trial Order, Division Docket, Volume I, p. 329.

16 Item No. 5, id., p. 330; Exhibit "P-7", id., Volume II, pp. 670-674.

Thereafter, the BIR issued to Robiegie LOA No. LOA-031-2013-00000066 dated 25 February 2013[17], signed by Regional Director Simplicio A. Madulara (**RD Madulara**) of RR No. 6 - Manila, authorizing Revenue Officer (**RO**) Vicente Santiago (**Santiago**) and Group Supervisor (**GS**) Ronan Martirez (**Martirez**) of RDO No. 31 - Sta. Cruz, to examine its books of accounts and other accounting records for all internal revenue taxes for the period from 01 January 2011 to 31 December 2011. The said LOA was received by a certain Vangie Del Rosario (**Del Rosario**) of El Niño Pharmacy on 14 March 2013.

On 23 April 2013, Revenue District Officer Teodoro A. Huelva (**RDO Huelva**) of RDO No. 31 - Sta. Cruz issued a First Notice[18] for the presentation of Robiegie's records for TY 2011. Such notice was followed by a Second and Final Notice[19] issued on 16 May 2013.

Pursuant to RO Santiago's recommendation, which GS Martirez[20] noted, RD Madulara issued a *subpoena duces tecum*[21] to Dolores M. Galicia (**Galicia**), Robiegie's President, requiring her to appear before him on 10 June 2013, and to bring Robiegie's 2011 accounting records.

On 23 December 2014, the BIR issued and sent *via* registered mail[22] a Preliminary Assessment Notice[23] (**PAN**), assessing Robiegie for alleged deficiency Income Tax (**IT**), Value-Added Tax (**VAT**) and Expanded Withholding Tax (**EWT**) for TY 2011.

On 12 January 2015, Regional Director Araceli L. Francisco (**RD Francisco**) issued a Formal Letter of Demand[24] (**FLD**) with ANs, assessing Robiegie for deficiency taxes for TY 2011 in the aggregate amount of ₱10,505,557.53, broken down as follows:

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17 Exhibit "P-11", id., Volume I, p. 541.
18 Exhibit "P-13", id., p. 543.
19 Exhibit "P-14", id., p. 544.
20 *See* Memorandum dated 28 May 2013, Exhibit "P-15", id., p. 545.
21 Exhibit "P-16", id., p. 546.
22 *See* Transmittal Letter to Post Office Re: Mailing of the Preliminary Assessment Notice (PAN) dated 23 December 2014, Exhibit "P-20", id., p. 557.
23 Exhibit "P-19", id., pp. 554-556.
24 Exhibit "P-4", id., pp. 521-523.

Tax Type	AN No.	Amount	Due Date	Exhibit No.
IT	31-11-IT-7070	₱5,954,979.71	13 February 2015	"P-1"[25]
VAT	31-11-VT-7071	4,544,073.12	13 February 2015	"P-2"[26]
EWT	31-11-WE-7072	6,504.70	13 February 2015	"P-3"[27]
Total		**₱10,505,557.53**		

RD Francisco then issued a Letter dated 16 February 2015[28], informing Robiegie that it still has outstanding IT, VAT and EWT liabilities in the total amount of ₱10,505,557.53 for TY 2011 *per* ANs above, all due on or before 13 February 2015, and giving it the last opportunity to settle said tax liabilities within ten (10) days from receipt thereof.

On separate dates, RD Francisco issued and sent *via* registered mail[29] to Robiegie a Preliminary Collection Letter (**PCL**) dated 25 August 2015[30] and a Final Notice Before Seizure (**FNBS**) dated 09 September 2015.[31]

On 19 January 2016, RD Francisco issued a Warrant of Distraint and/or Levy[32] (**WDL**) against Robiegie. The same was likewise received by Del Rosario, who signed therein as a staff of Salud Trading (previously of El Niño Pharmacy).

On 17 April 2017, RO Lorna A. Lazaro (**Lazaro**) and RO Jefferson T. Ocampo (**Ocampo**) executed a Joint Complaint-Affidavit[33], initiating a criminal complaint against Robiegie and its President and Treasurer, Galicia and Sucksuphan, respectively, for willful failure to pay taxes required to be paid, in violation of Section 255[34], in relation

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25 Supra at note 6.
26 Exhibit "P-2", Division Docket, Volume I, p. 519.
27 Supra at note 7.
28 Exhibit "P-27", Division Docket, Volume I, p. 565.
29 Exhibits "P-23" to "P-26", id., pp. 560-564.
30 Exhibit "P-21", id., p. 558.
31 Exhibit "P-22", id., p. 559.
32 Exhibit "P-28", id., p. 566.
33 Id., pp. 15-74, with annexes.
34 Supra at note 4.

to Section 256[35], of the National Internal Revenue Code (**NIRC**) of 1997, as amended.

In a Letter dated 17 April 2017[36], RD Arnel SD. Guballa (**Guballa**) referred the said Joint Complaint-Affidavit of ROs Lazaro and Ocampo to the Office of the City Prosecutor of Manila (**OCP-Manila**) for preliminary investigation and for the filing of the appropriate Information in court.

On 13 June 2017, the OCP-Manila issued a Resolution[37] recommending that: (1) Robiegie and its President and Treasurer, Galicia and Sucksuphan, respectively, be indicted for violation of Sections 255[38] and 256[39] of the NIRC of 1997, as amended, for their alleged refusal and failure to pay the amounts of ₱3,850,524.77, representing the sum of the deficiency IT and EWT, *and* ₱2,861,197.50, representing the deficiency VAT; and, (2) the corresponding Information be filed with the CTA.

PROCEEDINGS BEFORE THE COURT IN DIVISION

On 13 July 2017, petitioner filed an Information dated 13 June 2017[40] against Robiegie and its President and Treasurer, Galicia and Sucksuphan, respectively, for violation of Section 255[41], in relation to Section 256[42], of the NIRC of 1997, as amended, the accusatory portion thereof reads:

> ...
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> That on or about **January 12, 2015**, and for sometime prior and subsequent thereto, in the City of Manila, Philippines, the said accused, **ROBIEGIE CORPORATION** and its Corporate President and Treasurer, **DOLORES M. GALICIA and GRACE G. SUCKSHUPHAN** [sic], **respectively**, with business address located at No. 1618 Alvarez St., 339 Zone 34, Sta. Cruz, in this City, having filed its Annual Income Tax Return (AITR) for Taxable Year 2011 with attached Financial Statements (FS) dated April 16, 2012, it has been

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35 Supra at note 5.
36 Division Docket, Volume I, pp. 13-14.
37 Id., pp. 8-10.
38 Supra at note 4.
39 Supra at note 5.
40 Division Docket, Volume I, pp. 6-7.
41 Supra at note 4.
42 Supra at note 5.

> found that there is due and collectible tax from said corporation, to wit: Deficiency Income Tax and Expanded Withholding Tax in the amount of **Php3,850,524.77** and without formally protesting against or appealing the same, did then and there willfully and unlawfully failed to return, supply correct and accurate information in the tax return and refused to and neglected to pay the correct amount of tax despite notice and demand made upon them to do so, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount of **Php3,850,524.77**, Philippine Currency.
>
> CONTRARY TO LAW.
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> ...

In the Resolution dated 02 August 2017[43], the Third Division[44] found probable cause and ordered the issuance of warrants of arrest against Galicia and Sucksuphan. Later, the warrants of arrest against Galicia and Sucksuphan were issued.[45]

On 29 August 2017, Sucksuphan appeared and submitted her person to the jurisdiction of the Court as she posted the required bond for her provisional liberty.[46] The arraignment of Sucksuphan was set on 27 September 2017.[47]

Petitioner filed its Pre-Trial Brief[48] on 26 September 2017, while respondents filed their Pre-Trial Brief[49] on 06 October 2017.

On 27 September 2017, Galicia's counsel manifested that Galicia passed away.[50] The Third Division then reset Sucksuphan's arraignment and the Pre-Trial Conference to 11 October 2017.[51]

Pursuant to the Third Division's directive[52], petitioner filed on 21 November 2017 an Amended Information[53] where the name of Galicia as accused no longer appeared. The accusatory portion thereof reads:

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43 Division Docket, Volume I, pp. 77-78.
44 Composed of Associate Justice Lovell R. Bautista (Ret.), Associate Justice Esperanza R. Fabon-Victorino (Ret.) and Associate Justice Ma. Belen M. Ringpis-Liban.
45 Division Docket, Volume I, pp. 79-82.
46 *See* Resolution dated 31 August 2017, id., p. 89.
47 Id.
48 Id., pp. 107-111.
49 Id., pp. 133-137.
50 *See* Order dated 27 September 2017, id., pp. 115-116.
51 Id.

> ...
>
> That on or about **January 12, 2015 and for sometime prior and subsequent thereto, in the City of Manila, Philippines**, the said accused, ROBIEGIE CORPORATION and its Corporate Treasurer GRACE SUCKSUPHAN with business address located at No. 1618 Alvarez St., 339 Zone 34, Sta. Cruz, in this City, **did then and there willfully and unlawfully fail, refuse and neglect, as they fall [sic], refuse and neglect to pay their deficiency internal revenue tax liabilities for the taxable year 2011 in the amount of Php3,850,524.77 under Assessment Notices with numbers 31-11-IT-7070 and 31-11-WE-7072, despite notice and service of said assessments, without formally protesting against or appealing the same, and repeated demands made upon them to do so**, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount of Php3,850,524.77, Philippine Currency.
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> Contrary to law.[54]
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> ...

When arraigned under the Amended Information[55] on 22 November 2017, Sucksuphan, duly assisted by her counsel, Atty. Donald S. Uy (**Atty. Uy**), entered a "not guilty" plea.[56]

On 12 March 2018, respondents filed an Amended Pre-Trial Brief.[57]

During the trial before the Third Division, petitioner presented its witnesses, ROs Santiago, Ma. Paz Arcilla (**Arcilla**) and Edna A. Ortalla (**Ortalla**), on 25 April 2018, 23 May 2018, and 15 August 2018, respectively.

Subsequently, in view of the reorganization of the three (3) divisions of the Court, in line with CTA Administrative Circular No.

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52 *See* Order dated 11 October 2017, id., pp. 143-144.
53 Dated 16 November 2017; Supra at note 3.
54 Emphasis and underscoring supplied.
55 Supra at note 3.
56 *See* Minutes of the Hearing, Certificate of Arraignment and Order, all dated 22 November 2017, Division Docket, Volume I, pp. 174, 175, and 177-178, respectively.
57 Id., pp. 315-319.

02-2018 dated 18 September 2018, the case was transferred to the First Division.[58]

Before the First Division, the presentation of petitioner's witnesses, ROs Ocampo and Esmeraldo F. Jose (**Jose**), continued on 06 March 2019 and 27 March 2019, respectively. In the Order dated 27 March 2019[59], the First Division granted petitioner a period of five (5) days, or until 01 April 2019, within which to file its Formal Offer of Evidence (**FOE**). In the same Order, the First Division granted respondents leave of court to file a Demurrer to Evidence, within a non-extendible period of ten (10) days from receipt of the resolution on the FOE.

On 01 April 2019, after completing the presentation of its testimonial evidence, petitioner filed its FOE[60], consisting of Exhibits "P-1" to "P-34-a", inclusive of sub-markings. On 03 April 2019, respondents filed their Comment[61] thereto.

On 15 May 2019, respondents filed their Demurrer to Evidence[62], with petitioner's Comment/Opposition[63] thereto filed through registered mail on 27 May 2019.

In the Resolution dated 24 May 2019[64], the First Division admitted all of petitioner's exhibits. The Court further noted that Exhibits "P-34" and "P-34-a" offered as the Judicial Affidavit of RO Jose and his signature, respectively, were actually marked as Exhibits "P-33" and "P-33-a".

Then, in the Resolution dated 15 October 2019[65], the First Division denied respondents' Demurrer to Evidence for lack of merit, holding that it is incumbent upon respondents to prove their defense and be heard in a full-blown trial to be free of any criminal liability.

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58 Pursuant to the Resolution dated 01 October 2018. *See* Order dated 01 October 2018, id., pp. 439-440.
59 Id., pp. 504-505.
60 Id., pp. 510-517.
61 Id., Volume II, pp. 567-568.
62 Id., pp. 571-573.
63 Id., pp. 577-581.
64 Id., pp. 575-576.
65 Id., pp. 584-592.

alleged in the Information. In the same Resolution, the First Division likewise set the presentation of evidence for respondents on 04 December 2019.

Subsequently, respondents presented their testimonial and documentary evidence.

On 06 December 2019, respondents filed their FOE[66], consisting of Exhibits "A-1" to "A-33-1". Petitioner filed *via* registered mail its Comment/Opposition[67] thereto on 20 December 2019.

In the Resolution dated 03 February 2020[68], the First Division admitted respondents' exhibits, except Exhibits "A-30" and "A-31"[69], for failure to present the originals for comparison, and gave the parties a period of thirty (30) days within which to file their respective memoranda.

Respondents filed their Memorandum[70] on 14 February 2020, while petitioner filed its Memorandum[71] on 06 March 2020. Accordingly, on 12 March 2020, the First Division considered the case submitted for decision.[72]

On 17 June 2020, the First Division rendered the assailed Decision, dismissing the case for lack of jurisdiction.[73]

Aggrieved, petitioner filed an MR[74] on the civil aspect of the assailed Decision. In the similarly assailed Resolution, the First Division likewise denied the same for lack of merit.[75]

66 Id., pp. 666-669.
67 Id., pp. 731-732.
68 Id., pp. 737-738.
69

Exhibit No.	Description
"A-30"	The Certificate of Retirement of Business of Robiegie Corporation from the City Treasurer's Office of Manila dated 02/04/2016.
"A-31"	The Application of Permanent Closure of Business BIR Form 1905.

70 "Memorandum for the Accused", id., pp. 739-743.
71 "Plaintiff's Memorandum", id., pp. 744-751.
72 *See* Resolution dated 12 March 2020, id., p. 753.
73 Supra at note 1.
74 Supra at note 14.

PROCEEDINGS BEFORE THE COURT *EN BANC*

Unsatisfied with the First Division's rulings and after being granted an extension of time[76], petitioner filed the present Petition for Review before the Court *En Banc*, docketed as CTA EB Crim. No. 084.[77]

Robiegie filed its "Comment/Opposition to the Petition for Review filed by the Petitioner on the Civil Aspects (Dated October 28, 2020)"[78] on 16 November 2020.

On 19 May 2021, the Court *En Banc* submitted the case for decision.[79]

ISSUES

In herein petition, petitioner assigns the following errors in assailing the First Division's assailed Decision and Resolution:

I.

THE HONORABLE COURT OF TAX APPEALS (CTA) FIRST DIVISION ERRED IN RULING THAT IT LACKS JURISDICTION OVER THE CRIMINAL OFFENSE SINCE THE AMENDED INFORMATION CLEARLY INDICATED THE DEFICIENCY INTERNAL REVENUE TAX DUE FROM RESPONDENT ROBIEGIE CORPORATION AS AMOUNTING TO ₱3,850,524.77;

II.

THE HONORABLE COURT OF TAX APPEALS (CTA) FIRST DIVISION ERRED IN RULING THAT RESPONDENT ROBIEGIE CORPORATION MAY NOT BE HELD CRIMINALLY LIABLE *SANS* ARRAIGNMENT; AND,

III.

THE HONORABLE COURT OF TAX APPEALS (CTA) FIRST DIVISION ERRED IN RULING THAT THE ASSESSMENT AGAINST RESPONDENT ROBIEGIE CORPORATION IS INVALID FOR FAILURE OF PETITIONER PEOPLE OF THE PHILIPPINES TO

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75 Supra at note 13.
76 *See* Minute Resolution dated 16 October 2020, *Rollo*, p. 4.
77 Supra at note 8.
78 *Rollo*, pp. 24-27.
79 *See* Resolution dated 19 May 2021, id., pp. 96-97.

PROVE SERVICE OF THE LETTER OF AUTHORITY (LOA) AND ASSESSMENT NOTICES.

In support of the assigned errors above, petitioner forwards the following arguments:

1. The First Division of this Court has already acquired jurisdiction over the subject criminal case when: (**a**) warrants of arrest were issued against deceased Galicia and respondent Sucksuphan[80]; (**b**) Sucksuphan was arraigned[81]; and, (**c**) trial ensued wherein both petitioner and respondents presented their respective pieces of evidence. Furthermore, during the presentation of evidence for the prosecution, petitioner was able to present AN Nos. 31-11-IT-7070[82] and 31-11-WE-7072[83], both of which indicated the basic tax due in the aggregate amount of ₱3,850,524.77, which is within the jurisdictional amount conferred upon the CTA.[84]

2. Robiegie, being a juridical person, need not be arraigned in order for the Court to acquire jurisdiction over its person. Even assuming that it is necessary to arraign the corporation itself, such was accomplished when Sucksuphan, in her capacity as Treasurer of Robiegie, submitted her person to the jurisdiction of the Court and was arraigned on 22 November 2017.

3. Robiegie is liable for deficiency IT and EWT in the aggregate amount of ₱3,850,524.77 for TY 2011. However, despite service of the LOA, PAN, FLD with ANs, PCL, and FNBS, Robiegie failed and refused to pay the said tax liabilities.

4. The fact of mailing was supported by the corresponding registry receipts and testimony of its witnesses. If indeed the *onus probandi* had shifted to the prosecution, petitioner maintains that it has sufficiently proven with overwhelming evidence that Robiegie received the LOA, PAN, FLD with

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80 Supra at note 45.
81 Supra at note 56.
82 Supra at note 6.
83 Supra at note 7.
84 Arguments/Discussion, Petition for Review, supra at note 8, p. 8.

ANs, PCL, and FNBS in the due course of mail. Respondents' bare denial of receipt thereof without competent proof does not contradict the disputable presumption laid down in Section 3(v)[85], Rule 131 of the Rules of Court.

5. The subject assessment for deficiency taxes against Robiegie had become final, executory and demandable because it failed to file an administrative protest with the Commissioner of Internal Revenue (**CIR**).

On the other hand, Robiegie, in its Comment/Opposition, asks the Court to deny the instant petition, as to the civil aspect of the assailed Decision, and echoes the First Division's findings:

1. The obligation to pay the tax is an obligation created by law and does not arise from the criminal offense of violation of the NIRC of 1997, as amended. Thus, the obligation to pay the tax is not deemed instituted in the criminal action.

2. Considering that the First Division did not acquire jurisdiction over the person of Robiegie, as it was not arraigned, no civil action pursuant to Section 253[86] of the NIRC of 1997, as amended, may prosper against it.

3. Even assuming that the Court has jurisdiction over the case, Robiegie was acquitted of the offense charged for failure of the prosecution to prove its guilt beyond reasonable doubt, without any civil liability.

RULING OF THE COURT *EN BANC*

Before going into the merits of the case, We shall first resolve whether the Court *En Banc* has jurisdiction over the present petition.

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[85] Sec. 3. *Disputable presumptions*. — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

...

(v) That a letter duly directed and mailed was received in the regular course of the mail[.]

...

[86] **SEC. 253**. *General Provisions*.

THE COURT *EN BANC* HAS JURISDICTION OVER THE PRESENT PETITION.

The First Division issued the assailed Resolution[87] denying petitioner's MR on the civil aspect[88] on 21 September 2020. Petitioner received the said assailed Resolution on 29 September 2020.[89]

Under Section 2(f)[90], Rule 4 in relation to Section 9(b)[91], Rule 9 of the RRCTA, petitioner had fifteen (15) days from 29 September 2020, or until 14 October 2020, within which to file its appeal before this Court.

On 13 October 2020, petitioner filed a "Motion for Extension of Time to File a Petition for Review"[92], requesting for an additional period of 15 days from 14 October 2020, or until 29 October 2020, within which to file its Petition for Review. The Court *En Banc* granted the same in its Minute Resolution dated 16 October 2020.[93]

Accordingly, on 29 October 2020, petitioner timely filed the present Petition for Review.[94] Hence, the Court *En Banc* validly acquired jurisdiction.

We now proceed to the merits of the case.

At the outset, it bears to note that as to acquisition of jurisdiction in criminal cases, there are three (3) important requisites that should be satisfied, namely: (1) the court must have jurisdiction over the subject matter; (2) the court must have jurisdiction over the territory where the offense was committed; and, (3) the court must have jurisdiction over the person of the accused.[95]

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87 Supra at note 13.
88 Supra at note 14.
89 *See* Notice of Resolution dated 28 September 2020, *Rollo*, p. 847.
90 Supra at note 9.
91 Supra at note 10.
92 *Rollo*, pp. 1-3.
93 Id., p. 4.
94 Supra at note 8.
95 *See Gomez v. People of the Philippines*, G.R. No. 216824, 10 November 2020, citing *People of the Philippines v. Spouses Vanzuela*, G.R. No. 178266, 21 July 2008; *see* also Remedial Law, Oscar M. Herrera. Volume IV, 2007 Edition, p. 4, Rex Bookstore, Manila, Philippines; Criminal

In this case, the relevant aspects of jurisdiction being disputed are: (1) over the subject matter or the offense charged; and, (2) over the person of the accused. At this point, the Court *En Banc* will now determine whether these aspects of jurisdiction have been satisfied.

THE FIRST DIVISION HAS JURISDICTION OVER THE OFFENSE CHARGED AGAINST RESPONDENT CORPORATION ROBIEGIE AND SUCKSUPHAN.

In the assailed Decision, the First Division held that it has no jurisdiction over the subject matter of the case as the Amended Information[96] failed to allege facts sufficient to qualify the case as one falling within the exclusive jurisdiction of the CTA. *In particular,* the First Division found that the Amended Information did not indicate that the amount of unpaid deficiency taxes is exclusive of charges and penalties as allegedly required under Section 7(b)(1) of Republic Act (**RA**) No. 1125[97], as amended by RA 9282.[98] As such, it ruled that the Amended Information lacked the appropriate allegation anent the jurisdictional amount, *i.e.*, the principal amount of tax, that could have vested proper jurisdiction upon the Court in Division (over the case charged against respondent corporation and Sucksuphan).

To petitioner, however, the Amended Information[99] avers sufficiently the facts to make respondents liable for violation of Section 255[100], in relation to Section 256[101], of the NIRC of 1997, as amended, as the amount of deficiency internal revenue tax liabilities for TY 2011 indicated therein, *i.e.*, ₱3,850,524.77, pertains to the aggregate basic tax due that is clearly within the jurisdictional amount of the CTA.

Procedure: A Comprehensive Approach for the Bench and the Bar, Ferdinand A. Tan, 2013 Edition, p. 34. Rex Bookstore., Manila, Philippines.

96 Supra at note 3.

97 AN ACT CREATING THE COURT OF TAX APPEALS.

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

99 Supra at note 3.

100 Supra at note 4.

101 Supra at note 5.

We agree with petitioner.

Jurisdiction over the subject-matter is the power to hear and determine cases of the general class to which the proceedings in question belong and is conferred by the sovereign authority which organizes the court and defines the court and its powers.[102] Thus, jurisdiction over an offense is vested by law upon a particular court and may not be conferred thereto by the parties involved in the offense. More importantly, jurisdiction over an offense cannot be conferred to a court by the accused through an express waiver or otherwise.[103]

Moreover, a court's jurisdiction is determined by the allegations in the Complaint or Information[104] and not by the result of proof. These allegations pertain to the ultimate facts constituting the elements of the crime charged. Such recital of the ultimate facts apprises the accused of the nature and cause of the accusation against him or her.[105]

The CTA, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction. Its jurisdiction over criminal cases is set forth in Section 7(b)(1) of RA 1125[106], as amended by RA 9282[107], *viz*:

> ...
> **SEC.** 7. *Jurisdiction.* — The CTA shall exercise:
> ...
>
> (b) Jurisdiction over cases involving criminal offenses as herein provided:
>
> (1) **Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code** or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs: *Provided,*

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[102] *Bernabe, et al. v. Vergara*, G.R. No. L-48652, 16 September 1942.
[103] *Gomez v. People of the Philippines*, supra at note 94.
[104] *See Lacson v. The Executive Secretary, et al.*, G.R. No. 128096, 20 January 1999, 301 SCRA 298; *Lim v. Hon. Judge Rodrigo, et al.*, G.R. No. L-76974, 18 November 1988, 167 SCRA 487.
[105] Id.
[106] Supra at note 97.
[107] Supra at note 98.

> *however*, **<u>That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate</u>**. Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized.[108]
>
> ...

Stated differently, the CTA exercises exclusive original jurisdiction over all criminal offenses arising from violations of the NIRC of 1997, as amended, *unless the amount claimed is less than ₱1 million pesos, exclusive of charges and penalties, or where there is no specified amount claimed*, in which case, jurisdiction shall be vested in the regular courts.

Corollary thereto, Section 3(b)(1), Rule 4 of the RRCTA, clarifies that the Court in Division exercises exclusive original jurisdiction over criminal cases arising from violations of the NIRC of 1997, as amended, and other laws administered by the BIR where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is ₱1 million pesos or more, *viz*:

> ...
>
> **SEC. 3.** *Cases within the jurisdiction of the Court in Division.* — The Court in Division shall exercise:
>
> ...
>
> (b) Exclusive jurisdiction over cases involving criminal offenses, to wit:
>
> (1) **Original jurisdiction** over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs, **<u>where the principal amount of</u>**

---

108 Italics in the original text; Emphasis and underscoring supplied.

> **<u>taxes and fees, exclusive of charges and penalties, claimed is one million pesos or more</u>**[.][109]
>
> ...

Bearing in mind therefore that the jurisdiction of a court over a criminal case is determined by the allegations in the Complaint or Information[110], it is necessary that the Information filed with this Court clearly state that the **principal amount of taxes and fees claimed, is *at least* ₱1 million pesos, and that the same is *<u>exclusive of charges and penalties</u>***.

In this case, respondents are charged in the Amended Information[111] for alleged violation of Section 255[112], in relation to Section 256[113], of the NIRC of 1997, as amended. Pertinently, the accusatory portion thereof states, in part, that respondents refused and neglected "**to pay their deficiency internal revenue tax liabilities for the taxable year 2011 in the amount of Php3,850,524.77 under [ANs] with numbers 31-11-IT-7070 and 31-11-WE-7072.**"

A plain reading of the afore-quoted accusatory portion of the Amended Information[114] discloses that it does not specifically state that charges and penalties are included in the amount claimed of ₱3,850,524.77, which patently exceeds the minimum jurisdictional amount of ₱1 million pesos.

While it is true that there is no phrase referring to the amount of deficiency taxes as the "principal amount of taxes and fees, exclusive of penalties and charges", the absence thereof nevertheless does *not* make the amount claimed so ambiguous as to render the Amended Information defective because there is another phrase of similar import.

Notably, even without the phrase "exclusive of charges and penalties", it can still be deduced clearly that the amount of

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[109] Italics in the original text; Emphasis and underscoring supplied.
[110] *Treñas v. People of the Philippines*, G.R No. 195002, 25 January 2012, citing *Isip v. People of the Philippines*, G.R. No. 170298, 26 June 2007.
[111] Supra at note 3.
[112] Supra at note 4.
[113] Supra at note 5.
[114] Supra at note 3.

unpaid deficiency internal revenue tax liabilities indicated therein pertains to *no other but the basic or principal amount of tax due.* It should be noted that the Amended Information[115] makes direct and express reference to AN Nos. 31-11-IT-7070[116] and 31-11-WE-7072.[117] The sum of the basic tax due stated in the said ANs (*i.e.*, ₱3,846,459.33 and ₱4,065.44, respectively) is ₱3,850,524.77, which is the amount stated in the Amended Information.

Furthermore, a careful perusal of the Joint Complaint-Affidavit[118] of ROs Lazaro and Ocampo, with attached copies of the aforementioned ANs, and the Prosecutor's Resolution[119] shows that the basic deficiency IT due is ₱3,846,459.33 and the basic deficiency EWT due is ₱4,065.44. Given that these documents are filed in Court together with and <u>form integral parts of the Information</u>[120], to the Court's mind, the amount of deficiency taxes being claimed of, as stated in the Amended Information[121], unmistakably refers to the principal amount.

Additionally, with a particular reference to the ANs on the face of the Amended Information[122] filed against herein respondents, no defect or ambiguity may be claimed. While it is also true that a substantial defect in the Information cannot be cured by evidence, for that would jeopardize the right of an accused to be informed of the true nature of the offense charged[123], that is not respondents' case. Aside from not interposing any objection grounded on a supposed defective or ambiguous Information[124], they have also presented their evidence. By doing so, it is thus difficult to deem that they were uninformed of the charge against them (because of ambiguity or defect) especially when they ably responded to it during the trial.

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115 Supra at note 3.
116 Supra at note 6.
117 Supra at note 7.
118 Supra at note 33.
119 Supra at note 37.
120 *See People of the Philippines v. Solar y Dumbrique*, G.R. No. 225595, 06 August 2019, citing *Lim, Sr., et al. v. Hon. Felix, et al.*, G.R. Nos. 94054-57, 19 February 1991.
121 Supra at note 3.
122 Supra at note 3.
123 *Ilo, et al. v, Court of Appeals, et al.*, 108 Phil. 938 (1960).
124 In *The People of the Philippines v. Belga*, 100 Phil. 996 (1957), the Supreme Court held that an acquittal or conviction under a fatally defective information for want of certain essential allegation is not necessarily void when no objection appears to have been raised at the trial and the fatal defect could have been supplied by competent proof.

With the above disquisition, We can thus reasonably conclude that, based on the facts alleged in the Amended Information, it is the CTA, and not the regular courts, which has jurisdiction over the subject matter or the offense charged in this case.

THE FIRST DIVISION ACQUIRED JURISDICTION OVER THE PERSON OF RESPONDENT CORPORATION ROBIEGIE AND SUCKSUPHAN.

The First Division also held that since Robiegie itself was never the subject of an arraignment, wherein it was allowed to enter a plea after being informed of the nature and cause of the accusation against it, Robiegie cannot be held criminally liable for the offense charged in the Amended Information.[125]

Petitioner counter-argues that the arraignment of an accused corporation is not sanctioned by law, jurisprudence or any rule, unlike in the case of an accused natural person. Assuming *arguendo* that a corporation must be arraigned in order for the court to acquire jurisdiction over it and to impose the penalty of a fine thereon, petitioner insists that the arraignment was done through Robiegie's representative. According to petitioner, Robiegie was deemed arraigned when Sucksuphan submitted her person to the jurisdiction of the First Division and was arraigned on 22 November 2017.

We resolve.

Foremost, arraignment is the formal mode and manner of implementing the constitutional right of an accused to be informed of the nature and cause of accusation against him or her.[126] On the other hand, jurisdiction over the person of the accused is acquired upon his or her: (1) arrest or apprehension, with or without a warrant; or (2) voluntary appearance or submission to the jurisdiction of the court.[127] It allows the court to render a decision that is binding on the

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125 Supra at note 3.
126 1987 Constitution, Article III, Section 14(2).
127 *Inocentes v. People of the Philippines, et al.*, G.R. Nos. 205963-64, 07 July 2016.

accused.[128] In cases where neither mode is present and the accused appears for the first time in court for arraignment, the appearance therein vests the court with jurisdiction over the said accused.

In herein case, there is no dispute that jurisdiction over the person of respondent Sucksuphan was already acquired when she submitted herself to the court's jurisdiction at the time she posted bail. While the same could not be said of respondent corporation (as it is unimaginable that a corporation, if not through its officers, can post bail), jurisdiction over it has been nevertheless acquired. **When the latter did not raise any objection thereto and participated in the proceedings before the First Division, the Court *En Banc* finds that the First Division successfully acquired jurisdiction over the person of respondent corporation.**

Firstly, the records reveal that Robiegie did not invoke its right to challenge or object to the Court in Division's jurisdiction over its person. *Secondly*, Robiegie and Sucksuphan initially referred to themselves as the "accused" and represented "by counsel" in their Pre-Trial Brief.[129] *Thirdly*, respondents submitted a duly notarized Special Power of Attorney (**SPA**) dated 06 March 2018[130], authorizing Atty. Roland D. Baltazar (**Atty. Baltazar**) to appear and represent Robiegie, and this was signed by Sucksuphan for Robiegie. Thereafter, respondents filed their pleadings (*i.e.*, Demurrer to Evidence[131], FOE[132], Memorandum[133]) through Atty. Baltazar.

Moreover, the fact that Sucksuphan was the Treasurer and representative of Robiegie was admitted and stipulated upon by the parties in the enumeration of facts in the Pre-Trial Order dated 13 April 2018[134], to wit:

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128 Cf. *People's General Insurance Corporation v. Guansing, et al.*, G.R. No. 204759, 14 November 2018.
129 Supra at note 49.
130 Division Docket, Volume I, pp. 324-325.
131 Supra at note 62.
132 Supra at note 66.
133 Supra at note 70.
134 Division Docket, Volume I, pp. 329-338; Emphasis supplied.

...

1. **[Robiegie] Corporation is a domestic corporation duly organized and existing under and by virtue of Philippine laws represented by the treasurer/accused Grace G. Sucksuphan.**

2. The identity of the accused as the same person as charged in the Amended Information.

3. The jurisdiction of the Honorable Court over the case.

4. Dolores M. Galicia and **Grace G. Sucksuphan** as the President and **Treasurer**, respectively, **of Robiegie Corporation.**

5. [Robiegie] Corporation filed its Annual Income Tax Return (ITR) for taxable year 2011 on April 16, 2012 at Revenue District Office No. 31 - Sta. Cruz, BIR Manila.

...

Verily, Robiegie's participation through its representative, Sucksuphan, and counsel, Atty. Baltazar, in the proceedings before the First Division covered matters which called for the Court's exercise of its jurisdiction. As such, Robiegie may be deemed to have submitted itself to the jurisdiction of the First Division.

It is noted that, as to jurisdiction over the person of Robiegie itself, the First Division implied the lack thereof on the ground that it was not arraigned as a corporation separately from respondent Sucksuphan. The First Division stressed that *sans* arraignment, Robiegie cannot be convicted of the offense charged and Sucksuphan cannot likewise be held liable as her culpability is dependent upon the liability and conviction of the accused corporation itself as the taxpayer.

At this juncture, We will now determine *if* arraignment of the corporate taxpayer itself is indispensable under the pertinent rules of procedure for purposes of acquiring jurisdiction.

We answer in the negative.

To reiterate, arraignment is defined as "the formal mode and manner of implementing the constitutional right of an accused to be informed of the nature and cause of the accusation against him." Its *purpose* is to notify the accused of "the reason for his indictment, the specific charges he is bound to face, and the corresponding penalty that could be possibly meted against him."[135]

Indeed, as emphasized in the assailed Decision, Section 1(a), Rule 116 of the Revised Rules on Criminal Procedure is categorical and unmistakable that an accused must be arraigned, without any distinction as to whether the accused is a natural or juridical person, to wit:

> ...
> **SEC.** 1. *Arraignment and plea; how made.* —
>
> (a) The accused **<u>must</u>** be arraigned before the court where the complaint or information was filed or assigned for trial. The arraignment shall be **made in open court** by the judge or clerk by furnishing the accused with a copy of the complaint or information, reading the same in the language or dialect known to him, and **asking him whether he pleads guilty or not guilty**. ...[136]
>
> ...

Relevant thereto, Section 7, Rule 117 of the Revised Rules on Criminal Procedure also requires, *inter alia*, that the accused be arraigned and enter a valid plea to the charge for double jeopardy to attach, to wit:

> ...
> **SEC.** 7. *Former conviction or acquittal; double jeopardy.* — When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and **after the accused had pleaded to the charge**, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is

[135] *People of the Philippines v. Palema y Vargas, et al.*, G.R. No. 228000, 10 July 2019, citing *Kummer v. People of the Philippines*, G.R. No. 174461, 11 September 2013.
[136] Emphasis and underscoring supplied.

> necessarily included in the offense charged in the former complaint or information.
>
> ...

However, **while arraignment is clearly an indispensable requirement in any criminal prosecution, the pertinent provisions of the Revised Rules on Criminal Procedure and the RRCTA merely provide the manner by which an accused natural person should be arraigned, that is, no corresponding procedure has been specifically laid down for arraigning an accused juridical person.[137] Likewise, nothing in jurisprudence, laws, rules and regulations specifically require that the corporation itself must be arraigned.[138]**

There is no such distinct procedure for arraignment of an accused <u>juridical</u> person perhaps in light of the settled rule that a corporation, being a juridical entity, may act <u>only</u> through its directors, officers, agents or employees.[139] Thus, any action by the directors, officers, agents or employees of the corporation is the act of the corporation itself if such act was within the scope of his or her authority or employment.

In the context of a criminal violation committed by a corporation, the Supreme Court explained in *Alfredo Ching v. The Secretary of Justice, et al.*[140] (**Ching**) that the law may specifically hold the corporate officers responsible for such offense. The rationale for this rule is that the corporate officers are vested with the authority and responsibility to devise means necessary to ensure compliance with the law and, if they fail to do so, are held criminally accountable, to wit:

> ...
>
> Though the entrustee is a corporation, nevertheless, the law specifically makes the officers, employees or other officers or persons

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137 *See* Associate Justice Catherine T. Manahan's Concurring and Dissenting Opinion in CTA Crim. Case No. O-639, 17 June 2020, entitled *People of the Philippines v. Robigie Corporation and Grace G. Sucksuphan.*

138 Id.

139 *See Zaragoza v. Tan, et al.*, G.R. No. 225544, 04 December 2017, 847 SCRA 450; *Lozada v. Mendoza*, G.R. No. 196134, 12 October 2016, 805 SCRA 680; *Polymer Rubber Corporation, et al. v. Salamuding*, G.R. No. 185160, 24 July 2013, 702 SCRA 153; *Peñaflor v. Outdoor Clothing Manufacturing Corporation, et al.*, G.R. No. 177114, 13 April 2010, 618 SCRA 208.

140 G.R. No. 164317, 06 February 2006; Citations omitted and emphasis supplied.

responsible for the offense, without prejudice to the civil liabilities of such corporation and/or board of directors, officers, or other officials or employees responsible for the offense. **The rationale is that such officers or employees are vested with the authority and responsibility to devise means necessary to ensure compliance with the law and, if they fail to do so, are held criminally accountable; thus, they have a responsible share in the violations of the law.**

If the crime is committed by a corporation or other juridical entity, the directors, officers, employees or other officers thereof responsible for the offense shall be charged and penalized for the crime, precisely because of the nature of the crime and the penalty therefor. A corporation cannot be arrested and imprisoned; hence, cannot be penalized for a crime punishable by imprisonment. However, a corporation may be charged and prosecuted for a crime if the imposable penalty is fine. Even if the statute prescribes both fine and imprisonment as penalty, a corporation may be prosecuted and, if found guilty, may be fined.

A crime is the doing of that which the penal code forbids to be done, or omitting to do what it commands. A necessary part of the definition of every crime is the designation of the author of the crime upon whom the penalty is to be inflicted. When a criminal statute designates an act of a corporation or a crime and prescribes punishment therefor, it creates a criminal offense which, otherwise, would not exist and such can be committed only by the corporation. But when a penal statute does not expressly apply to corporations, it does not create an offense for which a corporation may be punished. On the other hand, **if the State, by statute, defines a crime that may be committed by a corporation but prescribes the penalty therefor to be suffered by the officers, directors, or employees of such corporation or other persons responsible for the offense, only such individuals will suffer such penalty. Corporate officers or employees, through whose act, default or omission the corporation commits a crime, are themselves individually guilty of the crime.**

The principle applies whether or not the crime requires the consciousness of wrongdoing. **It applies to those corporate agents** who themselves commit the crime and to those, **who, by virtue of their managerial positions or other similar relation to the corporation, could be deemed responsible for its commission, if by virtue of their relationship to the corporation, they had the power to prevent the act**. Moreover, all parties active in promoting a crime, whether agents or not, are principals. Whether such officers or employees are benefited by their delictual acts is not

> a touchstone of their criminal liability. Benefit is not an operative fact.
>
> ...

As can be gleaned from the foregoing, **when a crime punishable by both fine and imprisonment is committed by a corporation or juridical entity (such as a violation of Section 255[141] of the NIRC of 1997, as amended), it is the responsible officers who will be charged and penalized for the crime precisely because of the nature of the crime and the penalty therefor. Having the power to prevent the commission of the crime by virtue of their relationship to the corporation, corporate officers are deemed responsible for its commission.**

Here, Robiegie and its Treasurer, Sucksuphan, were jointly charged with violation of Section 255 of the NIRC of 1997, as amended, which states in part:

> ...
>
> **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 law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (₱10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.[142]
>
> ...

For juridical entities, however, the penal liability for violations under Section 255 above is imposed on the responsible officer of the corporation, to wit:

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141 Supra at note 4.
142 Emphasis and underscoring supplied.

> ...
>
> **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.[143]
>
> ...

Relatedly, Section 256 of the NIRC of 1997, as amended, penalizes the corporation of a fine for any violation thereunder after a finding of guilt or conviction, *viz*:

> ...
>
> **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 (₱50,000.00) but not more than One hundred thousand pesos (₱100,000.00).[144]
>
> ...

In interpreting the word "conviction" in Section 256 above, the Court *En Banc* finds that it pertains to the conviction of the responsible corporate officers, treasurer or employees whose acts were found to be willful and criminal during the trial. **Accordingly, it is <u>not the prior conviction of the corporate taxpayer that triggers the imposition of the penalty under Section 256 but rather the conviction of the officer or employee whose act or omission may be imputed to the corporate taxpayer</u>.**

Consistent with such interpretation, the Court *En Banc*, in *Suarez v. People of the Philippines*[145] (Suarez), has <u>sustained the conviction of a responsible corporate officer</u> and the imposition

[143] Emphasis supplied.
[144] Emphasis supplied.
[145] CTA EB Crim. No. 066 (CTA Crim. Case No. A-4), 19 November 2019 (by unanimous vote of all the Justices present in the consideration of this case, with Presiding Justice Roman G. Del Rosario concurring only in the result); Citations omitted and emphasis supplied.

of a fine under Section 256 of the NIRC of 1997, as amended, <u>*sans*</u> <u>arraignment of the corporate taxpayer</u>, *viz*:

> ...
>
> **A corporation, being an artificial person created by fiction of law, can only act through its directors, officers, agents, or employees. Where the business of the corporation involves a violation of the law, the rule is that all those who participated in the illegal act are liable and must necessarily suffer its consequences. ...**
>
> ...
>
> Contrary to petitioner's assertion, the prosecution need not prove her involvement with the Corporation because she herself judicially admitted the same. **It also bears stressing that her position as the Corporation's EVP is covered by Sections 253 (d) and 256 of the 1997 NIRC given that these provisions penalize not only the partner, president, general manager, branch manager and treasurer but also the officers-in-charge and employees responsible for the violation.**

On the question of whether the non-payment of taxes by the Corporation was committed knowingly, intentionally, and with willful intent to disregard the obligation prescribed by law, the Court *En Banc* quotes with approval the Court in Division's disquisition on the matter:

> "It is undisputed that 21st Century, through its responsible officers, such as appellant, was aware of the subject assessment as early as the issuance of the assessment notices. Appellant never denied receipt from the BIR of the following documents pertinent to the subject assessment, to wit: Assessment Notices with accompanying Demand Letters for deficiency IAET, MCIT, EWT, VAT, IT, in the total amount of Php747,964.49 for taxable year 2000, including increments, and compromise penalty, all dated January 23, 2004; First Notice and Second Notice of Delinquent Account dated December 19, 2005 and January 2, 2006, respectively; Final Notice before Seizure dated March 1, 2006, Warrant of Distraint and/or Levy and Warrant of Garnishment to Equitable-PCI Bank Head Office. Initially, it tried to assail the subject assessment by filing a protest, which for unexplained reason, was never substantiated and which rendered the subject assessment final and demandable. The BIR even tried to avail of administrative remedies to collect the deficiency taxes but failed, ushering the institution of the present criminal case against appellant.

> Appellant cannot feign ignorance of the assessment, let alone knowledge of the Company's obligation to pay the assessed taxes. Aware of possible legal consequences, she even wrote the BIR on behalf of the Company requesting time to organize its record and if warranted, to pay the tax liability by way of compromise, but she failed to pursue this direction.
>
> **All said, the prosecution was able to establish the guilt of appellant beyond moral certainty of violation of Section 255, in relation to Sections 253(d) and 256 of the NIRC, as amended."**

...

It is also worth noting that, on appeal to the Supreme Court, the accused corporate officer in *Suarez* was later acquitted not because there was no prior conviction of the corporate taxpayer but only because the prosecution failed to prove that therein accused corporate officer was the one responsible for the violation.[146] **In fact, the Supreme Court, citing the 1930 case of *The People of the Philippine Islands v. Tan Boon Kong*[147], declared "that for crimes committed by a corporation, the responsible officers thereof would personally bear the criminal liability. This is because a corporation can act only through its officers and agents".**[148]

Furthermore, no less than the Supreme Court declared in *Ambassador Hotel, Inc. v. Social Security System*[149] (Ambassador Hotel) that for criminal violations committed by a corporation, <u>an arrest on a juridical entity's representative is sufficient to acquire jurisdiction over it</u>, to wit:

> ...
> *To acquire jurisdiction over Ambassador Hotel, its managing head, director or partner must be arrested*
>
> As discussed above, even when the employer is a corporation, it shall still be held liable for the non-remittance of SSS contributions. It is, however, the head, directors or officers that shall suffer the personal criminal liability. **Although a corporation**

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146 *See Suarez v. People of the Philippines, et al.*, G.R. No. 253429, 06 October 2021.

147 G.R. No. L-35262, 15 March 1930.

148 Supra at note 146.

149 G.R. No. 194137, 21 June 2017; Citations omitted, italics in the original text, emphasis and underscoring supplied.

> **is invested by law with a personality separate and distinct from that of the persons composing it, the corporate veil is pierced when a director, trustee or officer is made personally liable by specific provision of law.** In this regard, **Section 28 (f) of R.A. No. 8282 explicitly provides that "[i]f the act or omission penalized by this Act be committed by an association, partnership, corporation or any other institution, its managing head, directors or partners shall be liable to the penalties provided in this Act for the offense."** Thus, a corporation cannot invoke its separate judicial entity to escape its liability for non-payment of SSS contributions.
>
> **To acquire jurisdiction over the corporation in a criminal case, its head, directors or partners must be served with a warrant of arrest. Naturally, a juridical entity cannot be the subject of an arrest because it is a mere fiction of law; thus, an arrest on its representative is sufficient to acquire jurisdiction over it. To reiterate, the law specifically disregards the separate personality between the corporation and its officers with respect to violations of R.A. No. 8282; thus, an arrest on its officers binds the corporation.**
>
> In this case, Yolanda, as President of Ambassador Hotel, was arrested and brought before the RTC. Consequently, the trial court acquired jurisdiction over the person of Yolanda and of Ambassador Hotel as the former was its representative. **No separate service of summons is required for the hotel because the law simply requires the arrest of its agent for the court to acquire jurisdiction over it in the criminal action. Likewise, there is no requirement to implead Ambassador Hotel as a party to the criminal case because it is deemed included therein through its managing head, directors or partners, as provided by Section 28 (f) of R.A. No. 8282.**
>
> ...

Applying by analogy the doctrine laid down in *Ambassador Hotel*, where the separate personality between the corporation and its officers is disregarded with respect to criminal violations of RA 8282 or the Social Security Law, the same holds true for criminal violations of the NIRC of 1997, as amended, which explicitly provides under Section 253(d) that "[i]n 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" akin to Section 28(f) of RA 8282 quoted, emphasized and underscored above.

Consequently, there is clear basis to say that upon the arrest or apprehension or voluntary appearance or submission to the jurisdiction of the Court of the corporation's responsible officer or representative, the Court acquires jurisdiction over the person not only of said responsible officer or representative but also over the corporation itself. In fact, the Supreme Court clearly stated in *Ambassador Hotel* that there is <u>no need to implead the corporation as a party to the criminal case because it is deemed included therein through its responsible officer or representative</u>.

Following the foregoing pronouncements, the Court *En Banc* sees no necessity to arraign the corporate taxpayer itself given that it is the responsible officer who will be held criminally liable for the corporate taxpayer's violation of Section 255[150] of the NIRC, as amended. And even assuming *arguendo* that such arraignment is indispensable, the responsible officer may nevertheless be held criminally liable *sans* arraignment of the corporate taxpayer, which is deemed included in the criminal case against the responsible officer, as the prior conviction of the corporate taxpayer is <u>not</u> a condition *sine qua non* therefor.

In conclusion, the First Division acquired jurisdiction over the person of Sucksuphan, in her capacity as Treasurer of Robiegie, *and* Robiegie need not be arraigned for purposes of imposing a fine as penalty thereon under Section 256[151] of the NIRC of 1997, as amended.

THE FIRST DIVISION CORRECTLY RULED THAT PETITIONER FAILED TO PROVE BEYOND REASONABLE DOUBT THE GUILT OF RESPONDENT SUCKSUPHAN IN THE OFFENSE CHARGED.

Based on the pertinent provisions aforequoted, the following essential elements must be established by the prosecution to secure the conviction of Sucksuphan, as the responsible officer of Robiegie,

150 Supra at p. 27.
151 Supra at p. 28.

for the offense of "Failure to Pay Tax" under Section 255[152] of the NIRC of 1997, as amended, to wit:

1. A corporate taxpayer is required under the NIRC of 1997, as amended, to pay any tax;

2. The corporate taxpayer failed to pay the required tax at the time required by law or rules and regulations; and,

3. The accused, as the officer responsible for the violation, willfully failed to pay such tax at the time required by law or rules and regulations.

Even with the presence of the first two (2) elements, the First Division held that, as to the third element of "willfulness", petitioner has not proven beyond reasonable doubt that Sucksuphan, representing Robiegie, deliberately failed to pay the required tax. This is so in view of petitioner's failure to prove service of the LOA and the assessment notices. As such, there is no obligation on the part of Robiegie to pay the internal revenue tax liabilities assessed therein.

Conversely, petitioner claims that Sucksuphan, representing Robiegie, willfully and unlawfully failed, and refused and neglected, to pay the deficiency internal revenue tax liabilities under AN Nos. 31-11-IT-7070[153] and 31-11-WE-7072[154], despite repeated demands. Petitioner further claims that Robiegie, despite notice and service of the aforesaid ANs, did not make a formal protest or appeal thereto.

Petitioner likewise maintains that the BIR sent the PAN, FLD with ANs, PCL and FNBS to Robiegie through registered mail. On this basis, it has sufficiently proven that Robiegie received the LOA, PAN, FLD with ANs, PCL and FNBS in the due course of mail.

On the other hand, respondents challenge the service of the LOA and deny receipt of the assessment notices, and any document from

152 Supra at p. 27.
153 Supra at note 6.
154 Supra at note 7.

the BIR. According to Sucksuphan, Robiegie already closed its business and vacated the business address.[155]

The Court *En Banc* agrees with the conclusion reached by the First Division that Sucksuphan's failure to pay Robiegie's deficiency tax liabilities for TY 2011 was not willful since petitioner failed to prove Robiegie's receipt of the LOA and the assessment notices.

The term "willful" in tax crime statutes means a voluntary, intentional violation of a known legal duty and bad faith or bad purpose need not be shown.[156] Thus, to attribute to the accused a "willful failure to pay" the 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 nevertheless voluntarily, knowingly, and intentionally failed to pay it.[157]

In this case, although the records support petitioner's claim that the LOA, PAN, FLD with ANs, PCL and FNBS were sent *via* registered mail to Robiegie's address at 1618 Alvarez St., Sta. Cruz, Manila, no competent proof of actual receipt was however shown.

In *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*[158], citing the case of *Protector's Services, Inc. v. Court of Appeals, et al.*[159], the Supreme Court ruled that when a mail matter is sent *via* registered mail, there exists a presumption, set forth under Section 3(v)[160], Rule 131 of the Rules of Court, that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (**a**) that the letter was properly addressed with postage prepaid; and, (**b**) that it was mailed. While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the

155 TSN dated 04 December 2019, pp. 30, 37-39.
156 *Ongsiako, Jr., et al. v. People of the Philippines*, CTA EB Crim. No. 031, 26 May 2015, citing Mertens (Law of Federal Income Taxation) Chapter 47.05, p. 28, Vol. 13; *People of the Philippines v. Estelita Delos Angeles*, CTA Crim. Case No. O-027, 25 November 2009.
157 *People of the Philippines v. Corazon C. Gernale*, CTA Crim. Case No. O-336, 26 September 2018.
158 G.R. No. 157064, 07 August 2006.
159 G.R. No. 118176, 12 April 2000.
160 Supra at note 85.

receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.

In relation thereto, the Supreme Court, in the cases of *Jaime Alferez v. People of the Philippines and Pingping Co.*[161] and *In the Matter of the Petition for Habeas Corpus of Benjamin Vergara, et al., v. Hon. Francisco C. Gedorio, Jr., et al.*[162], further stated that the receipts for registered letters and return receipts do not prove themselves; they must be properly authenticated in order to serve as proof of receipt of the letters.

The Supreme Court further stressed in the case of *Republic of the Philippines v. Resins, Incorporated,*[163] citing the cases of *The Government of the Philippines v. Aballe, et al.*[164] and *Cruz v. The Court of Appeals, et al.*[165], that **it is the registry receipt issued by the mailing office and the affidavit of the person mailing, which proves service made through registered mail. Absent one or the other, or worse both, there is no proof of service**.

Here, respondents denied receipt of the LOA and the assessment notices. Such denial, therefore, shifts the burden upon petitioner to prove that the LOA and the assessment notices were duly delivered and actually received by Robiegie.

We quote with approval the relevant portions of the assailed Decision, as follows:

> ...
> ***Effect of failure to serve the LOA***
>
> ...
> In the instant case, there is no dispute that an LOA was issued by the BIR authorizing RO Santiago and GS Marti[r]ez to examine the books of accounts and other accounting records for all internal revenue taxes of [respondent] Robiegie for taxable year

161 G.R. No. 182301, 31 January 2011.
162 G.R. No. 154037, 30 April 2003.
163 G.R. No. 175891, 12 January 2011.
164 G.R. No. 147212, 24 March 2006.
165 G.R. No. 123340, 29 August 2002.

2011. [Respondent] Sucksuphan, however, denies receipt of any document or notice sent by the BIR.

In his judicial affidavit and during trial, RO Santiago testified that they tendered a copy of the LOA and checklist to [respondent] Robiegie at its registered address where it operates a pharmacy named El Niño Pharmacy. According to him, a person named Vangie del Rosario was present at that time.

Records show that indeed a person named Vangie del Rosario of El Niño Pharmacy received the LOA. [Petitioner], however failed to establish that Vangie del Rosario was an authorized representative of [respondent] Robiegie. Thus, it cannot be concluded that [respondent] Robiegie actually received the LOA through Vangie del Rosario.

[Petitioner] argues that RO Santiago constructively served the LOA on March 14, 2013 because the staff at El Niño Pharmacy refused to accept the same, even when they tried several times. [Respondent] Sucksuphan, however, oppose the constructive service of the LOA, arguing that RO Santiago's testimony did not clarify whether she or her agents refused service, and that no barangay official and two disinterested witnesses were invited to personally observe and attest to such act of refusal.

While [Revenue Audit Memorandum Order (RAMO) No. 1-00] is silent on whether an LOA may be constructively served upon the taxpayer, Section 3.1.7 of Revenue Regulations (RR) No. 12-99 provides for the requirements of a valid constructive service of tax assessment notices, which reads:

> SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> ...
>
> 3.1.7 *Constructive Service.* — If the notice to the taxpayer herein required is served by registered mail, and no response is received from the taxpayer within the prescribed period from date of the posting thereof in the mail, the same shall be considered actually or constructively received by the taxpayer. If the same is personally served on the taxpayer or his duly authorized representative who, however, refused to acknowledge receipt thereof, the same shall be constructively served on the taxpayer. Constructive service thereof shall be considered effected by leaving the same in the premises of the taxpayer and this fact of constructive service is attested to, witnessed and signed by at least two (2) revenue officers other than the revenue officer who constructively served the same. The revenue officer who constructively served the same shall make a

> written report of this matter which shall form part of the docket of this case.

Applying analogously the above-mentioned rule on constructive service of assessment notice to LOAs, the Court finds that there was failure on the part of [petitioner] to prove that there was a valid constructive service of the LOA. Records show that the alleged constructive service was not attested to, witnessed and signed by at least two (2) revenue officers other than the revenue officer who allegedly constructively served the same.

As aforediscussed, RAMO No. 1-00 is categorical in declaring that failure to serve the LOA to an accused within the 30-day mandatory period renders the same void. In turn, a void LOA deprives revenue officers named therein of any authority to carry out the examination of the books of accounts and other accounting records of [respondent] Robiegie for all internal revenue taxes for the period covering the year 2011.

In fine, *sans* authority of the revenue officers to conduct an examination of accused's books of accounts and other accounting records, the assessment notices issued by the BIR pursuant thereto are inescapably void. Being void, they bear no fruit and must be slain at sight. Needless to say, a void assessment cannot be used as basis in collecting the subject deficiency internal revenue tax liabilities from the accused.

Effect of failure to prove that accused received the assessment notices

...

Considering that [respondent] Sucksuphan directly denies receipt of the PAN, FAN, FLD, PCL and FNBS, the burden of proving that [respondent] actually received the said notices shifts to [petitioner], who is the party favored by the presumption. Stated differently, the *onus probandi* was shifted to [petitioner] to prove by contrary evidence that [respondent] received the aforesaid notices in the due course of mail.

To prove that the PAN, FAN, FLD, PCL and FNBS were sent *via* registered mail to [respondent] Robiegie at 1618 Alvarez St., Sta. Cruz, Manila, [petitioner] presented in evidence mere transmittal letters and registry receipts.

While the registry receipts prove the fact of mailing, [petitioner] fell short in establishing actual receipt of the PAN, FAN, FLD, PCL and FNBS by [respondent]. No registry return

cards were offered in evidence by [petitioner] to show that [respondent] actually received the assessment notices.

In fact, during trial, [petitioner's witness RO Jose], testified that they just presumed that [respondent] Robiegie received the FAN and Details of Discrepancy, without any proof of actual receipt by [respondent] Robiegie or its authorized representative ...

...

From the foregoing, it is clear that while the PAN, FAN, FLD, PCL and FNBS were sent through registered mail to [respondent] Robiegie, there is no evidence confirming that Robiegie or its authorized representative actually received the same.

[Petitioner's] failure to prove [respondent Robiegie]'s receipt of the PAN and FAN is patently violative of [respondent Robiegie]'s right to due process thereby resulting in the nullity of the FAN and FLD as well as the subsequent collection of the amounts assessed therein, through PCL and FNBS and WDL.[166]

...

Accordingly, considering that petitioner was not able to prove beyond reasonable doubt that Sucksuphan, in her capacity as Treasuer, was made fully aware of Robiegie's obligation to pay deficiency taxes and when to pay the same, it could not be established that her failure to pay Robiegie's deficiency taxes was willful on her part.

In *Guilbemer Franco v. People of the Philippines*[167], the Supreme Court ruled that the prosecution has the burden to prove that all the elements of the offense are present, and that the accused committed the said offense, to wit:

...
The burden of such proof rests with the prosecution, which must rely on the strength of its case rather than on the weakness of the case for the defense. Proof beyond reasonable doubt, or that quantum of proof sufficient to produce a moral certainty that would convince and satisfy the conscience of those who act in judgment, is

166 Emphasis and underscoring supplied.
167 G.R. No. 191185, 01 February 2016; Italics in the original text; Emphasis supplied.

> indispensable to overcome the constitutional presumption of innocence.
>
> In every criminal conviction, the prosecution is required to prove two things beyond reasonable doubt: ***first*, the fact of the commission of the crime charged, or the presence of all the elements of the offense**; and *second*, the fact that the accused was the perpetrator of the crime.
>
> ...

Finding no reversible error in the assailed Decision and Resolution, the Court *En Banc* thus upholds the First Division's finding that respondent Sucksuphan's refusal to pay the assessed deficiency taxes was justified as petitioner failed to adduce competent proof that respondent corporation received the LOA and the assessment notices. Verily, respondent Sucksuphan's failure to pay the deficiency taxes assessed against respondent corporation for TY 2011 was not willful.

NO CIVIL LIABILITY ARISING FROM THE OBLIGATION TO PAY TAX UNDER THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED.

Pursuant to Section 11[168], Rule 9 of the RRCTA, in relation to Section 7(b)(1)[169] of RA 1125[170], as amended by RA 9282[171], the civil aspect of this case is deemed simultaneously instituted and jointly determined with the filing of the present criminal case.

Having established earlier that the LOA and the assessment notices were not duly served and received by Robiegie, the subject deficiency tax assessments must be declared void. In which case, the Court *En Banc* likewise upholds the First Division's finding that no civil liability for deficiency taxes may be adjudged against Robiegie and,

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

169 Supra at pp. 17-18.

170 Supra at note 97.

171 Supra at note 98.

with more reason, Sucksuphan, as the facts upon which such liability arising from law may arise do not exist.

NO CIVIL LIABILITY ARISING FROM THE CRIMINAL VIOLATION OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED.

In *Macario Lim Gaw, Jr. v. Commissioner of Internal Revenue*[172] (**Gaw**), the Supreme Court elucidated on the nature of civil liability arising from a criminal violation of the NIRC of 1997, as amended, *viz*:

> ...
> Rule 111, Section 1 (a) of the Rules of Court provides that **what is deemed instituted with the criminal action is only the action to recover civil liability arising from the crime. Civil liability arising from a different source of obligation, such as when the obligation is created by law, such civil liability is not deemed instituted with the criminal action.**
>
> It is well-settled that the taxpayer's obligation to pay the tax is an obligation that is created by law and does not arise from the offense of tax evasion, as such, the same is not deemed instituted in the criminal case.
> ...
>
> ... **what is deemed instituted with the criminal action is only the government's recovery of the taxes and penalties relative to the criminal case. The remedy of the taxpayer to appeal the disputed assessment is not deemed instituted with the criminal case. To rule otherwise would be to render nugatory the procedure in assailing the tax deficiency assessment.**
> ...

Generally, an acquittal in a criminal case does not *ipso facto* result in the extinguishment of civil liability *ex delicto*. An exception would be when there is a finding in a final judgment in the criminal action that the act or omission from which civil liability may arise did not exist.[173]

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[172] G.R. No. 222837, 23 July 2018; Emphasis supplied.
[173] Revised Rules on Criminal Procedure, Rule 111, Section 2.

In this case, the First Division found that respondents cannot be held criminally liable for petitioner's failure to prove all the elements of the crime charged against them. As the law requires that failure to pay tax under Section 255[174] of the NIRC of 1997, as amended, must be "willful" and the main ground for respondents' acquittal stemmed from the fact that the element of "willfulness" was wanting, this Court cannot hold respondents liable for civil liability *ex delicto*.

Finally, considering that the First Division has acquired jurisdiction over the case *and* over the person of respondents, and Sucksuphan's acquittal for petitioner's failure to prove her guilt beyond reasonable doubt for violating Section 255[175] of the NIRC of 1997, as amended, no civil action pursuant to Section 253(d)[176] of the NIRC of 1997, as amended, may prosper against Sucksuphan, and no penalty under Section 256[177] of the NIRC of 1997, as amended, may be imposed against Robiegie.

With the foregoing, *although* the Court *En Banc* finds that the First Division was able to acquire jurisdiction not only over respondent Sucksuphan but also over respondent corporation Robiegie (as no objection was timely raised and that it has actively participated in the trial of the case before the First Division), it is nevertheless constrained to affirm the assailed Decision's finding on the civil liability *ex delicto* on the grounds discussed above.

WHEREFORE, with the foregoing considerations, the present Petition for Review filed by petitioner People of the Philippines on 29 October 2020 is hereby **DENIED**. Accordingly, the First Division's Decision dated 17 June 2020 in CTA Crim. Case No. O-639, entitled *People of the Philippines v. Robiegie Corporation and Grace G. Sucksuphan,* is hereby **AFFIRMED** insofar as it acquitted Robiegie Corporation and Grace G. Sucksuphan of the offense charged for failure of the prosecution to prove their guilt beyond reasonable doubt, *and* with no declaration of any civil liability as the facts on which it should be based do not exist.

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174 Supra at p. 27.
175 Supra at p. 27.
176 Supra at p. 28.
177 Supra at p. 28.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

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

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES
Petitioner,

CTA EB CRIM. NO. 084
(CTA Crim. Case No. O-639)

Present:

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

- versus -

ROBIEGIE CORPORATION and GRACE G. SUCKSUPHAN,
Respondents.

Promulgated:
JUN 30 2022 4:30pm

x - x

SEPARATE OPINION

***DEL ROSARIO, P.J.*:**

I concur in the *ponencia* denying the Petition for Review and affirming the Decision dated June 17, 2020 rendered by the Court in Division in CTA Crim. Case No. O-639.

With due respect, however, I express my dissent on the view that arraignment of an accused corporation is not required under the Rules of Court, as amended.

A corporation is an artificial being created by operation of law,[1] whose juridical personality commences from the date the Securities and Exchange Commission issues the certificate of incorporation.[2] A corporation is a juridical person[3] empowered to bring criminal actions,

[1] Section 2, Revised Corporation Code.
[2] Section 18, Revised Corporation Code.
[3] Article 44(3), Civil Code.

in conformity with the laws and regulations of its organization.[4] It may sue and be sued[5] albeit, in all suits, it is the corporate entity that is legally identified as a party-litigant even in instances when any of its officers is similarly indicted. Thus, the Doctrine of Separate Juridical Personality, which provides that a corporation has a legal personality separate and distinct from the people comprising it,[6] has become a bedrock principle of our legal system.

Having its own legal personality, a corporation may be made criminally liable. The Supreme Court has categorically ruled, in *Alfredo Ching vs. The Secretary of Justice, et al.* (*Ching*),[7] that a corporation may itself be charged and prosecuted on its own and if found guilty, may be fined, *viz.*:

> "If the crime is committed by a corporation or other juridical entity, the directors, officers, employees or other officers thereof responsible for the offense shall be charged and penalized for the crime, precisely because of the nature of the crime and the penalty therefor. A corporation cannot be arrested and imprisoned; hence, cannot be penalized for a crime punishable by imprisonment. **However, a corporation may be charged and prosecuted for a crime if the imposable penalty is fine. Even if the statute prescribes both fine and imprisonment as penalty, a corporation may be prosecuted and, if found guilty, may be fined**.
>
> A crime is the doing of that which the penal code forbids to be done, or omitting to do what it commands. A necessary part of the definition of every crime is the designation of the author of the crime upon whom the penalty is to be inflicted. **When a criminal statute designates an act of a corporation or a crime and prescribes punishment therefor, it creates a criminal offense which, otherwise, would not exist and such can be committed only by the corporation**. But when a penal statute does not expressly apply to corporations, it does not create an offense for which a corporation may be punished. On the other hand, if the State, by statute, defines a crime that may be committed by a corporation but prescribes the penalty therefor to be suffered by the officers, directors, or employees of such corporation or other persons responsible for the offense, only such individuals will suffer such penalty. Corporate officers or employees, through whose act, default or omission the corporation commits a crime, are themselves individually guilty of the crime." (*Emphasis supplied*)

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[4] Article 46, Civil Code.
[5] Sec. 35(a), Revised Corporation Code.
[6] Joselito Hernand M. Bustos vs. Millians Shoe, Inc., et al., G.R. No. 185024, April 4, 2017.
[7] G.R. No. 164317, February 6, 2006.

Prescinding from the foregoing, when the penalty for a crime is both imprisonment and payment of fine, the corporation may be made liable but only with respect to the payment of fine. When the law prescribes fine as the only penalty, then it may be imposed upon the corporation even more so.

A corporate entity, as an accused in a criminal case, is no less entitled to the guarantees extended to any other accused enshrined in the Constitution. As so provided in Section 14(2), Article III thereof, an accused has the right to be informed of the nature and cause of an accusation -- a right that is recognized and implemented at the stage of arraignment.[8] The importance of arraignment is elucidated in *Omar Villarba vs. Court of Appeals and People of the Philippines,*[9] *viz.*:

> "**Arraignment is the accused's first opportunity to know the precise charge pressed against them**. During the arraignment, they are 'informed of the reason for [their] indictment, the specific charges [they are] bound to face, and the corresponding penalty that could be possibly meted against [them].'
>
> Hence, **arraignment is not a mere formality, but a legal imperative to satisfy the constitutional requirements of due process.** x x x" (*Boldfacing supplied*)

Section 1, Rule 116 of the Rules of Court, as amended, mandates that the "accused must be arraigned before the court where the complaint or information was filed or assigned for trial." Since a corporation may legally be an "accused", then there is no reason to deny it the inherent right to due process of law. Interestingly, the Rule does not distinguish between an accused who is a natural person, and an accused who is a juridical person. *Ubi lex non distinguit nec nos distinguere debemos*. When the law makes no distinction, we also ought not to recognize any distinction.[10]

The obligatory nature of arraignment is likewise supported by the use of the term "must". This word, like the word "shall," is primarily of mandatory effect.[11]

It is acknowledged that there is no specific mention in existing procedural Rules anent the arraignment of a corporation other than saying that arraignment is indispensable in any criminal prosecution, without which no conviction may be considered valid. The silence or insufficiency of the law, however, should not be an excuse to ignore

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[8] *Nestor Guelos, et al. vs. People of the Philippines,* G.R. No. 177000, June 19, 2017.
[9] G.R. No. 227777, June 15, 2020.
[10] *Renalyn A. Masbate, et al. vs. Ricky James Relucio*, G.R. No. 235498, July 30, 2018.
[11] BLACK'S LAW DICTIONARY (1968 ed.), p. 1171.

accused corporation's right to be informed of the nature and cause of the accusation against it.[12]

In truth, a corporate officer may make a plea for the corporation, by virtue of the powers conferred upon him or her by the board of directors.[13] But in so doing, the corporate officer must simply be mindful that he or she is doing it for and in behalf of the entity.

The *ponencia* relies on the case of *Ambassador Hotel, Inc. vs. Social Security System* (*Ambassador Hotel*)[14] to support its view that arraignment is not necessary for corporations. However, the question in said case pertains to the jurisdiction over the person of the accused, which is separate and distinct from the conduct of arraignment itself. Besides, the law involved in said case, Republic Act No. 8282,[15] provides for a penal provision that prescribes the penalty upon the responsible corporate officers and not on the corporation itself. In contrast, the NIRC of 1997 provides a separate and distinct penalty imposable upon the corporation (*i.e.* fine) in addition to the penalty that may separately be imposed upon its officers. Thus, corporate criminal liability is not at all an issue in *Ambassador Hotel*.

As oft-repeated, arraignment is not an idle ceremony that can be brushed aside peremptorily, but an indispensable requirement of due process, the absence of which renders the proceedings against the accused void.[16] Applied in this case, the absence of arraignment for accused Robiegie Corporation necessarily renders the criminal proceedings against it void.

All told, I **REITERATE** the position I have taken in the assailed Decision (specifically on page 31 thereof) and **VOTE** to deny the present Petition for Review for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice

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[12] See, e.g., Article 9, Civil Code. See also *David Reyes (Substituted by Victoria R. Fabella) vs. Jose Lim, et al.*, G.R. No. 134241, August 11, 2003.
[13] *Colegio Medico-Farmaceutico de Filipinas, Inc. vs. Lily Lim, et al.*, G.R. No. 212034, July 2, 2018.
[14] G.R. No. 194137, June 21, 2017.
[15] An Act Further Strengthening the Social Security System Thereby Amending for this Purpose Republic Act No. 1161, as Amended, Otherwise Known as the Social Security Law.
[16] *People of the Philippines vs. Ronald Palema y Vargas, et al.*, G.R. No. 228000, July 10, 2019.