REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

PEOPLE OF THE PHILIPPINES, *Petitioner,*	**CTA *EB* CRIM. NO. 071** *(CTA Crim. Case No. O-653)*
	Present:
-versus-	**DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
CROSS COUNTRY OIL AND PETROLEUM CORP., ARTURO M. ZAPATA, AND JACOB VALERIANO JR., *Respondents.*	Promulgated: **DEC 04 2020** 10:48 a.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This Petition for Review,[1] filed on 9 October 2019, prays for the reconsideration of the civil aspect of the Resolutions promulgated on 28 June 2019 and 4 September 2019 by the Court of Tax Appeals ("CTA") Second Division.

The Parties

Petitioner People of the Philippines is represented by complainant Bureau of Internal Revenue ("BIR"), the government agency primarily tasked to collect internal revenue taxes for the support of the government with office address at the BIR National Office Building, Diliman, Quezon City. It may be served with summons and other legal processes through its counsel at the

[1] Petition for Review, *Rollo,* pp. 6-46, with annexes.

Legal Division, Revenue Region No. 6, 5th Floor, BIR Building I, Solana Street, Intramuros, Manila.

Respondents Arturo M. Zapata and Jacob Valeriano, Jr. (hereinafter referred to collectively as "Zapata and Valeriano") are the respective President and Treasurer of respondent Cross Country Oil and Petroleum Corporation ("Cross Country") (hereinafter referred to collectively as "respondents"). They may be served with summons and other legal processes through their counsel at Unit 2704, East Tower, PSE Centre, Exchange Road, Ortigas Center, Pasig City.

The Facts

On 23 June 2017, an Information was filed in the Regional Trial Court ("RTC") of Manila against respondents for allegedly violating Section 255 in relation to Sections 253(d) and 256 of the National Internal Revenue Code of 1997, as amended (hereinafter referred to as "Tax Code").[2]

In an Order, dated 13 July 2017, the RTC of Manila dismissed the case on the ground that it had no jurisdiction to try and decide the same. The dismissal was without prejudice to its re-filing with the proper court.[3] Hence, petitioner refiled the Information in the CTA on 18 September 2017, which was docketed as Case No. O-653.[4]

On 26 January 2018, petitioner filed its Amended Information[5] revising the total amount of deficiency taxes from ₱626,260,793.96 to ₱404,956,533.57, broken down as follows:

Deficiency income tax	₱ 249,645,069.52
Deficiency value-added tax ("VAT")	155,277,239.45
Deficiency expanded withholding tax ("EWT")	34,224.60
TOTAL	₱ 404,956,533.57

On 17 May 2018, the Court in Division issued a Resolution ordering the issuance of a Warrant of Arrest against Zapata and Valeriano.[6] The same was issued on 23 May 2018.[7] Zapata and Valeriano posted bail on 4 June 2018.[8]

[2] Information dated 25 May 2017, Division Docket Vol. 1, pp. 18-19.
[3] Order, Division Docket Vol. 1, pp. 10-11.
[4] Information dated 14 July 2017, Division Docket Vol. 1, pp. 6-7.
[5] Amended Information, Division Docket Vol. 1, pp. 14-15.
[6] Resolution, Division Docket Vol. 1, pp. 110-112.
[7] Warrant of Arrest, Division Docket Vol. 1, pp. 113-122.
[8] Bail Requirements, Division Docket Vol. 1, pp. 123-149.

On 18 June 2018, respondents filed their Special Appearance with Motion to Require Prosecution to Amend Information asking the Court to require petitioner to amend the Information and to correct the name impleaded to Jacob Valeriano, Jr. instead of Jacob Valeriano.[9]

This prompted petitioner to file its Second Amended Information on 9 July 2018.[10]

However, the Second Amended Information was again revised in open court on 25 July 2018 due to certain ambiguities noted by the Court in Division therein. Respondents' counsel did not interpose any objection to the said amendments.[11] The amended Second Amended Information[12] reads as follows:

> "That on or about JANUARY 14, 2015, and for sometime prior thereto, in the City of Manila, Philippines, accused **ARTURO M. ZAPATA, JACOB VALERIANO, JR., and CROSS COUNTRY OIL & PETROLEUM CORPORATION** being then the President and Treasurer, respectively, of Cross Country Oil and Petroleum Corporation, with business address at Room 3105 31st Floor, World Trade Exchange Bldg., Juan Luna Street, Binondo, this City, did then and there willfully and unlawfully fail, refuse and neglect, as they still fail, refuse and neglect to pay the principal deficiency income tax, value-added tax and expanded withholding tax of the corporation for taxable year 2011 in the amounts of **P249,645,069.52, P155,277,239.45 and P34,224.60**, respectively, or in the amount of **FOUR HUNDRED FOUR MILLION NINE HUNDRED FIFTY SIX THOUSAND FIVE HUNDRED THIRTY THREE and 57/100 PESOS (P404,956,533.57)** exclusive of penalties, surcharges and interests, under assessment Notice/Demand Letter Nos. 30-11-IT-7136, 30-11-VT-7137 & 30-11-WE-7138, despite notice and service of said assessment, 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 **P404,956,533.57**, Philippine Currency."

On the same day, arraignment and pre-trial proceeded, where Zapata and Valeriano entered their pleas of "Not Guilty" to the crime charged.[13]

Thereafter, trial ensued wherein petitioner presented its witnesses: Revenue Officers John Paulo A. Leonardo,[14] Ronnie Roel Y. Bolledo,[15] Ma. Paz Arcilla,[16] Henry B. Benitez,[17] Ronnielyn V. Inocencio,[18] and Mailing-In-

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[9] Special Appearance with Motion to Require Prosecution to Amend Information, Division Docket Vol. 1, pp. 150-173.
[10] Second Amended Information, Division Docket Vol. 1, pp. 383-384.
[11] Order, Division Docket Vol. 1, pp. 408-412.
[12] Second Amended Information, Division Docket Vol. 1, pp. 383-384.
[13] Order, Division Docket Vol. 1, pp. 408-412.
[14] Exhibit "P-32", Division Docket Vol. 1, pp. 341-358.
[15] Exhibit "P-33", Division Docket Vol. 1, pp. 362-367.
[16] Exhibit "P-34", Division Docket Vol. 1, pp. 264-273.
[17] Exhibit "P-37", Division Docket Vol. 1, pp. 299-337.
[18] Exhibit "P-36", Division Docket Vol. 1, pp. 277-285.

Charge Benhur C. Nacorda.[19] The witnesses testified as to the service of the Letter of Authority ("LOA"), issuance and mailing of the assessments, and the BIR's collection efforts against Cross Country.

In the interim, the original case was transferred from the First Division to the Second Division pursuant to CTA Administrative Circular No. 02-2018, "Reorganizing the Three (3) Divisions of the Court, dated 18 September 2018.[20]

After petitioner rested its case, respondents filed their Demurrer to Evidence on 7 March 2019[21] and Supplemental Arguments (to the Demurrer to Evidence dated 7 March 2019) on 13 March 2019.[22]

In their submissions, respondents argued that the revenue officers who conducted the audit examination of Cross Country did not have the pre-requisite authority since the LOA was not served to it within thirty (30) days from its date of issuance or revalidation, rendering the same null and void. They also insisted that their right to due process was violated since the assessments were not served to Cross Country. Lastly, they alleged that petitioner failed to prove that respondents intentionally, willfully, deliberately, and voluntarily refused to pay Cross Country's deficiency taxes.

Petitioner filed its Comment/Opposition to the Demurrer to Evidence on 5 April 2019.[23] It contended that the assessments were issued pursuant to a valid LOA. Furthermore, it noted that the assessments have already become final, executory, and demandable for Cross Country's failure to file a protest within the prescribed period. Hence, the same can no longer be questioned.

Meanwhile, respondents filed their Reply (Re: Comment/Opposition dated 4 April 2019) on 6 May 2019.[24]

On 28 June 2019, the Court in Division issued the first assailed Resolution[25] granting respondents' Demurrer to Evidence, to wit.

> "**WHEREFORE**, premises considered, accused's Demurrer to Evidence is **GRANTED**. Accordingly, CTA Crim. Case No. O-653 is hereby **DISMISSED**.
>
> Accused Arturo M. Zapata, Jacob Valeriano Jr., and Cross Country Oil & Petroleum Corp. are hereby **ACQUITTED.**

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[19] Exhibit "P-35", Division Docket Vol. 1, pp. 289-295.
[20] Resolution, Division Docket Vol. 1, p. 432.
[21] Demurrer to Evidence, Division Docket Vol. 2, pp. 484-497.
[22] Supplemental Arguments, Division Docket Vol. 2, pp. 498-580.
[23] Comment/Opposition to Demurrer to Evidence, Division Docket Vol. 2, pp. 589-593.
[24] Reply (Re: Comment/Opposition dated 4 April 2019), Division Docket Vol. 2, pp. 594-603.
[25] Resolution, Division Docket Vol. 2, pp. 607-621.

SO ORDERED."

In granting the Demurrer to Evidence, the Court in Division found that the assessments issued against respondents were void since the LOA was not served to Cross Country within the prescribed and mandatory 30-day period counting from its date of issuance. On this account, the Court in Division ruled that petitioner failed to prove that Cross Country was required to pay the assessed deficiency taxes.[26]

Aggrieved, petitioner filed its Motion for Reconsideration on the Civil Aspect of the Resolution on 24 July 2019.[27] Meanwhile, respondents filed their Comment/Opposition (Re: Motion for Reconsideration on the Civil Aspect of the Resolution) on 16 August 2019.[28]

On 4 September 2019, the Court in Division issued the second assailed Resolution denying petitioner's Motion for Reconsideration on the Civil Aspect of the Resolution for lack of merit. The Court in Division also cancelled and set aside the assessments and Warrant of Distraint and/or Levy issued against respondents.[29] The dispositive portion is hereby quoted, as follows:

> "**WHEREFORE**, premises considered, prosecution's "Motion for Reconsideration on the Civil Aspect of the Resolution" is hereby **DENIED** for lack of merit.
>
> Accordingly, the Assessment Notice/Demand Letter Nos. 30-11-IT-7136, 30-11-VT-7137 & 30-11-WE-7138 and the Warrant of Distraint and/or Levy dated December 21, 2011 are **CANCELLED and SET ASIDE**.
>
> **SO ORDERED.**"

The second assailed Resolution was received by the petitioner on 9 September 2010.[30]

This prompted petitioner to post its Motion for Extension of Time (To File Petition for Review) on 24 September 2019 asking the Court *En Banc* to grant it an additional period of fifteen (15) days or until 9 October 2019 to file

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[26] *Ibid.*
[27] Motion for Reconsideration on the Civil Aspect of the Resolution, Division Docket Vol. 2, pp. 622-629.
[28] Comment/Opposition (Re: Motion for Reconsideration on the Civil Aspect of the Resolution), Division Docket Vol. 2, pp. 632-642.
[29] Resolution, Division Docket Vol. 2, pp. 644-650.
[30] Division Docket Vol. 2, p. 643.

its Petition for Review.[31] The Court *En Banc* granted the same on 3 October 2019.[32]

Petitioner filed the instant Petition for Review on 9 October 2019.[33] Meanwhile, respondents filed its Comment/Opposition to the Petition for Review on 13 November 2019.[34]

On 4 December 2019, the Court *En Banc* promulgated a Resolution submitting the case for decision.[35]

However, before the Court *En Banc* could resolve the instant Petition, it received from respondents a Notice of Death on 10 January 2020, informing it of respondent Arturo M. Zapata's passing on 18 November 2019.[36]

The Issue[37]

WHETHER THE COURT IN DIVISION ERRED IN GRANTING RESPONDENTS' DEMURRER TO EVIDENCE AND IN DISMISSING CTA CRIM. CASE NO. O-653.

Arguments of the Parties

Petitioner's Arguments[38]

Petitioner explains that it is pursuing the civil aspect of the above-captioned case pursuant to ***Section 7(b)(1) of Republic Act No. 9282***.[39] It alleges that the said provision mandates that the civil action for the recovery of taxes and penalties corresponding to a criminal action shall at all times be simultaneously instituted and jointly determined in the same proceedings by the CTA.

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[31] Motion for Extension of Time (To File Petition for Review), *Rollo*, pp. 1-3.
[32] Minute Resolution, *Rollo*, p. 5.
[33] Petition for Review, *Rollo*, pp. 6-46, with annexes.
[34] Comment/Opposition to the Petition for Review, *Rollo*, pp. 61-72.
[35] Resolution, *Rollo*, pp. 74-75.
[36] Notice of Death, *Rollo*, pp. 76-80.
[37] Petition for Review, *Rollo*, pp. 6-46, with annexes.
[38] *Ibid.*
[39] 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 of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, 30 March 2004.

Petitioner argues that the right of the BIR to collect from Cross Country is based on valid assessments. It alleges that the assessments were issued pursuant to the investigation/examination conducted by Revenue Officers John Paulo A. Leonardo and Group Supervisor Alemar Sani, by virtue of a valid LOA.

It insists that the allegation of respondents that the assessments were not served to Cross Country is without basis. It explains that the assessments were served to Cross Country at its last known address based on its Audited Financial Statements for taxable year 2014 filed by the same before the Securities and Exchange Commission. It argues that, assuming Cross Country transferred to a new business address since 2 May 2012, the BIR should not be faulted for not sending the assessments there since Cross Country failed to notify the BIR of its change of address.

Lastly, it contends that regardless of whether the assessments are valid or not, the same have become final, executory, and demandable and can no longer be disturbed or questioned for Cross Country's failure to file a timely and valid protest.

Respondents' Counter-Arguments[40]

Respondents counter that what is deemed instituted in a criminal case is the civil action to pay taxes and penalties as a result of the commission of a crime or the civil liability *ex delicto* and not the civil action to impose liability for alleged non-payment of tax arising from law or the civil liability based on assessment.

Considering the same, respondents explain that since the Court in Division already acquitted them in CTA Crim. Case No. O-653, finding them to have not committed the crime charged, it follows that their civil liability *ex delicto* had already been extinguished.

Further, they opine that they cannot be made liable to pay the civil liability based on the assessments since as held in the case of ***Gaw v. Commissioner of Internal Revenue (hereinafter referred to as "Gaw Case")***,[41] the instant Petition is not the proper forum to enforce the same.

Moreover, respondents allege that they are not liable to pay the assessed deficiency taxes since the assessments never attained finality for being void for want of authority of the revenue officers who conducted Cross Country's audit. They explain that the revenue officers were not authorized by a valid

[40] Comment/Opposition to the Petition for Review, *Rollo*, pp. 61-72.
[41] G.R. No. 222837, 23 July 2018.

LOA since it was only served to Cross Country after the lapse of the mandatory 30-day period from the date of its issuance.

Likewise, respondents insist that petitioner failed to prove that the BIR was able to send or mail the assessments to Cross Country. Respondents explain that per petitioner's witness, Mailing-In-Charge Benhur C. Nacorda, the assessments were allegedly mailed by a certain Armando Macatangay. However, said Armando Macatangay was neither presented in court nor was his affidavit duly offered in evidence to prove the fact of mailing. Since the pieces of evidence of petitioner were not properly authenticated, the same are inadmissible. Hence, they argue that petitioner has no proof that the assessments were sent and received by Cross Country.

Lastly, respondents interpose that since petitioner failed to follow the prescribed procedures in the issuance of the assessment and collection of taxes, their right to due process was violated rendering the assessments and collection efforts of the BIR against them void.

The Ruling of the Court

After considering the issues raised by petitioner and the arguments propounded by respondent, the Court *En Banc* sees no cogent reason to reverse the assailed Resolutions of the Court in Division.

Respondents are not liable to pay civil liability *ex delicto.*

As discussed, petitioner anchors its right to collect the civil aspect of CTA Crim. Case No. O-653 from respondents on ***Section 7(b)(1) of Republic Act No. 9282,*** which states:

> "Sec. 7. Jurisdiction. - The CTA shall exercise:
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> 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, however, 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. Any provision of law or the Rules of Court to the contrary notwithstanding, **the criminal action and the corresponding civil action** ψ

> **<u>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 filling of such civil action separately from the criminal action will be recognized</u>**."[42]

In the ***Gaw Case,*** the Supreme Court expounded the provision and clarified that the civil liability deemed instituted with the criminal action is only the civil liability *ex delicto*. It does not include the civil liability arising from a different source of obligation, such as those arising from law.

The concept of civil liability *ex delicto* was discussed by the Supreme Court in ***Dy v. People (hereinafter referred to as "Dy Case")***,[43] to wit:

> "Our laws recognize a bright line distinction between criminal and civil liabilities. A crime is a liability against the state. It is prosecuted by and for the state. Acts considered criminal are penalized by law as a means to protect the society from dangerous transgressions. As criminal liability involves a penalty affecting a person's liberty, acts are only treated criminal when the law clearly says so. On the other hand, civil liabilities take a less public and more private nature. Civil liabilities are claimed through civil actions as a means to enforce or protect a right or prevent or redress a wrong. They do not carry with them the imposition of imprisonment as a penalty. Instead, civil liabilities are compensated in the form of damages.
>
> **<u>Nevertheless, our jurisdiction recognizes that a crime has a private civil component. Thus, while an act considered criminal is a breach of law against the State, our legal system allows for the recovery of civil damages where there is a private person injured by a criminal act. It is in recognition of this dual nature of a criminal act that our Revised Penal Code provides that every person criminally liable is also civilly liable. This is the concept of civil liability ex delicto</u>**."

Apropos, the acquittal of the accused in a criminal case does not always translate to the extinguishment of his civil liability *ex delicto*. It is only deemed extinguished when there is a finding in a final judgment in the criminal action that the act or omission from which the civil liability may arise does not exist. Hence, if the acquittal is only based on reasonable doubt on the guilt of the accused, the latter may still be held liable to pay the said civil liability. The ***Dy Case*** illustrates this point, to wit:

> "The Civil Code states that when an accused in a criminal prosecution is acquitted on the ground that his guilt has not been proven beyond reasonable doubt, a civil action for damages for the same act or omission may be filed. In the latter case, only preponderance of evidence is required. This is supported by the Rules of Court which provides that the extinction of the criminal action does not result in the extinction of the corresponding civil action. **The latter may only be extinguished when**

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[42] Emphasis supplied.
[43] G.R. No. 189081, 10 August 2016.

there is a "finding in a final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist." Consistent with this, the Rules of Court requires that in judgments of acquittal the court must state whether "the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt. In either case, the judgment shall determine if the act or omission from which the civil liability might arise did not exist."

Thus, whether an exoneration from the criminal action should affect the corresponding civil action depends on the varying kinds of acquittal. In Manantan v. Court of Appeals, we explained —

> Our law recognizes two kinds of acquittal, with different effects on the civil liability of the accused. **First is an acquittal on the ground that the accused is not the author of the act or omission complained of. This instance closes the door to civil liability**, for a person who has been found to be not the perpetrator of any act or omission cannot and can never be held liable for such act or omission. **There being no delict civil liability ex delicto is out of the question, and the civil action, if any, which may be instituted must be based on grounds other than the delict complained of. This is the situation contemplated in Rule 111 of the Rules of Court. The second instance is an acquittal based on reasonable doubt on the guilt of the accused. In this case, even if the guilt of the accused has not been satisfactorily established, he is not exempt from civil liability which may be proved by preponderance of evidence only.** This is the situation contemplated in Article 29 of the Civil Code, where the civil action for damages is "for the same act or omission." Although the two actions have different purposes, the matters discussed in the civil case are similar to those discussed in the criminal case. However, the judgment In the criminal proceeding cannot be read in evidence In the civil action to establish any fact there determined, even though both actions involve the same act or omission. The reason for this rule is that the parties are not the same and secondarily, different rules of evidence are applicable. Hence, notwithstanding herein petitioner's acquittal, the Court of Appeals in determining whether Article 29 applied, was not precluded from looking into the question of petitioner's negligence or reckless imprudence.

In Dayap v. Sendiong, we further said —

> **The acquittal of the accused does not automatically preclude a judgment against him on the civil aspect of the case. The extinction of the penal action does not carry with it the extinction of the civil liability where: (a) the acquittal is based on reasonable doubt as only preponderance of evidence is required; (b) the court declares that the liability of the accused is only civil; and (c) the civil liability of the accused does not arise from or is not based upon the crime of which the accused is acquitted. However, the civil action based on delict may be deemed extinguished if mere is a finding on the final**

> **judgment in the criminal action that the act or omission from which the civil liability may arise did not exist or where the accused did not commit the acts or omission imputed to him.**
>
> Hence, a civil action filed for the purpose of enforcing civil liability ex delicto, even if mandatorily instituted with the corresponding criminal action, survives an acquittal when it is based on the presence of reasonable doubt. In these instances, while the evidence presented does not establish the fact of the crime with moral certainty, the civil action still prevails for as long as the greater weight of evidence tilts in favor of a finding of liability. This means that while the mind of the court cannot rest easy in penalizing the accused for the commission of a crime, it nevertheless finds that he or she committed or omitted to perform acts which serve as a separate source of obligation. There is no sufficient proof that the act or omission is criminal beyond reasonable doubt, but there is a preponderance of evidence to show that the act or omission caused injury which demands compensation."[44]

To reiterate, the civil liability *ex delicto* survives the acquittal of the accused in instances when the said acquittal is based on reasonable doubt and/or the court declares that the liability of the accused is only civil.

In applying the foregoing rule in the case at bar, the Court *En Banc* notes that the crime charged against respondents is for violation of ***Section 255 of the Tax Code*** which has the following elements: (a) that the taxpayer is required to pay any tax under the Tax Code; (b) that the taxpayer failed to pay the required tax at the time required by law; (c) that the failure to pay tax was willful; and (d) that the accused are the responsible officers of the taxpayer.

In absolving the respondents from the said crime, the Court in Division found that the petitioner failed to prove that Cross Country is required to pay the assessed deficiency taxes on the ground that the assessments issued by the BIR are null and void for want of a valid LOA. Neither did the Court in Division impose any civil liability against respondents.

Clearly, the acquittal of the accused is based on the findings of the Court in Division that respondents did not commit the crime charged. Thus, the civil liability *ex delicto* cannot be awarded since there is no act or omission punishable by law which can serve as the source of obligation. On this account, respondents cannot be made liable and therefore, are absolved from paying the civil liability *ex delicto*.

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[44] Emphasis supplied.

<u>The case herein is not the proper venue to enforce the civil liability arising from the assessments.</u>

Neither can petitioner enforce the collection of the civil liability arising from the assessments in the herein case. As discussed, this type of civil liability is sourced from law and, therefore, is not deemed instituted in this case. The ***Gaw Case*** is clear on this point, to wit:

> "The civil action filed by the petitioner to question the FDDA is not deemed instituted with the criminal case for tax evasion
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> Rule 9, Section 11 of A.M. No. 05-11-07-CTA, otherwise known as the Revised Rules of the Court of Tax Appeals (RRCTA), states that:
>
>> 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.
>
> Petitioner claimed that by virtue of the above provision, the civil aspect of the criminal case, which is the Petition for Review Ad Cautelam, is deemed instituted upon the filing of the criminal action. Thus, the CTA had long acquired jurisdiction over the civil aspect of the consolidated criminal cases. Therefore, the CTA erred in dismissing the case.
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> We do not agree.
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> **Rule 111, Section 1 (a) 44 of the Rules of Court provides that what is deemed instituted with the criminal action <u>is only the action to recover civil liability arising from the crime.</u> <u>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.</u>**
>
> **<u>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.</u>**
>
> In the case of Republic of the Philippines v. Patanao, We held that:
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>> **Civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him.** The criminal liability arises upon failure of the debtor to satisfy his civil obligation. The incongruity of the factual premises and foundation principles of the two cases is one of the

> reasons for not imposing civil indemnity on the criminal infractor of the income tax law. x x x **Considering that the Government cannot seek satisfaction of the taxpayer's civil liability in a criminal proceeding under the tax law or, otherwise stated, since the said civil liability is not deemed included in the criminal action, acquittal of the taxpayer in the criminal proceeding does not necessarily entail exoneration from his liability to pay the taxes**. It is error to hold, as the lower court has held that the judgment in the criminal cases nos. 2089 and 2090 bars the action in the present case. The acquittal in the said criminal cases cannot operate to discharge defendant appellee from the duty of paying the taxes which the law requires to be paid, since that duty is imposed by statute prior to and independently of any attempts by the taxpayer to evade payment. Said obligation is not a consequence of the felonious acts charged in the criminal proceeding nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of non-existence of the criminal acts charged. x x x.

Further, in a more recent case of Proton Pilipinas Corp. v. Republic of the Phils., We ruled that:

> While it is true that according to the aforesaid Section 4, of Republic Act No. 8249, the institution of the criminal action automatically carries with it the institution of the civil action for the recovery of civil liability, however, in the case at bar, **the civil case for the collection of unpaid customs duties and taxes cannot be simultaneously instituted and determined in the same proceedings as the criminal cases before the Sandiganbayan, as it cannot be made the civil aspect of the criminal cases filed before it. It should be borne in mind that the tax and the obligation to pay the same are all created by statute; so are its collection and payment governed by statute. The payment of taxes is a duty which the law requires to be paid. Said obligation is not a consequence of the felonious acts charged in the criminal proceeding nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of non-existence of the criminal acts charged. Hence, the payment and collection of customs duties and taxes in itself creates civil liability on the part of the taxpayer. Such civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him**."[45]

Clearly, as mandated by the Supreme Court in the ***Gaw Case***, this case is not the proper forum to enforce the assessments against Cross Country, which as clarified by the ***Dy Case***, should be pursued in a separate proceeding, to wit:

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[45] Citations omitted and emphasis supplied.

> "In Manantan, this Court explained the effects of this result on the civil liability deemed instituted with the criminal case. At the risk of repetition, Manantan held that when there is no delict, "civil liability ex delicto is out of the question, and the civil action, if any, **which may be instituted must be based on grounds other than the delict complained of**." In Dy's case, the civil liability arises out of contract—a different source of obligation apart from an act or omission punished by law—**and must be claimed in a separate civil action."**[46]

The assessments were based on a void LOA, hence void.

At any rate, even assuming that the Court *En Banc* can rule on the civil liability based on the assessments imposed against Cross Country, the same cannot be validly enforced for being void for lack of authority of the revenue officers who conducted the audit since they are not authorized pursuant to a valid LOA.

As found by the Court in Division, which was not disputed by petitioner, the LOA was only served to Cross Country on 30 May 2013 or 45 days after its issuance on 15 April 2013, without the same being revalidated. Considering that the failure to serve the LOA on time is in direct contravention of the mandate of ***Revenue Audit Memorandum Order ("RAMO") No. 1-00***,[47] which requires the LOA to be served to the taxpayer within thirty (30) days from the date of its issuance, the same becomes void and without force and effect, to wit:

> "C. Contact With Taxpayer
>
> 2. Serving of Letter of Authority
>
> 2.2 A Letter of Authority authorizes or empowers a designated Revenue Officer to examine, verify and scrutinize a taxpayer's books and records in relation to his internal revenue tax liabilities for a particular period.
>
> 2.3 **A Letter of Authority must be served or presented to the taxpayer within 30 days from its date of issue; otherwise, it becomes null and void unless revalidated**. The taxpayer has all the right to refuse its service if presented beyond the 30-day period depending on the policy set by top management. Revalidation is done by issuing a new Letter of Authority or by just simply stamping the words "Revalidated on ____________" on the face of the copy of the Letter of Authority issued."[48]

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[46] Emphasis supplied.
[47] Updated Handbook on Audit Procedures and Techniques Volume I (Revision —Year 2000), 17 March 2000.
[48] Emphasis supplied.

Clearly, an LOA served or presented to the concerned taxpayer beyond the 30-day mandatory period is considered null and void. Hence, any revenue officer rendering an audit of a taxpayer pursuant to a defective LOA has no authority to examine the same, rendering the resulting assessment void.

To emphasize the LOA is an important part of the audit examination of a taxpayer since, as found by the Supreme Court in ***Medicard Philippines, Inc. v. CIR (hereinafter referred to as "Medicard Case")***,[49] it is "the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax". Hence, without a valid LOA, the examination or assessment against the taxpayer will be declared null and void.[50]

The assessments did not attain validity as they were void.

The argument of the petitioner that the assessments can no longer be controverted for failure of Cross Country to file a valid protest is, likewise, without merit.

The Supreme Court in the case of ***Republic of the Philippines v. Yu***[51] defined an assessment as "a notice to the effect that the amount therein stated is due as a tax and a demand for the payment thereof". ***Section 228 of the Tax Code*** provides for the rules on assessment, 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**: Provided, however, That a pre-assessment notice shall not be required in the following cases:
>
> 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

[49] G.R. No. 222743, 5 April 2017.
[50] Commissioner of Internal Revenue v. Sony Philippines, Inc., G.R. No. 178697, 17 November 2010.
[51] G.R. No. L-17438, 30 April 1964.

> 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."[52]

As discussed, a taxpayer is given the remedy to file its protest within thirty (30) days from its receipt of the assessment. Failure to file the protest within the stated period renders the same final, executory and demandable. However, a close reading of the Tax Code proves that the commencement of the period to file the protest is anchored on the taxpayer's receipt of an assessment notice issued ***based on the findings of the CIR or his duly authorized representative***.

Applying the foregoing in this case, the assessments issued against Cross Country do not satisfy the requirement under ***Section 228 of the Tax Code*** since the same were not issued by the CIR or his authorized representative since the LOA, when it was served to Cross Country, was already null and void.

Hence, without an assessment arising from a valid audit investigation conducted by the CIR or his duly authorized representative, the period to file the protest ceases to commence since the assessment is deemed inexistent for being intrinsically void. The Tax Code did not admit of an exception as to what constitutes an assessment that would trigger the assessment process other than one which is based on the findings of the CIR or his authorized representative.

Therefore, it becomes immaterial whether Cross Country failed to file a protest against the assessments since the same did not attain finality for being intrinsically void.

One final note. Since the civil liability based on the assessments is not deemed instituted in the herein case, this Court is without authority to declare or order the cancellation of the Assessment Notice/Demand Letter Nos. 30-11-IT-7136, 30-11-VT-7137 and 30-11-WE-7138 and the Warrant of Distraint and/or Levy dated 21 December 2011.

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[52] Emphasis supplied.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

Accordingly, the Court in Division's Resolutions promulgated on 28 June 2019 and 4 September 2019 are hereby **AFFIRMED** with **MODIFICATION**.

The order cancelling Assessment Notice/Demand Letter Nos. 30-11-IT-7136, 30-11-VT-7137 and 30-11-WE-7138 and the Warrant of Distraint and/or Levy dated 21 December 2011 is hereby **VACATED.**

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On Leave)
CATHERINE T. MANAHAN
Associate Justice

(I concur in the result)
JEAN MARIE A. BACORRO-VILLENA
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