REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM. CASE NOS. O-779, O-780 & O-781**
	Members:
-versus-	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
GRAND EAST EMPIRE CORPORATION and SOLANIA G. ONG, *Accused.*	Promulgated: JAN 24 2022 1:30 p.m.

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RESOLUTION

For resolution are the ***Motion for Leave of Court to File Demurrer to Evidence (with attached Demurrer to Evidence)***[1] and ***Demurrer to Evidence***,[2] filed by accused Grand East Empire Corporation ("GEEC"/"the Company", for brevity), and Solania G. Ong ("Ong") on 20 November 2020. The prosecution did not file its Comment per the Court's Records Verification Report dated 4 October 2021.[3]

In the aforementioned submissions, the accused pray for the Court to dismiss the herein cases for insufficiency of evidence and for the release of Ong's cash bond.

Antecedents

As culled from the records, the prosecution, on 31 July 2019, filed before the Court of Tax Appeals ("CTA") three (3) Informations indicting Johnny D. Ong and Ong for violation of ***Section 255, in relation to Sections 253 and 256 of the Tax Code***.[4]

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[1] Division Records O-779, pp. 439-441.
[2] *Id.*, pp. 442-444.
[3] *Id.*, p. 454.
[4] Information, *Id.*, pp. 8-10; Division Records O-780, pp. 8-10; Division Records O-781, pp 8-10.

The prosecution alleged that as President/General Manager and Treasurer of GEEC, respectively, Johnny D. Ong and Ong willfully and unlawfully failed to pay the Company's deficiency Income Tax, Value-Added Tax ("VAT"), and Expanded Withholding Tax ("EWT") for taxable year 2006 despite the Bureau of Internal Revenue's ("BIR") issuance of the Final Assessment Notice ("FAN"), including prior and post notices, and final demands to pay, the last being the Demand Before Suit ("DBS") dated 18 January 2013.[5]

The amount of damages involved, exclusive of surcharges and interests, for each case are as follows:

Case No.	Tax Type	Amount
O-779	Income Tax	₱ 44,817,192.89
O-780	VAT	₱ 26,534,263.31
O-781	EWT	₱ 1,842,234.49

CTA Crim. Case No. O-780 was assigned to the CTA Second Division. Meanwhile, CTA Crim. Case Nos. O-779 and O-781 were raffled to the CTA Third Division.

After personally examining and evaluating the Information in CTA Crim. Case No. O-780 and all the documents attached thereto, the Court found probable cause and ordered the issuance of Warrants of Arrest against Johnny D. Ong and Ong on 22 August 2019.[6] The corresponding Warrants of Arrest against the accused were then issued on 23 August 2019.[7]

As for CTA Crim. Case Nos. O-779 and O-781, the Court issued Resolutions, dated 27 and 22 August 2019. In the said Resolutions, the Court noted that although GEEC was named as one of the accused in the Informations, the Company was not indicted in the accusatory portion thereon.

In addition, it also found that the recommended bail by the prosecution was not in accordance with ***Section 4 of the DOJ Department Circular No. 013*** and that it only submitted certified photocopies of the Commissioner of Internal Revenue's ("CIR") Letter, dated 22 May 2014, and the Joint Complaint Affidavit, dated 22 May 2014.[8]

On these notions, the Court ordered the prosecution to amend the Informations and to submit the original or certified true copy of the CIR Letter and Joint Complaint Affidavit, respectively.[9]

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[5] *Ibid.*
[6] Resolution; Division Records O-780, pp. 80-82.
[7] Warrants of Arrest, *id.*, pp. 83-84.
[8] Division Records O-779, pp. 80-84; Division Records O-781, pp. 80-84.
[9] *Ibid.*

In compliance, the prosecution filed, on 12 September 2019, its Motions to Admit Attached Amended Information together with the first amended Informations and the original copy of the CIR's Letter and the Joint Complaint-Affidavit.[10]

In the first amended Informations, the prosecution already included GEEC as an accused in the accusatory portion thereon and increased the recommended bail amount from ₱20,000.00 to ₱60,000.00.[11]

On the same day, the prosecution filed its Motions for Consolidation asking the Court to consolidate the three (3) criminal cases in one (1) division of the CTA.[12]

On 26 September 2019, the Court in CTA Crim. Case Nos. O-779 and O-781 granted the prosecution's Motions to Admit Attached Amended Information.[13]

Taking cue from the foregoing, the Court ordered the issuance of the Warrants of Arrest against Johnny D. Ong and Ong. The same were issued on 1 October 2019 for CTA Crim. Case No. O-781[14] and on 2 October 2019 for CTA Crim. Case No. O-779.[15]

Thereafter, the Court approved the prosecution's Motion for Consolidation and ordered the consolidation of CTA Crim. Case No. O-781 with O-779 on 26 September 2019[16] and of CTA Crim. Case No. O-780 with O-779 on 2 October 2019.[17]

On 16 and 17 October 2019, Ong posted bail for all three criminal cases, depositing the cash bond of ₱60,000.00[18] for each case covered by Official Receipt Nos. 8982080L, 8982082L, and 8982081L.

At this juncture, the Court issued a Resolution, dated 17 October 2019, lifting and setting aside the Warrants of Arrests against Ong.[19]

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[10] *Id.*, pp. 85-124; *id.*, pp. 88-127.
[11] *Ibid.*
[12] Division Records O-779, pp. 125-127; Division Records O-780, pp. 85-87; Division Records O-781, pp. 85-87.
[13] Division Records O-779, pp. 128-131; Division Records O-781, pp. 129-131.
[14] *Id.*, pp. 132-135.
[15] Division Records O-779, pp. 132-135.
[16] *Id.*, pp. 128-131; Division Records O-781, pp. 129-131.
[17] Division Records O-780, p. 95.
[18] Undertaking; Division Records O-779, pp. 142-150; Division Records O-780, pp. 96-103; Division Records O-781, pp. 136-144.
[19] Division Records O-779, pp. 157-159.

On 29 October 2019, the Returns of Warrant of Arrest were filed in Court. The same indicated that Johnny D. Ong had already passed away on 2 April 2018.[20]

On 11 November 2019, the Court required the accused to submit the original Death Certificate of Johnny D. Ong.[21]

On 8 November 2019, the accused and the prosecution filed their respective Pre-Trial Briefs.[22]

On 13 November 2019, Ong's arraignment took place. She pleaded **NOT GUILTY** to the crimes charged against her.[23]

Thereafter, the Pre-Trial Conference ensued where the parties stipulated on the following facts:

(a) The jurisdiction of the Court over the crimes charged;
(b) The identity of the accused; and
(c) That the BIR did not send a Notice of Informal Conference ("NIC") to Ong.[24]

Also, during this time, accused presented the Certificate of Death of Johnny D. Ong issued by the Philippine Statistics Authority.[25]

On 25 November 2019, Ong filed her Notice and Motion presenting to Court the original copy of the Certificate of Death of Johnny D. Ong, this time issued by the Office of the Civil Registrar General. On this basis, she asked the Court to order the prosecution to withdraw the Informations against her deceased co-accused.[26]

On 9 January 2020, the Court issued a Resolution granting the Notice and Motion and directing the prosecution to have the name of Johnny D. Ong removed from the Informations.[27]

Afterward, the Court issued the Pre-Trial Order on 27 January 2020.[28]

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[20] *Id.*, pp. 160-166; Division Records O-780, pp. 104-109; Division Records O-781, pp. 145-150.
[21] Division Records O-779, pp. 178-180.
[22] Pre-Trial Brief of Accused Solania G. Ong; *id.*, pp. 168-170; Pre-Trial Brief (for the Plaintiff); *id.*, pp. 171-176.
[23] Minutes of the Hearing; *id.*, p 182; Certificate of Arraignment; *id.*, pp. 183,185, and 187.
[24] Order; *id.*, pp. 191-194.
[25] *Id.*, pp. 189-190.
[26] *Id.*, pp. 247-249.
[27] *Id.*, pp. 310-311.
[28] *Id.*, pp. 324-330.

On 17 February 2020, the prosecution filed its Motion to Admit Attached Amended Informations.[29] The second amended Informations removed Johnny D. Ong as an accused in the cases herein. The accusatory portion of each Information are quoted to wit:

CTA Criminal Case No. O-779

"That on or about January 18, 2013 and thereafter, in Quezon City, and within the jurisdiction of this Honorable Court, the accused **GRAND EAST EMPIRE CORPORATION and SOLANIA G. ONG as Treasurer of the said domestic corporation, which is a duly registered taxpayer**, with business address at No. 22 Miller St., Bungad I, Quezon City and at 125 Scout Lozano St., Quezon City, did then and there willfully, unlawfully, and knowingly fail to pay deficiency Income Tax with the Bureau of Internal Revenue for the taxable year 2006, despite final assessment notice, including prior and post notices and final demands to pay, the last being the Demand Before Suit (DBS) issued on January 18, 2013, to the damage and prejudice of the Government, in the amount of **Forty Four Million Eight Hundred Seventeen Thousand One Hundred Ninety Two Pesos and Eighty Nine Centavos (₱ 44,817,192.89)**, exclusive of surcharge and interests.

CONTRARY TO LAW."

CTA Criminal Case No. O-780

"That on or about January 18, 2013 and thereafter, in Quezon City, and within the jurisdiction of this Honorable Court, the accused **GRAND EAST EMPIRE CORPORATION and SOLANIA G. ONG as Treasurer of the said domestic corporation, which is a duly registered taxpayer**, with business address [with business address] at No. 22 Miller St., Bungad I, Quezon City and at 125 Scout Lozano St., Quezon City, did then and there willfully, unlawfully, and knowingly fail to pay deficiency Value Added Tax with the Bureau of Internal Revenue for the taxable year 2006, despite final assessment notice, including prior and post notices and final demands to pay, the last being the Demand Before Suit (DBS) issued on January 18, 2013, to the damage and prejudice of the Government, in the amount of **Twenty Six Million Five Hundred Thirty Four Thousand Two Hundred Sixty Three Pesos and Thirty One Centavos (₱26,534,263.31)**, exclusive of surcharges and interests.

CONTRARY TO LAW."

CTA Criminal Case No. O-781

"That on or about January 18, 2013 and thereafter, in Quezon City, and within the jurisdiction of this Honorable Court, the accused **GRAND EAST EMPIRE CORPORATION and SOLANIA G. ONG as Treasurer, respectively, of the said domestic corporation, which is a duly registered taxpayer**, with business address at No. 22 Miller St.,

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[29] *Id.*, pp. 347-360.

Bungad I, Quezon City and at 125 Scout Lozano St., Quezon City, did then and there willfully, unlawfully, and knowingly fail to pay deficiency Expanded Withholding Tax with the Bureau of Internal Revenue for the taxable year 2006, despite final assessment notice, including prior and post notices and final demands to pay, the last being the Demand Before Suit (DBS) issued on January 18, 2013, to the damage and prejudice of the Government, in the amount of **One Million Eight Hundred Forty Two Thousand Two Hundred Thirty Four Pesos and Forty Nine Centavos (₱1,842,234.49)**, exclusive of surcharges and interests.

CONTRARY TO LAW."

On 14 February 2020, the prosecution posted its Urgent Motion to Request for the Issuance of *Subpoena Ad Testificandum* praying for the Court to compel its witness Revenue Officer Angelina T. Victorio or Ruth Vivian G. Gadia, who are both retired from the BIR, to testify in the herein cases.[30]

On 24 February 2020, the Court issued a Resolution granting the Urgent Motion to Request for the Issuance of *Subpoena Ad Testificandum* and ordering both Revenue Officers Angelina T. Victorio and Ruth Vivian G. Gadia to testify in Court. In the same Resolution, the Court also admitted the second amended Informations.[31]

On 28 February 2020, the prosecution filed another Manifestation with Request for the Issuance of *Subpoena Ad Testificandum*. This time it asked the Court to compel its witnesses Revenue Officer Ma. Isabel R. Loza and Wilfredo Garcia, who are also both retired from service, to testify in the case.[32] The Court granted the Motion on 24 June 2020.[33]

The presentation of the prosecution's witness ensued on 26 February 2020.

On 26 August 2020, the prosecution manifested in open court that it would no longer present additional witnesses. Hence, the Court gave the same fifteen (15) days to file its Formal Offer of Evidence ("FOE"). The prosecution filed the same on 10 September 2020,[34] offering the following exhibits:

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[30] *Id.*, pp. 366-368.
[31] *Id.*, pp. 373-375.
[32] *Id.*, pp. 376-378.
[33] *Id.*, pp. 385-386.
[34] *Id.*, pp. 393-428.

Exhibits	Description
P-1	Letter of Authority No. 2001-00058839 dated 17 July 2007 for taxable year 2006
P-2	Preliminary Assessment Notice with Details of Discrepancies dated 28 August 2009 issued to GEEC and Ong for taxable year 2006
P-3	Formal Letter of Demand No. 38-06-0131 (50%) dated 28 September 2009 issued to GEEC for taxable year 2006
P-4	Assessment Notice for Income Tax for taxable year 2006
P-5	Assessment Notice for VAT for taxable year 2006
P-6	Assessment Notice for EWT for taxable year 2006
P-7	Preliminary Collection Notice dated 22 April 2010
P-7-A	Registry Receipt No. 9169 dated 28 April 2010
P-8	Final Notice Before Seizure (FNBS) dated 05 May 2010
P-8-A	Registry Receipt No. 10026 dated 13 May 2010
P-9	Warrant of Distraint and/or Levy No. 05-07010 dated 28 May 2010
P-10	Warrant of Garnishment addressed to United Coconut Planters Bank
P-11	Warrant of Garnishment to the Bank of the Philippine Islands
P-12	Warrant of Garnishment addressed to the Allied Bank
P-13	Warrant of Garnishment addressed to the China Bank Corporation
P-14	Warrant of Garnishment addressed to the Development Bank of the Philippines
P-15	Warrant of Garnishment addressed to the Metropolitan Bank & Trust Company
P-16	Warrant of Garnishment addressed to the Land Bank of the Philippines
P-17	Demand Before Suit dated 18 January 2013
P-18	Memorandum of Assignment dated 21 April 2010

On 7 October 2020, the Court issued a Resolution admitting the prosecution's pieces of evidence subject to the final evaluation of the Court.[35] The said Resolution was received by the accused on 17 November 2020.[36]

On 20 November 2020, Ong filed the instant Motion and her Demurrer to Evidence.[37] The prosecution did not file its Comment despite notice.[38] Hence, this Resolution.

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[35] *Id.*, pp. 436-437.
[36] TSN, dated 26 February 2020, pp. 1-30.
[37] Division Records O-779, pp. 439-443.
[38] Records Verification Report; *id.*, p. 454.

Evidence presented by the prosecution

The prosecution presented as its lone witness Revenue Officer Angelina T. Victorio, by way of direct examination. She explained that she was assigned, through a Memorandum of Assignment, to handle the collection of the alleged deficiency taxes of GEEC for taxable year 2006.

Correspondingly, she testified that she caused the preparation and mailing, via registered mail, of the Preliminary Collection Notice, Final Notice Before Seizure, and Warrants of Garnishment (collectively "Collection Notices") against GEEC. Likewise, she confirmed issuing and serving the Warrant of Distraint and/or Levy against the Company which was, in turn, received by a certain Cecilia Montorio on 28 May 2010.

During her testimony, she also identified the following exhibits:[39]

Exhibits	Description
P-7	Preliminary Collection Notice dated 22 April 2010
P-7-A	Registry Receipt No. 9169 dated 28 April 2010
P-8	Final Notice Before Seizure (FNBS) dated 05 May 2010
P-8-A	Registry Receipt No. 10026 dated 13 May 2010
P-9	Warrant of Distraint and/or Levy No. 05-07010 dated 28 May 2010
P-10	Warrant of Garnishment addressed to United Coconut Planters Bank
P-11	Warrant of Garnishment to the Bank of the Philippine Islands
P-12	Warrant of Garnishment addressed to the Allied Bank
P-13	Warrant of Garnishment addressed to the China Bank Corporation
P-14	Warrant of Garnishment addressed to the Development Bank of the Philippines
P-15	Warrant of Garnishment addressed to the Metropolitan Bank & Trust Company
P-16	Warrant of Garnishment addressed to the Land Bank of the Philippines
P-18	Memorandum of Assignment dated 21 April 2010

Allegations of the Accused

The accused allege that the prosecution failed to present any evidence to prove that accused Ong was the treasurer of GEEC or even one of its directors, stockholders, officers, and/or employees. It did not show proof that she was involved in any manner with GEEC's operations. They state that this

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[39] Minutes of the Hearing; *id.*, p. 182.

can easily been proven by the Company's General Information Sheet which the prosecution did not produce in trial.

They also argue that the BIR did not afford GEEC due process when it issued the assessment. They explain that the prosecution neither presented any witness nor offered any document proving that the Preliminary Assessment Notice ("PAN"), the Assessment Notices, and the Final Letter of Demand ("FLD/FAN") were sent, mailed, or delivered to GEEC.

Lastly, they contend that the prosecution failed to provide evidence proving the factual basis of the assessment. The accused insist that the prosecution's lone witness, Revenue Officer Angelina T. Victorio, has no personal knowledge as to GEEC's audit and assessment. She only identified the Collection Notices issued against the Company.

In total, they insist that the evidence presented by the prosecution are insufficient to convict the accused of the crime charged.

The Ruling of the Court

The Supreme Court in ***Jalandoni v. The Office of the Ombudsman, et. al.***,[40] defined Demurrer to Evidence as "an action to the effect that the evidence his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue" in short "the party filing the demurrer challenges the sufficiency of the whole evidence to sustain a verdict."

In criminal cases, the rule governing Demurrer to Evidence is found under ***Section 23, Rule 119 of the Rules of Court***, which provides:

> "Section 23. Demurrer to evidence. — **After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence** (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) **upon demurrer to evidence filed by the accused with or without leave of court**.
>
> If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution. (15a)
>
> The motion for leave of court to file demurrer to evidence shall specifically state its grounds and **shall be filed within a non-extendible period of five (5) days after the prosecution rests its case**. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.

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[40] G.R. Nos. 211751, 217212-80, 244467-535 & 245546-614, 10 May 2021.

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

Based on the foregoing, when the accused files a Demurrer to Evidence, the role of the courts is to "ascertain whether there is competent or sufficient evidence to issue a judgment" against the accused and to dismiss the case if it finds none.[41]

In this case, accused Ong and GEEC are indicted for violation of ***Section 255 in relation to Sections 253 and 256 of the Tax Code***. The said sections of the Tax Code are here reproduced:

> "SEC. 255. Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation. - **<u>Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax make a return, keep any record, or supply correct the accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations</u>** shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.
>
> Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of internal revenue office wherein the same was actually filed shall, upon conviction therefore, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years."
>
> "SEC. 253. General Provisions. -
>
> (a) Any person convicted of a crime penalized by this Code shall, in addition to being liable for the payment of the tax, be subject to the penalties imposed herein: Provided, That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution for violation of any provision of this Code or in any action for the forfeiture of untaxed articles.
>
> (b) Any person who willfully aids or abets in the commission of a crime penalized herein or who causes the commission of any such offense by another shall be liable in the same manner as the principal.

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[41] *Ibid.*

(c) If the offender is not a citizen of the Philippines, he shall be deported immediately after serving the sentence without further proceedings for deportation. If he is a public officer or employee, the maximum penalty prescribed for the offense shall be imposed and, in addition, he shall be dismissed from the public service and perpetually disqualified from holding any public office, to vote and to participate in any election. If the offender is a Certified Public Accountant, his certificate as a Certified Public Accountant shall, upon conviction, be automatically revoked or cancelled.

(d) **In the case of associations, partnerships or <u>corporations</u>, the <u>penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and the employees responsible for the violation</u>.**

(e) The fines to be imposed for any violation of the provisions of this Code shall not be lower than the fines imposed herein or twice the amount of taxes, interest and surcharges due from the taxpayer, whichever is higher."

"SEC. 256. Penal Liability of Corporations. - **<u>Any corporation</u>, association or general co-partnership <u>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) but not more than One hundred thousand pesos (₱100,000)</u>.**"
(Emphasis and underscoring supplied)

In order for an accused to be liable under ***Section 255 of the Tax Code***, the following elements must all be proven by the prosecution, to wit:

1. The accused is the person required under the Tax Code or by rules and regulations to file a return, to pay the tax and supply correct and accurate information;
2. The accused failed to file a return, to pay the tax and supply correct and accurate information at the time required by law; and
3. Such failure was willful.

Concomitantly, since the person required under the ***Tax Code*** to file a return, pay the tax, and supply correct and accurate information is a juridical entity, ***Sections 253 and 256 of the Tax Code*** state that the penal liability shall be imposed on the corporation's responsible officers. Hence, in addition to the foregoing elements, the prosecution must also establish that Ong is one of the responsible officers of GEEC.

After a careful perusal of the documents presented as well as of the testimony of its witness, the Court finds that the pieces of evidence offered by the prosecution to be insufficient to sustain a judgment against the accused.

The prosecution failed to adduce sufficient evidence to convict accused GEEC.

As stated, in order for the prosecution to sustain a conviction under ***Section 255 of the Tax Code***, it first must prove that the accused is liable to pay taxes.

In ***People v. Cross Country Oil & Petroleum Corp. et. al.***, (hereinafter referred to as "***Cross Country Case***"),[42] the CTA identified the instances where a taxpayer is legally obligated to pay taxes under the Tax Code. The *first* is when the law specifically requires the payment of a particular tax or when the taxpayer is compelled to make a self-assessment of its own tax liability; the *second* is when the BIR issues a tax assessment demanding the payment of deficiency taxes. The relevant discussion of the Court is hereby quoted, to wit:

> "For purposes of the first element, We are guided by the provisions of Section 56 of the NIRC of 1997, as amended. Said provision reads:
>
> > **SEC. 56. *Payment and Assessment of Income Tax for Individuals and Corporations.* —**
> >
> > (A) *Payment of Tax.* —
> >
> > (1) *In General.* — The total amount of tax imposed by this Title shall be paid by the person subject thereto at the time the return is filed.
> >
> > xxx xxx xxx.
> >
> > (B) Assessment and Payment of Deficiency Tax. - After the return is filed, the Commissioner shall examine it and assess the correct amount of the tax. The tax or deficiency income tax so discovered shall be paid upon notice and demand from the Commissioner."
>
> Based on the foregoing, **the legal obligation to pay tax under the NIRC of 1997, as amended, arises from two (2) specific instances**: *first*, **at the time required by the law to pay a particular tax**; or *second*, **upon being informed of a tax assessment issued by the BIR, requiring the taxpayer to pay the assessed tax or deficiency tax within a specific period, as set forth in the assessment**.
>
> The **first instance, involves a self-assessment of tax obligations** as outlined by the Supreme Court in the case of Commissioner of Internal Revenue vs. Fitness by Design, Inc. (or Fitness by Design case), *to wit*:
>
> > "The assessment process starts with the filing of the tax return and payment of tax by the taxpayer. The initial assessment evidenced by the tax return is a self-assessment of the taxpayer. The tax is primarily computed

[42] C.T.A. Crim. Case No. O-620, 19 May 2021.

and voluntarily paid by the taxpayer without need of any demand from government. If tax obligations are properly paid, the Bureau of Internal Revenue may dispense with its own assessment."

A self-assessment approach, in essence, starts and ends with the initial assessment by the taxpayer of the tax due, corresponding with the filing of the requisite return and payment of the said tax. Thereafter, assuming the tax obligations were properly computed and paid, the process is rendered complete without the participation or intervention of the BIR.

<u>The second instance, on the other hand, involves the issuance by the BIR of a tax assessment, when the tax obligation was not properly computed or paid. The deficiency tax assessment, shall then be paid by the taxpayer upon notice and demand. These notice and demand are predicated upon a valid assessment issued in full compliance with the requirements on procedural due process</u>."
(Emphasis and underscoring supplied)

The second instance finds ground not only in ***Section 56 of the Tax Code*** but also in ***Section 6 of the Tax Code***, which requires the taxpayer to pay the assessed deficiency tax upon notice and demand of the CIR or his authorized representative, to wit:

"SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. -

(A) Examination of Return and Determination of Tax Due. After a return has been filed as required under the provisions of this Code, the **Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax, Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.**

<u>The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative</u>.

Any return, statement of declaration filed in any office authorized to receive the same shall not be withdrawn: Provided, That within three (3) years from the date of such filing, the same may be modified, changed, or amended: Provided, further, That no notice for audit or investigation of such return, statement or declaration has in the meantime been actually served upon the taxpayer. xxx"
(Emphasis and underscoring supplied)

Here, the charges against GEEC are based on the second instance or on the accused's alleged failure to pay its assessed deficiency taxes despite notice and demand of the BIR.

Hence, in order to satisfy the first requisite, the prosecution must establish, through competent evidence, the existence of a valid assessment, notice, and demand from the BIR to pay deficiency taxes.

An assessment's validity is dependent on whether it was issued in accordance with the Tax Code, the pertinent rules of the BIR, and jurisprudence.

Corollary, ***Section 228 of the Tax Code*** provides for the procedure on the issuance of an assessment and the manner through which it can be protested by the taxpayer. The relevant provision is hereby quoted, to wit:

> "SEC. 228. Protesting of Assessment. - **When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings**: xxx
>
> xxx xxx xxx
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void**.
>
> Within a period to be prescribed by implementing rules and regulations, **the taxpayer shall be required to respond to said notice.**
>
> If the **taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings**.
>
> Such assessment may be **protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations**.
> Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> **If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable**."
> (Emphasis and underscoring supplied.)

Since the Letter of Authority ("LOA") herein was issued on 17 July 2007[43] and the Preliminary Assessment Notice ("PAN") on 28 August 2009,[44] the relevant implementing regulation of the aforementioned provision is

[43] Exhibit "P-1", Division Records O-779, p. 401.
[44] Exhibit "P-2", *id.*, pp. 402-405.

Revenue Regulation ("RR") No. 12-99, which was issued on 6 September 1999[45] and was effective until 17 December 2013.[46] The said RR provides:

> "SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> 3.1.1 Notice for informal conference. — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, **the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.**
>
> 3.1.2 Preliminary Assessment Notice (PAN). — **If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.**
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> xxx xxx xxx
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> 3.1.4 Formal Letter of Demand and Assessment Notice. — **The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of**

[45] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, Revenue Regulations No. 12-99, 6 September 1999.

[46] Revenue Regulations No. 18-13, Amending Certain Sections of Revenue Regulations No. 12-99, Relative to the due process requirement in the issuance of a Deficiency Tax Assessment, 28 November 2013.

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

Based on the foregoing, the BIR is required to issue the NIC, the PAN, and the FAN/FLD and to ensure that the same are received by the taxpayer either through personal service, registered mail, or constructive service. Failure to do so is tantamount to a violation of the taxpayer's right to due process, which will render the assessment void and ineffectual.

A review of the case records shows that the prosecution failed to establish that an NIC was issued to accused GEEC. Neither was it able to show that the NIC, PAN, and FAN/FLD were served to the Company by way of personal service, registered mail, or constructive service.

In this case, the prosecution only offered in evidence the LOA, PAN, and the FAN/FLD, which were not even identified by a competent witness. The case records do not include the NIC or any proof of service of the PAN and FLD/FAN.

The PAN and FLD/FAN have no indication or any marks that these were personally received by GEEC or any of its authorized representatives. The same had no signature or receiving stamp, among others. The prosecution also did not offer any proof of mailing, such as the registry receipt or registry return card of the assessments, or that the same were constructively served to the taxpayer. In fact, it did not even present any witness who could at least narrate the events that had taken place during the audit investigation and assessment of GEEC.

Clearly, the prosecution's failure in establishing the BIR's compliance with the mandate of ***Section 228 of the Tax Code*** and ***Section 3 of RR No. 12-99*** is tantamount to a violation of GEEC's rights to due process, rendering the assessment void, as found in ***Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.***,[47] to wit:

> "This Court has, in several cases, **declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulations No. 12-99**.
>
> In Commissioner of Internal Revenue v. Metro Star Superama, Inc., this Court held **that failure to send a Preliminary Assessment Notice stating the facts and the law on which the assessment was made as required by Section 228 of the Tax Code rendered the assessment made by the Commissioner as void**. This Court explained:
>
>> **Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN**. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. **To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations — that taxpayers should be able to present their case and adduce supporting evidence.**
>
> In *Commissioner of Internal Revenue v. Reyes*, this Court ruled as void an assessment for deficiency estate tax issued by the Commissioner for failure to inform the taxpayer of the law and the facts on which the assessment was made, in violation of Section 228 of the Tax Code.
>
> In *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*, **this Court ruled, among others, that the taxpayer was deprived of due process when the Commissioner failed to issue a notice of informal conference** and a Preliminary Assessment Notice **as required by Revenue Regulations No. 12-99, in relation to Section 228 of the Tax Code. Hence, the assessment was void.**
>
> xxx xxx xxx
>
> In this case, **Avon was able to amply demonstrate the Commissioner's disregard of the due process standards raised in *Ang Tibay* and subsequent cases, and of the Commissioner's own rules of procedure. Her disregard of the standards and rules renders the deficiency tax assessments null and void.**
> (Emphasis and underscoring supplied.)

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[47] G.R. Nos. 201398-99 & 201418-19, 3 October 2018.

Considering that the assessment against accused GEEC is void, it follows that it is not liable to pay any deficiency taxes rendering the first element non-existent.

Consequently, since GEEC has no deficiency taxes, the Company cannot be deemed to have willfully failed to pay the alleged deficiency tax liability. Hence, the second and third element were also not established.

The prosecution failed prove that Ong is the Treasurer of GEEC.

Even assuming, for sake of argument, that GEEC is liable for violation of ***Section 255 of the Tax Code***, the penalty imposed under ***Sections 253 and 256 of the Tax Code*** cannot be imposed on Ong for the prosecution's failure to prove that she is a responsible officer of GEEC during the taxable year 2006.

Fatal to its case, the prosecution failed to adduce proof that Ong was the Treasurer of GEEC during the time of the crime. In fact, it did not present any evidence identifying any of the officers of the accused corporation.

Without any proof of Ong's role, designation or position in GEEC, she cannot be held liable for violation of ***Section 255 in relation to Sections 253 and 256 of the Tax Code***.

Let it be reminded that in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proven. At this juncture, the prosecution is burdened not only to prove the guilt of the accused based on proof beyond reasonable doubt, but to ensure that the accused person's constitutional rights to due process are at all times upheld. As for the Courts, they are expected to zealously guard against the curtailment of the accused person's constitutional rights.

WHEREFORE, premises considered, the ***Motion for Leave of Court to File Demurrer to Evidence (with attached Demurrer to Evidence)*** and ***Demurrer to Evidence*** filed by the accused on 20 November 2020 are hereby **GRANTED**.

Accordingly, CTA Criminal Case Nos. O-779, O-780 & O-781 are **DISMISSED** on the ground of insufficiency of evidence.

The cash bond of Solania G. Ong is **CANCELLED** and ordered **RELEASED** to her upon presentation of proper documents, in accordance with the usual accounting rules and regulations.

SO ORDERED.

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice