Docket copy

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

ANNE GIL RACHEL LABAO y KUAN, (Don Pedro Celdran Avenue, Corpus Christi Village Tubod, Iligan City),
Accused.

CTA Crim. Case No. O-834
For: Violation of Section 255 of the NIRC of 1997, as amended

Members:

MANAHAN, *Chairperson*
REYES-FAJARDO, *and*
ANGELES, *JJ.*

Promulgated:

FEB 07 2024
8:38 a.m.

x- x

D E C I S I O N

MANAHAN, *J.:*

This resolves the criminal case filed against the accused, Anne Gil Rachel Labao y Kuan, for alleged violation of Section 255 of the 1997 National Internal Revenue Code (NIRC), as amended, on her alleged willful failure to supply correct and accurate information in her Income Tax Return (ITR) and to pay the income tax deficiency for taxable year (TY) 2011.

On September 3, 2020, an Information was filed against the accused regarding a criminal offense allegedly committed as follows:[1]

> "That on or about September 21, 2015, 2016 or on dates subsequent thereto, in Iligan City, and within the jurisdiction of this Honorable Court, the above-named accused, as the registered proprietor of San Miguel Protective Security Agency (SMPSA), Janitorial, Messengerial and Allied Services or San Miguel Security Agency (SMSA), a business establishment registered with the Bureau of Internal Revenue (BIR) under Tax Identification No. (TIN) 196-393-586, and with registered business address in Don Pedro Celdran

---

[1] Docket, CTA Crim. Case No. O-834, Vol. I, Information dated October 4, 2019, pp. 5-6.

> Avenuve (*sic*), Corpus Christi Village, Tubod, Iligan City, and as such required by law, rules and regulations to supply correct and accurate information in the income tax return of her business establishment and to pay the taxes due thereon, did then and there, willfully, unlawfully, and feloniously fail to supply correct and accurate information in the income tax return of the said business establishment and to pay the Income Tax Deficiency for the taxable year 2011 in the amount of Php3,573,880.78, exclusive of interest, penalty and surcharge, arising from a final demandable and executory Assessment Notice/Formal Letter of Demand dated September 21, 2015, to the prejudice of the government in the aforementioned amount.
>
> CONTRARY TO LAW."

On September 17, 2020, this Court found the existence of probable cause to hold the accused for trial. Thus, the Court ordered the issuance of a Warrant of Arrest (WOA) against the accused.[2]

The WOA[3] against the accused was issued on September 22, 2020.

On December 17, 2020, accused Labao voluntarily surrendered and posted a cash bond before the Office of the Clerk of Court, Regional Trial Court of Lanao Del Norte, Iligan City.[4] Hence, upon the return[5] of the issued WOA to this Court, the same was lifted and set aside.[6]

On October 27, 2021, after several resettings due to COVID-19 pandemic, accused Labao was arraigned and pleaded not guilty of the offense charged against her.[7] The pre-trial of the case was also conducted on the same day.[8]

The parties' Joint Stipulation of Facts and Issues was submitted on November 10, 2021.[9] On March 14, 2022, the

---

[2] Docket, CTA Crim. Case No. O-834, Vol. I, Resolution dated September 17, 2020, pp. 84-85.
[3] *Id.*, Vol. I, pp. 86-87.
[4] *Id.*, Vol. I, Release Order dated December 17, 2020, pp. 109-110.
[5] *Id.*, Vol. I, Return of Warrant of Arrest, p. 97.
[6] *Id.*, Vol. I, Resolution dated February 17, 2021, pp. 125-126.
[7] *Id.*, Vol. I, Order dated October 27, 2021, pp. 490-492.
[8] *Id.*; *Transcript of Stenographic Notes* (TSN) during the hearing on October 27, 2021.
[9] *Id.*, Vol. II, pp. 582-596. *cm*

Court issued the Pre-Trial Order[10] which governed the conduct of the trial of the instant case.

Considering that the parties and witnesses were located in Cagayan De Oro City and its nearby provinces, the hearing for the presentation of petitioner's witnesses was conducted in the Hall of Justice of Regional Trial Court-Cagayan De Oro City on May 18, 2022.[11]

Plaintiff presented its witnesses, namely: (a) Revenue Officer (RO) Monib Y. Dimalomping; (b) RO Joan H. Dumadag-Restauro; (c) Chief RO Estela M. Laga-ac; and (d) RO Ivy Rose T. Gemina. The witnesses' testimonies were subjected to cross-examination.[12]

On May 23, 2022 and May 26, 2022, the prosecutor, posted and physically filed, respectively, his Formal Offer of Evidence[13] with the following exhibits, to wit:

Exhibit	Document
P-1[14]	Resolution dated October 4, 2019 of the Department of Justice.
P-2[15]	Referral Letter dated May 16, 2019, signed by the Bureau of Internal Revenue (BIR) Commissioner Caesar Dulay, authorizing Revenue Officers Ivy Rose T. Gemina and Okani A. Lomondot, to file a criminal complaint against Accused for Willful Failure to Pay Taxes for taxable year 2011, amounting to a total amount of Ten Million Nine Hundred Sixty Five Thousand Nine Hundred Fifty Five and 10/100 (₱10,965,955.10), inclusive of surcharge and interest.
P-3[16]	Joint Complaint-Affidavit of Ivy Rose T. Gimena and Okani A. Lomondot, dated May 16, 2019, with attachments.
P-3-a[17]	Name and signature of Ivy Rose T. Gimena as one of the Affiants in the Joint-Complaint Affidavit dated May 16, 2019.

[10] Docket, Vol. II, pp. 680-701.
[11] *Id.*, Vol. II, Minutes of the hearing held on May 18, 2022, pp. 734-734-D.
[12] *Id.*, Vol. II, Order dated May 18, 2022, pp. 735-738 and pp. 740-743.
[13] *Id.*, Vol. II, at pp. 797-847 and pp. 745-795.
[14] *Id.*, Vol. I, at pp. 7-12.
[15] *Id.*, Vol. I, at pp. 181-182.
[16] *Id.*, Vol. I, at pp. 183-193.
[17] *Id.*, Vol. I, at p. 193. am

P-3-b[18]	Name and signature of Okani A. Lomondot as one of the Affiants in the Joint-Complaint Affidavit dated May 16, 2019.
P-4 to P-4-c[19]	Letter Notice No. 101-RLF-11-00-00041 dated February 1, 2013 with attachments.
P-4-d[20]	Name and signature of Cristine B. Lorejo dated February 7, 2013.
P-5[21]	Confirmation request dated February 1, 2013 and signed by Revenue District Officer (RDO) Judith G. Pacana, CPA.
P-5-a[22]	Stamped "Received" by San Miguel Protective Security Agency and signed by Cristine B. Lorejo dated February 8, 2013.
P-6[23]	Follow-up Letter dated February 15, 2013, signed by Revenue District Officer (RDO) Judith G. Pacana, CPA.
P-6-a[24]	Name and signature of Cristine B. Lorejo dated February 21, 2013 as authorized representative and/or tax agent.
P-7[25]	Computation Sheet approved and signed by Revenue District Officer (RDO) Judith G. Pacana, CPA and received by Cristine B. Lorejo on February 21, 2013.
P-7-a[26]	Name and signature of Cristine B. Lorejo dated February 21, 2013.
P-8[27]	Notice of Informal Conference dated March 18, 2013 signed by Revenue District Officer Judith G. Pacana, CPA.
P-8-a[28]	Name and signature of Jonahlyn T. Germata dated March 26, 2013.
P-9[29]	Discrepancy on Sales prepared by Okani A. Lomondot.

[18] Docket, Vol. I, at p. 193.
[19] *Id.*, Vol. I, at pp. 251-254.
[20] *Id.*, Vol. I, at p. 251.
[21] *Id.*, Vol. I, at p. 255.
[22] *Id.*
[23] *Id.*, Vol. I, at p. 256.
[24] *Id.*
[25] *Id.*, Vol. I, at p. 257.
[26] *Id.*
[27] *Id.*, Vol. I, at p. 258.
[28] *Id.*
[29] *Id.*, Vol. I, at p. 259.

P-9-a[30]	Name and signature of Jonahlyn T. Germata dated March 26, 2013 on the Discrepancy of Sales.
P-10[31]	Letter of Authority No. LOA-101-2013-00000058 (SN: eLA201000060558) dated July 11, 2013.
P-10-a[32]	Name and signature of Cristine B. Lorejo dated July 17, 2013.
P-11[33]	Checklist of Documentary Requirements dated July 11, 2013 and signed by Revenue District Officer (RDO) Judith G. Pacana, CPA.
P-11-a[34]	Name and signature of Cristine B. Lorejo dated July 17, 2013 on the Checklist of Documentary Requirements.
P-12[35]	First Notice dated July 22, 2013.
P-12-a[36]	Stamped "Received" by San Miguel Protective Security and signed by Cristine B. Lorejo dated July 24, 2013 on the Final Notice.
P-13[37]	Second and Final Notice dated August 5, 2013, signed by Revenue District Officer Judith G. Pacana, CPA and received by Cristine B. Lorejo on August 5, 2013.
P-13-a[38]	Stamped "Received" by San Miguel Protective Security Agency and signed by Cristine B. Lorejo received on August 8, 2013 on the Second and Final Notice.
P-14[39]	Reminder Letter dated September 23, 2013, signed by Revenue District Officer (RDO) Judith G. Pacana, CPA.
P-14-a[40]	Stamped "Received" by San Miguel Protective Security Agency and signed by Cristine B. Lorejo received on September 23, 2013 on the Reminder Letter.
P-15[41]	Subpoena Duces Tecum (SDT) with SDT No. RR16-2013-104 issued on December 4, 2013 and received by Cristine B. Lorejo on December 10, 2013.

[30] *Id.*
[31] *Id.*, Vol. I, at p. 260.
[32] *Id.*
[33] *Id.*, Vol. I, at p. 261.
[34] *Id.*
[35] *Id.*, Vol. I, at p. 262.
[36] *Id.*
[37] *Id.*, Vol. I, at p. 263.
[38] *Id.*
[39] *Id.*, Vol. I, at p. 264.
[40] *Id.*
[41] *Id.*, Vol. I, at p. 265.

P-15-a[42]	Name and signature of Cristine B. Lorejo dated December 10, 2013 on the Subpoena Duces Tecum (SDT) with SDT No. RR16-2013-104.
P-16[43]	Affidavit of Service of Subpoena Duces Tecum executed by Okani Lomondot.
P-17[44]	Letter of Accused to OIC-Regional Director Atty. Alberto Olasiman dated December 11, 2013.
P-18[45]	Investigation Data Form in relation to the case "Bureau of Internal Revenue (BIR) v. Anne Gil Rachel Labao" dated June 2, 2014 for violation of Section 266, in relation to Sections 5 and 14, of the National Internal Revenue Code (NIRC) of 1997, as amended.
P-19[46]	Resolution of the Department of Justice dated March 21, 2016 and signed by Prosecutor Allan M. Radaza
P-20 to P-20-d[47]	Proposed Assessment Notice dated July 9, 2014, signed by Revenue District Officer (RDO) Lordel T. Monteclaro, CPA with attached Details of Discrepancies, consisting of four (4) pages.
P-20-e[48]	Stamped "Received" by San Miguel Protective Security and signed by Karla C. Baje on July 9, 2014 on the Proposed Assessment Notice.
P-21 [49]	Protest Letter of Mr. Francisco A. Labao dated July 22, 2014.
P-22, P-22-a to P-22-d[50]	Preliminary Assessment Notice dated November 14, 2014 and signed by OIC-Regional Director Alberto Olasiman with attachments, consisting of four (4) pages.
P-22-e[51]	Name and signature of Maria Cabangahan on the Preliminary Assessment Notice dated November 14, 2014.
P-22-f[52]	Memorandum of Service

---

[42] *Id.*
[43] *Id.*, Vol. I, at p. 266.
[44] *Id.*, Vol. I, at p. 267.
[45] *Id.*, Vol. I, at p. 268.
[46] *Id.*, Vol. I, at pp. 269-270.
[47] *Id.*, Vol. I, at pp. 271-275.
[48] *Id.*, Vol. I, at p. 271.
[49] *Id.*, Vol. I, at pp. 276-277.
[50] *Id.*, Vol. II, p. 720; Docket, Vol. I, at pp. 279-282.
[51] *Id.*, Vol. II, at p. 720.
[52] *Id.*, Vol. II, at p. 729.

P-23[53]	Stamped marked "Received" by the Administrative Division Mailing Section evidencing the mailing of the Preliminary Assessment Notice dated November 20, 2014.
P-24-a[54]	Audit Result/Assessment Notice with Assessment Number RR16-101-347-2015 (Income Tax).
P-24-b[55]	Audit Result/Assessment Notice with Assessment Number RR16-101-347-2015 (Value Added Tax).
P-24-c[56]	Audit Result/Assessment Notice with Assessment Number RR16-101-347-2015 (Compromise Penalty).
P-24-a-1[57]	Stamped marked "Received" by the Administrative Division Mailing Section evidencing the mailing of Audit Result/Assessment Notice with Assessment Number RR16-101-347-2015 (Income Tax).
P-24-b-1[58]	Stamped marked "Received" by the Administrative Division Mailing Section evidencing the mailing of Audit Result/Assessment Notice with Assessment Number RR16-101-347-2015 (Value Added Tax).
P-24-c-1[59]	Stamped marked "Received" by the Administrative Division Mailing Section evidencing the mailing of Audit Result/Assessment Notice with Assessment Number RR16-101-347-2015 (Compromise Penalty).
P-25 to P-25-d[60]	Formal Letter of Demand dated September 21, 2015, consisting of five (5) pages.
P-26[61]	Stamped marked "Received" by the Administrative Division Mailing Section evidencing the mailing of FAN/FLD dated September 28, 2015.
P-27[62]	Registry Receipt No. 15-1035 on November 26, 2015.
P-28[63]	Preliminary Collection Letter dated April 11, 2016 signed by Revenue District Officer (RDO) Roger G. Cadavas and received by Karla C. Baje on April 19, 2016.

---

[53] Docket, Vol. I, at p. 278.
[54] *Id.*, Vol. I, at p. 283.
[55] *Id.*, Vol. I, at p. 284.
[56] *Id.*, Vol. I, at p. 285.
[57] *Supra*, Note 54.
[58] *Supra*, Note 55.
[59] *Supra*, Note 56.
[60] *Id.*, Vol. I, at pp. 286-290.
[61] *Id.*, Vol. I, at p. 286.
[62] *Id.*, Vol. I, at p. 317; Docket, Vol. I, p. 536.
[63] *Id.*, Vol. I, at p. 318; Docket, Vol. I, p. 537.

P-28-a[64]	Name and signature of Karla C. Baje dated April 19, 2016.
P-29[65]	Final Notice Before Seizure dated October 19, 2017, signed by Chief of the Collection Division, Ms. Estella M. Laga-ac.
P-29-a[66]	Stamped marked "Received" by the Administrative Division Mailing Section evidencing the mailing of the Final Notice Before Seizure dated October 19, 2017.
P-30[67]	Certification of the Provincial and City Assessor dated March 24, 2017 and signed by Camilo M. Diacor, Jr. as Acting Provincial Assessor.
P-31[68]	Certification of City Assessor dated April 3, 2017 and signed by Maria Elena Rodora A. Gimena, City Government Department Head II, City Assessor of Iligan.
P-32[69]	Warrant of Distraint and/or Levy (WDL) No. AMS-RR16-101-12-0249, signed by Chief Estela M. Laga-ac
P-32-a[70]	LBC Tracking
P-32-b[71]	LBC Receipt
P-32-c[72]	LBC Certification
P-32-d[73]	Identification Card of the LBC Representative
P-33[74]	Warrant of Garnishment with AMS-RR16-WG-101-02-0081, addressed to UCPB Legal counsel and signed by Chief Estela M. Laga-ac
P-34[75]	Warrant of Garnishment with AMS-RR16-WG-101-02-0082, addressed to the Security Bank Branch Manager and signed by Chief Estela M. Laga-ac
P-35[76]	Warrant of Garnishment with AMS-RR16-WG-101-02-0080, addressed to Union Bank Branch Manager and signed by Chief Estela M. Laga-ac

[64] *Id.*
[65] *Id.*, Vol. I, at p. 319; Docket, Vol. I, p. 538.
[66] *Id.*
[67] *Id.*, Vol. I, at p. 320; Docket, Vol. I, p. 539.
[68] *Id.*, Vol. I, at p. 321; Docket, Vol. I, p. 540.
[69] *Id.*, Vol. I, at p. 322; Docket, Vol. I, p. 541.
[70] *Id.*, Vol. II, at p. 730.
[71] *Id.*, Vol. II, at p. 731.
[72] *Id.*, Vol. II, at p. 732.
[73] *Id.*, Vol. II, at p. 733.
[74] *Id.*, Vol. I, at p. 323; Docket, Vol. I, p. 542.
[75] *Id.*, Vol. I, at p. 324; Docket, Vol. I, p. 535.
[76] *Id.*, Vol. I, at p. 325; Docket, Vol. I, p. 543.

P-36[77]	UCPB Reply dated February 6, 2018 signed by Jomar L. Duhaylungsod as Branch Operation Officer
P-37[78]	Security Bank Reply dated February 8, 2018
P-38[79]	Union Bank Reply dated February 7, 2018 and signed by Edmund Soria and Jessica de Claro as Branch Operations Support Officers Documentation and Consultancy, Legal Division
P-39[80]	Letter of Chief Estela M. Laga-ac to the Regional Director of Land Transportation Office (LTO)
P-40[81]	Letter Reply of the District Chief of Land Transportation Office (LTO), Simeon DC Gorra, CTRO, District Chief Cagayan De Oro District Office
P-41[82]	Final Collection Letter dated May 15, 2018
P-42[83]	Memorandum of Assignment No. RID-06-53-2018 dated June 4, 2018
P-43[84]	Philpost Letter dated July 19, 2021
P-44[85]	Judicial Affidavit of Witness Monib Dimalomping
P-44-a[86]	Name and signature of Witness Monib Dimalomping on page 14 of the Judicial Affidavit
P-45[87]	Judicial Affidavit of Witness Joan H. Dumagdag-Restauro
P-45-a[88]	Name and signature of Witness Joan H. Dumagdag-Restauro on page 6 of the Judicial Affidavit
P-46[89]	Judicial Affidavit of Witness Ivy Rose T. Gemina
P-46-a[90]	Name and signature of Witness Ivy Rose T. Gemina on page 8 of the Judicial Affidavit

77 Docket, Vol. I, at p. 326 and p. 544.
78 *Id.*, Vol. I, at p. 327 and p. 545.
79 *Id.*, Vol. I, at p. 328 and p. 546.
80 *Id.*, Vol. I, at p. 329 and p. 547.
81 *Id.*, Vol. I, at p. 330 and p. 548.
82 *Id.*, Vol. I, at p. 331 and p. 549.
83 *Id.*, Vol. I, at p. 332 and p. 550.
84 *Id.*, Vol. I, at p. 552 (inserted before p. 523).
85 *Id.*, Vol. I, at pp. 466-481.
86 *Id.*, Vol. I, at p. 479.
87 *Id.*, Vol. I, at pp. 458-465.
88 *Id.*, Vol. I, at p. 463.
89 *Id.*, Vol. I, at pp. 438-447.
90 *Id.*, Vol. I, at p. 445.

P-47[91]	Judicial Affidavit of Witness Estela Laga-ac
P-47-a[92]	Name and signature of Witness Estela Laga-ac on page 8 of the Judicial Affidavit

On the other hand, accused filed her Comment/ Opposition (Re: Plaintiff's Formal Offer of Evidence)[93] on June 6, 2022.

Except for Exhibit P-43 which was not admitted for failure to be identified, all other exhibits abovementioned were admitted.[94]

Accused Labao's Motion for Leave to File a Demurrer to Evidence during the hearing held on May 18, 2022 was initially granted[95] by the Court. However, for failure of the accused to file the same on time, the Court had withdrawn said permission.[96]

Thus, accused Labao moved for the reconsideration[97] of said withdrawal. However, the Court had given the accused another ten (10)-day period to submit her Demurrer to Evidence, hence, said motion became moot and academic.[98]

On August 18, 2022, accused Labao filed her Demurrer to Evidence[99] which was denied[100] by the Court. Thus, accused presented her evidence.

After accused presented her evidence, she filed her Formal Offer of Documentary Evidence[101] on May 22, 2023 and offered the following documentary exhibits for admission by the Court, to wit:

---

[91] Docket, Vol. I, at pp. 448-457.
[92] *Id.*, Vol. I, at p. 455.
[93] *Id.*, Vol. II, pp. 851-923.
[94] *Id.*, Resolution dated August 4, 2022, pp. 981-983.
[95] *Id.*, Order dated May 18, 2023, pp. 735-738.
[96] *Id.*, Resolution dated June 20, 2022, pp. 942-943.
[97] *Id.*, Motion for Reconsideration (Re: Resolution dated 20 June 2022), pp. 946-958.
[98] *Id.*, Resolution dated July 1, 2022, pp. 976-977.
[99] *Id.*, pp. 984-1062.
[100] *Id.*, Resolution dated January 27, 2023, pp. 1073-1082.
[101] *Id.*, pp. 1130-1154.

Exhibit	Document
A-1[102]	Computation Sheet dated 01 February 2013
A-2[103]	Confirmation Request dated 01 February 2013 received by Cristine B. Lorejo
A-3[104]	Follow-up Letter dated 15 February 2013 signed by RDO Pacana and received by Cristine B. Lorejo
A-4[105]	Notice for Informal Conference dated 18 March 2013 received by Jonahlyn Germata
A-5[106]	Computation of Deficiency Taxes received by Jonahlyn Germata
A-6[107]	Letter of Authority (LOA) No. 101-2013-00000058/ eLOA201000060558 dated 11 July 2013 authorizing RO Okani Lomondot/GS-Monib Dimalomping received by Cristine Lorejo on 17 July 2013
A-7[108]	Checklist of Documentary Requirements dated 11 July 2013 received by Cristine Lorejo on 17 July 2013
A-8[109]	First Notice dated 22 July 2013 received by Cristine Lorejo on 24 July 2013
A-9[110]	Second and Final Notice dated 05 August 2013 received by Cristine Lorejo on 05 August 2013
A-10[111]	Reminder Letter dated 16 September 2013 received by Cristine Lorejo on 23 September 2013
A-11[112]	Subpoena Duces Tecum issued on 4 December 2013 signed by Regional Director Alberto Olasiman received by Cristine Lorejo on 10 December 2013
A-12[113]	Affidavit of Service of Subpoena Duces Tecum dated 10 December 2013
A-13[114]	Letter dated 11 December 2013 signed by the Accused Father Francisco Labao

[102] *Id.*, Vol. I, at p. 257.
[103] Docket, Vol. I, at p. 255.
[104] *Id.*, Vol. I, at p. 256.
[105] *Id.*, Vol. I, at p. 258
[106] *Id.*, Vol. I, at p. 259.
[107] *Id.*, Vol. I, at p. 260.
[108] *Id.*, Vol. I, at p. 261.
[109] *Id.*, Vol. I, at p. 262.
[110] *Id.*, Vol. I, at p. 263.
[111] *Id.*, Vol. I, at p. 264.
[112] *Id.*, Vol. I, at p. 265.
[113] *Id.*, Vol. I, at p. 266.
[114] *Id.*, Vol. I, at p. 267.

A-13-a[115]	Signature of Mr. Francisco Labao
A-14[116]	Proposed Assessment Notice dated 09 July 2014 signed by RDO Lordel Monteclaro, CPA received by Karla Baje on 09 July 2014 with a note "Anne Gil Labao is no longer residing at this place"
A-15[117]	Details of Discrepancies
A-16[118]	Protest Letter of Francisco Labao dated 22 July 2014
A-16-a[119]	Signature of Mr. Francisco Labao
A-17[120]	Preliminary Assessment dated 14 November 2014 signed by BIR OIC Regional Director Alberto Olasiman
A-18[121]	Audit Results/Assessment Notice dated 21 September 2015 for Income Tax
A-19[122]	Audit Results/Assessment Notice dated 21 September 2015 for Value Added Tax
A-20[123]	Audit Results/Assessment Notice dated 21 September 2015 for Compromise/Penalty
A-21[124]	Formal Letter of Demand amounting to P5,000.00
A-22[125]	Registry Return Card received by Hipolito P. Majaducon on 26 November 2015
A-23[126]	Preliminary Collection Notice dated 11 April 2016 received by Karla C. Baje on 19 April 2016 with a note, "Anne Gil Labao is no longer residing in this address"
A-24[127]	Final Notice Before Seizure dated 19 October 2017 signed by the BIR Chief of Collection Division Estela M. Laga-ac
A-25[128]	Province of Lanao del Norte Office of the Provincial Assessor Certification dated 24 March 2017

[115] *Id.*
[116] Docket, Vol. I, at pp. 271-275.
[117] *Id.*, Vol. I, at pp. 272-275.
[118] *Id.*, Vol. I, at pp. 276-277.
[119] *Id.*, Vol. I, at p. 277.
[120] *Id.*, Vol. I, at pp. 278-282.
[121] *Id.*, Vol. I, at p. 283.
[122] *Id.*, Vol. I, at p. 284.
[123] *Id.*, Vol. I, at p. 285.
[124] *Id.*, Vol. I, at pp. 286-290.
[125] *Id.*, Vol. I, at p. 536.
[126] *Id.*, Vol. I, at p. 537.
[127] *Id.*, Vol. I, at p. 538.
[128] *Id.*, Vol. I, at p. 539.

A-26[129]	Iligan City Assessor's Office Certification dated 3 April 2017
A-27[130]	Warrant of Distraint and Levy No. AMS-RR-16-101-12-0249
A-28[131]	Warrant of Garnishment addressed to UCPB dated 6 February 2018
A-29[132]	Warrant of Garnishment addressed to Security Bank dated 6 February 2018
A-30[133]	Warrant of Garnishment addressed to Union Bank dated 6 February 2018
A-31[134]	UCPB Letter Reply dated 6 February 2018
A-32[135]	Security Bank Letter Reply dated 8 February 2018
A-33[136]	Union Bank Reply dated 7 February 2018
A-34[137]	BIR Letter to LTO dated 26 February 2018
A-35[138]	LTO Letter Reply dated 28 February 2019
A-36[139]	Final Collection letter dated 15 May 2018 signed by BIR Regional Director Hermeno A. Palamine for taxable year(s) 2010 and 2011
A-37[140]	Memorandum of Assignment No. RID-06-53-2018 dated 04 June 2018
A-38[141]	UMID of the Accused
A-39[142]	LTO Driver's License of the Accused
A-40[143]	Senior ID with signature of Mr. Francisco Labao
A-41[144]	Passport ID with signature of Mr. Francisco Labao

---

129 *Id.*, Vol. I, at p. 540.
130 Docket, Vol. I, at p. 541.
131 *Id.*, Vol. I, at p. 542.
132 *Id.*, Vol. I, at p. 535.
133 *Id.*, Vol. I, at p. 543.
134 *Id.*, Vol. I, at p. 544.
135 *Id.*, Vol. I, at p. 545.
136 *Id.*, Vol. I, at p. 546.
137 *Id.*, Vol. I, at p. 547.
138 *Id.*, Vol. I, at p. 548.
139 *Id.*, Vol. I, at p. 549.
140 *Id.*, Vol. I, at p. 550.
141 *Id.*, Vol. I, at p. 525.
142 *Id.*, Vol. I, at p. 526.
143 *Id.*, Vol. I, at p. 527.
144 *Id.*, Vol. I, at p. 528.

A-42[145]	Death Certificate of Mr. Francisco Labao
A-43[146]	Job Offer of JP Morgan Chase & Co. to the Accused dated 26 June 2013
A-44[147]	Certificate of Employment of the Accused from Cognizant
A-45[148]	Certificate of Employment of the Accused from EXL Service Philippines, Inc.
A-46[149]	Certificate of Employment of the Accused from JP Morgan
A-47[150]	BIR 2316 of Accused Labao
A-48[151]	Letter Notice No. 101-RLF-11-00-00041 dated 2 February 2013
A-49-series	Printed online news reports/clippings regarding Bagyong Sendong and Bagyong Pablo that hint (*sic*) Mindanao Region particularly the cities of Cagayan De Oro and Iligan City sometime on December 2011-2012.

Acting on Accused's Formal Offer of Documentary Evidence, Exhibits "A-38", "A-39", "A-47, "A-49-series" were denied for failure of the accused to present the original copies for comparison and to have such exhibits identified, while Exhibits "A-40", "A-41", "A-42", "A-43", "A-44", "A-45", and "A-46" were also denied for failure to present the originals for comparison. The Court also noted that Exhibit "A-13" is not signed by accused's father, Francisco Labao, but by the accused herself.[152]

On October 25, 2023, accused Labao submitted her Memorandum[153] while the plaintiff filed its Memorandum[154] on November 8, 2023. Thus, the case was submitted for decision on November 13, 2023.[155]

---

[145] Docket, Vol. I, at p. 529.
[146] *Id.*, Vol. I, at p. 530.
[147] *Id.*, Vol. I, at p. 531.
[148] *Id.*, Vol. I, at p. 532.
[149] *Id.*, Vol. I, at p. 533.
[150] *Id.*, Vol. I, at p. 534.
[151] *Id.*, Vol. I, at p. 251.
[152] *Id.*, Vol. II, Resolution dated September 22, 2023, pp. 1192-1194.
[153] *Id.*, Vol. II, at pp. 1195-1247.
[154] *Id.*, Vol. II, at pp. 1250-1265.
[155] *Id.*, Vol. II, Minute Resolution dated November 13, 2023, p. 1267.

Issues

The following are the issues to be resolved by the Court, to wit:[156]

1. Whether or not Accused is liable for the offense charged in the Information; and

2. Whether or not Accused is liable to pay the income tax deficiency for the taxable year 2011.

Ruling of the Court

Accused Labao was charged under Section 255 of the 1997 NIRC, as amended, the provision of which is quoted below:

> 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 (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years. (*Emphasis supplied*)

Based on the foregoing, the following constitute the elements of the crime, to wit:

1. The offender is **required under the 1997 NIRC**, as amended, or by rules and regulations promulgated thereunder **to pay any tax**, make a return, keep any record, or **supply correct and accurate information**;

2. The offender **fails to pay such tax**, make such return, keep such record, or **supply correct and accurate information**, or withhold or remit taxes withheld, or

[156] Docket, Vol. I, Order dated October 27, 2021, p. 491.

refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations; and

3. Such failure was **willful**.

In the instant case, accused is being charged with two overt acts, namely: (1) failure to supply correct and accurate information in her ITR; and (2) failure to pay the income tax deficiency resulting from such failure to supply correct and accurate information in her ITR.

In order to prove the offense charged, the plaintiff must establish first the antecedent fact that the accused is the taxpayer who is required to supply the correct and accurate information and has the duty to pay such rightful taxes.

Thus, it is only when the first element is established that the remaining two elements must be examined and proven. In other words, there can be no willful failure to supply correct and accurate information and willful failure to pay its corresponding tax if there is no requirement to do the same.

The admission of the accused satisfies the first requisite of the offense charged.

As to the first element of the offense charged, the Information alleged that accused Labao is the registered proprietor of San Miguel Protective Security Agency or San Miguel Security Agency, which is allegedly engaged in security, janitorial, messengerial and allied services business.

As shown above, nowhere did the prosecution present the Department of Trade and Industry's (DTI's) Certificate of Business Name Registration of San Miguel Protective Security Agency or San Miguel Security Agency nor its Bureau of Internal Revenue's (BIR's) Certificate of Registration indicating the name of the accused as the owner on record of the business.

Section 5, Rule VIII of the Revised Implementing Rules and Regulation (IRR) of 2018 of Act No. 3883,[157] provides that the

[157] ACT NO. 3883 - AN ACT TO REGULATE THE USE IN BUSINESS TRANSACTIONS OF NAMES OTHER THAN TRUE NAMES, PRESCRIBING THE DUTIES OF THE

"Certificate of Business Name Registration shall be exclusively used by the **owner** for the registered purpose/business and within its territorial scope." Thus, it is the proof as who the owner is, and who is responsible for its resulting operations and payment of the required taxes.

However, the accused admitted in her Judicial Affidavit[158] that the business name of San Miguel Security Agency was registered under her name as its owner, to wit:

> 4. Q: Do you know San Miguel Security Agency?
>
> A: Yes Ma'am.
>
> 5. Q: Why do you know San Miguel Security Agency?
>
> A: I know San Miguel Security Agency because it is a business organized, put up by my late father Francisco Labao, and registered under my name sometime in 2007.
>
> xxx xxx xxx
>
> 8. Q: You mentioned that Mr. Francisco Labao organized and registered the San Miguel Security Agency, how did you know this, Ms. Witness?
>
> A: My late father Francisco Labao informed me that San Miguel Security Agency will be registered under my name. He also informed me that, although I am the registered owner, being the only daughter, he will be the one to run the business and will oversee all staffs, budgets and operations of the business including dealing with clients and government offices.
>
> 9. Q: After Mr. Francisco informed you that San Miguel Security will be registered under your name, what was your reaction, if any, Ms. Witness?
>
> A: At first, I was hesitant since I do not have any background in running the business but when my father assured me that he will be the general manager of the business, and complying with all government requirement, I consented to his requests. Besides as a daughter, I do not want to disappoint my father on any of his requests.

DIRECTOR OF THE BUREAU OF COMMERCE AND INDUSTRY IN ITS ENFORCEMENT, PROVIDING PENALTIES FOR VIOLATIONS THEREOF, AND FOR OTHER PURPOSES.

[158] Docket, Vol. II, Judicial Affidavit of Anne Gil Rachel K. Labao, pp. 558-59.

Such admission was also made during the trial[159] before this Court, to wit:

ATTY. PINEDA:

In the registration of San Miguel Security Agency, did you sign any document to complete its registration process under your name?

MS. LABAO:

Yes.

xxx xxx xxx

ATTY. PINEDA:

So you admit that the registration under your name of San Miguel Security Agency is with your full consent and knowledge?

MS. LABAO:

Yes, because I have no choice (interrupted)

xxx xxx xxx

JUSTICE DEL ROSARIO:

So, when your name was technically borrowed by your father, you are already a graduate of LLB?

MS. LABAO:

Yes.

JUSTICE DEL ROSARIO:

Of course, because of that background, you're aware that the name that was used by your father is for the purpose of registering the business San Miguel Security?

MS. LABAO :

Yes, because, your Honors, he is a frustrated lawyer, I guess (interrupted)

xxx xxx xxx

JUSTICE DEL ROSARIO:

You're aware already that your name is used as the registered owner of the entity, of the enterprise?

---

[159] *Transcript of Stenographic Notes* (TSN) during the Hearing held on March 29, 2023, pp. 20, and 42-44.

MS. LABAO:

Yes, your Honors.

JUSTICE DEL ROSARIO:

And knowing that there is an obligation that accompanies the use of your name in that entity, you actually allowed your father to manage and operate that entity, fully without any objection on your part?

MS. LABAO:

No choice.

Section 4, Rule 129 of the Revised Rules of Court, as amended, provides:

> "SEC. 4. *Judicial admissions.* – **An admission, verbal** or written, **made by a party in the course of the proceedings in the same case, does not require proof**. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made." (*Emphasis supplied*)

Thus, her testimony, in her judicial affidavit as well as admission during trial, proves that she is indeed the registered proprietor of San Miguel Security Agency even with the failure of the prosecution to present its DTI Certificate of Business Name Registration.

Such admission has satisfied the first requisite that the accused is the required person to supply correct and accurate information and to pay the corresponding tax.

Failure to refute the evidence against the accused satisfies the second requisite of the offense charged.

The Information alleged that the accused is liable to pay the Income Tax Deficiency for the TY 2011 in the amount of Php3,573,880.78, exclusive of interest, penalty and surcharge. Such alleged liability was based on the accusation that the accused, as proprietor of San Miguel Security Agency, failed to supply correct and accurate information in her ITR.

To prove both allegations, the plaintiff presented the Letter Notice (LN)[160] with Details of Customers Records, Computation Sheet,[161] Notice for Informal Conference (NIC)[162] with the computation of the discrepancy on sales,[163] Preliminary Assessment Notice (PAN)[164] with Details of Discrepancies, Formal Letter of Demand (FLD),[165] and the Assessment Notices.[166]

The accused did not refute the findings stated in these documentary evidence. Instead, the accused merely reasoned out that aside from allowing her name to be used in the registration of San Miguel Security Agency, entertaining the wives of male clients and doing errands for collection, she did not participate in the day-to-day operation of said agency.[167]

It is well-settled that evidence not objected to is deemed admitted and may be validly considered by the court in arriving at its judgment.[168]

Thus, the prosecution was able to prove that the accused indeed failed to supply correct and accurate information and pay the corresponding tax for it.

Plaintiff's failure to properly serve notices to the accused casts doubts that the criminal offense was committed willfully.

As to the third requisite, the failure of the accused to provide or supply correct and accurate information on her ITR and to pay the corresponding tax must be willful.

---

[160] *Supra*, Note 19.
[161] *Supra*, Note 25.
[162] *Supra*, Note 27.
[163] *Supra*, Note 29.
[164] *Supra*, Note 50.
[165] *Supra*, Note 60.
[166] *Supra*, Notes 54 to 56.
[167] Docket, Vol. II, Judicial Affidavit of Anne Gil Rachel K. Labao, pp. 558-560; TSN during the Hearing held on March 29, 2023, pp. 21-22.
[168] *Edmundo Jose T. Buencamino v. People of the Philippines and Sandiganbayan*, G.R. Nos. 216745-46, November 10, 2020.

In the case of *People of the Philippines v. Judy Anne Santos y Lumagui*,[169] this Court defines what is considered "willful" in criminal tax cases, to wit:

> "Citing *Black's Law Dictionary*, the term "willful" is defined as voluntary and intentional. And in *Merten's Law of Federal Income Taxation*, "willful" in tax crimes statutes is defined as voluntary, intentional violation of a known legal duty."

Thus, it is imperative for the prosecution to prove that the accused has knowledge of such assessment and despite knowledge thereof, the accused failed to act on it thereby violating a known legal duty of supplying correct and accurate information in San Miguel Security Agency's ITR and to pay the corresponding taxes.

To prove that the accused was aware of the Bureau of Internal Revenue's (BIR's) findings and resulting assessment, the prosecution presented that the LN, NIC, PAN, FLD, were properly served to her.

However, the evidence shows otherwise. During the cross-examination of the prosecution's witness, it was revealed that the LN, NIC, and FLD were either personally served or by registered mail through an alleged authorized official of San Miguel Security Agency, to wit:[170]

ATTY. ANNA MARIE ANTONIO:

Q. Let us proceed with another document. Mr. Witness, please go over with the Letter Notice, which is attached to your Judicial Affidavit as Exhibit "P-4" to "P-4-c". Would you agree, Mr. Witness, that such Letter Notice, you are not a signatory thereto?

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. Yes. Attorney.

ATTY. ANNA MARIE ANTONIO:

Q. And a certain Cristina B. Lorejo received the said Letter Notice. Correct?

---

[169] CTA Crim. Case No. O-012, January 16, 2013.
[170] TSN during the Hearing held on May 18, 2022, pp. 41-56.

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. Yes, attorney.

ATTY. ANNA MARIE ANTONIO:

Q. And there is no showing that such Letter Notice, that such Cristine B. Lorejo is authorized to receive on behalf of the accused. Correct?

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. The only proof is Cristine Lorejo is the one in-charge in that establishment.

ATTY. ANNA MARIE ANTONIO:

Q. But there was no evidence to prove, Mr. Witness, that Cristine B. Lorejo is related to the accused Labao. Correct?

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. She is related to (Interrupted)

ATTY. ANNA MARIE ANTONIO:

Q. Mr. Witness, kindly refer to this document. Is there anything in this document that shows that Cristine B. Lorejo is related to the accused Labao?

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. There is no showing.

xxx xxx xxx

ATTY. ANNA MARIE ANTONIO:

Q. Mr. Witness, kindly go over to Exhibit "P-8" referring to your Notice of Informal Conference, which was attached to your Judicial Affidavit. Mr. Witness, in your Judicial Affidavit, particularly in Question No. 25, you mentioned that you issued a Notice of Informal Conference. Correct?

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. Yes. Attorney.

xxx xxx xxx

JUSTICE DEL ROSARIO:

Let us clarify the point. Was there any Informal Conference ever conducted after the Issuance of the Notice of Informal Conference?

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. Yes, Your Honors.

JUSTICE DEL ROSARIO:

There was actually (Interrupted).

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. No.

JUSTICE DEL ROSARIO:

No Informal Conference that was conducted anymore?

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. Yes, Your Honors.

JUSTICE DEL ROSARIO:

Because there was no appearance on the part of the accused.

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. Yes, Your Honors.

xxx xxx xxx

ATTY. ANNA MARIE ANTONIO:

Q. Thank you, Your Honors. In the said Notice for Informal Conference, the same was, the same indicates that a Jonahlyn Germata received the same document. Correct?

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. Yes, Attorney.

ATTY. ANNA MARIE ANTONIO:

Q. And the said document does not also show that accused Labao personally received the same? Correct?

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. Yes, Attorney.

ATTY. ANNA MARIE ANTONIO:

Q. Would you agree that there is no showing that such Jonahlyn Germata is specifically authorized by accused Labao to receive such Notice for Informal Conference? Correct?

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. The only proof is that Jonahlyn Germata was the one in-charge in that registry return.

ATTY. ANNA MARIE ANTONIO:

Q. But there was no specific authority presented to you?

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. Yes. There was no (Interrupted).

xxx xxx xxx

ATTY. ANNA MARIE ANTONIO:

Q. Thank you, Your Honors. In Question No. 53, in answer, of your Judicial Affidavit, to Question No. 53 you stated that you sent, that the Formal Letter of Demand was to the accused via registered mail? Correct?

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. Yes, Attorney.

ATTY. ANNA MARIE ANTONIO:

Q. Also, according to you, the Formal Letter of Demand was sent to the Admin Division of the Mailing Section. Correct?

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. Yes, Attorney.

ATTY. ANNA MARIE ANTONIO:

Q. But there was a showing in such Formal Letter of Demand that the accused Labao personally received the same. Correct?

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. Yes, Attorney.

xxx xxx xxx

The line of questioning by the accused's counsel reveals that her defense was that no evidence will show that she received any of the notices issued by the complainant BIR and that the persons who received said notices were not authorized by her to receive on her behalf.

In the recent case of *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*,[171] the Supreme Court ruled that the person receiving the NIC or the PAN has authority to do so and such must be indicated on the face of the said notices, otherwise, said notices and the succeeding Final Assessment Notice or FLD will be null and void, to wit:

> "Section 228 of the Tax Code explicitly provides that when the respondent finds that proper taxes should be assessed, the taxpayer must be properly notified of its findings. Moreover, under Section 3.1.4 of Revenue Regulations No. 12-99, personal delivery must be acknowledged by the taxpayer **or his duly authorized representative**, viz.:
>
> SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> x x x x
>
> 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 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 (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. (Emphasis supplied)

[171] G.R. No. 244202, July 10, 2023. *om*

> The very same provision even requires that the signee-recipient must indicate their "designation and authority to act for and in behalf of the taxpayer," which further emphasizes that personal delivery must be discriminate.
>
> The wisdom for such a requirement is readily apparent — unless the recipient possesses a certain degree of authority or discretion, they would be unable to grasp the gravity of the service of an assessment notice and the potential financial impact it would have to the taxpayer they purport to serve and represent. This is especially true for juridical entity taxpayers who can only act through its officers and employees, and who would otherwise be prejudiced by such recipient's simple ignorance.
>
> While Sections 3.1.1. and 3.1.2. of Revenue Regulations No. 12-99, which govern the NIC and the PAN, respectively, bear no similar qualifications for personal delivery as those found under Section 3.1.4, the Court deems it more in keeping with the spirit of the law that these should likewise be served only upon the taxpayer or, especially for juridical entities, their duly authorized representatives.
>
> This is consistent with the oft-repeated principle that the sending and actual receipt of the PAN is part and parcel of the due process requirement in the issuance of a deficiency tax assessment that the BIR must strictly comply with. Certainly, the importance of this preliminary stage of the assessment process cannot be discounted as it presents an opportunity for both the taxpayer and the BIR to settle the case at the earliest possible time without need for the issuance of a FAN.
>
> Having failed to properly serve petitioner with the NIC and the PAN, it necessarily follows that the succeeding FAN was void and without effect." (*Underscoring ours*)

In the instant case, the NIC[172] and the PAN[173] were received by a certain Jonahlyn T. Germata and Maria Chalebra A. Cabangahan, respectively.

In the NIC, Ms. Germata's indicated designation or position is one of a "Secretary"; while Ms. Cabangahan's indicated designation is an "Office Staff of SMSA". However, in both documents, the signee-recipients failed to indicate their authority to act for and in behalf of the accused taxpayer, Ms. Labao.

---

[172] Docket, Vol. I, Exhibit "P-8-a", p. 258.
[173] Id., Vol II, Exhibit "P-22-E", p.720.

Applying the preceding case, the NIC and PAN were not properly served to accused Labao and, therefore, the succeeding FLD and its corresponding Assessment Notices were void. The collection notices were also void as an invalid or void assessment bears no valid fruit as held in *Commissioner of Internal Revenue v. Azucena T. Reyes*,[174] to wit:

> "*Fourth*, petitioner violated the cardinal rule in administrative law that the taxpayer be accorded due process. Not only was the law here disregarded, but no valid notice was sent, either. **A void assessment bears no valid fruit**.
>
> 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 the instant case, respondent has not been informed of the basis of the estate tax liability. Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made. The haphazard shot at slapping an assessment, supposedly based on estate taxation's general provisions that are expected to be known by the taxpayer, is utter chicanery." (*Emphasis supplied*)

Thus, the prosecution failed to prove the third requisite that the alleged failure of accused Labao to supply correct and accurate information in the ITR and to pay its corresponding tax was done willfully.

In *Guilbemer Franco v. People of the Philippines*,[175] the Supreme Court mandated the prosecution to prove all the elements of the offense charged beyond reasonable doubt, 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 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**

---

[174] G.R. Nos. 159694 & 163581, January 27, 2006.
[175] G.R. No. 191185, February 01, 2016. om

> **the elements of the offense**; and *second*, the fact that the accused was the perpetrator of the crime." (*Emphasis supplied*)

As to the civil liability, however, even if the assessment is void, such may be proven by other evidence other than the assessment itself as ruled in the recent case of *People of the Philippines v. Joel Mendez*,[176] to wit:

> "For the guidance of the bench and bar, the following rules shall govern the prosecution of criminal tax law violations and the corresponding civil liability for unpaid taxes:
>
> (1) When a criminal action for violation of the tax laws is filed, a prior assessment is not required. Neither a final assessment is a precondition to *collection* of delinquent taxes in the criminal tax case. The criminal action is deemed a collection case. Therefore, the government must prove two things: *one*, the guilt of the accused by proof beyond reasonable doubt, and *two*, the accused's civil liability for taxes by competent evidence (other than an assessment). ..."

In the instant case, the plaintiff presented the LN[177] to prove the assessment that resulted from tax investigation.

However, during the interpellation conducted by this Court, particularly by the Presiding Justice Roman G. Del Rosario, the information gathered from the third-party sources, as stated in the LN by the BIR, was not verified or validated. The BIR merely relied or presumed that such information was indeed income of accused Labao, to wit:[178]

JUSTICE DEL ROSARIO:

And the basis of tax deficiency would be the information obtained from the best evidence obtainable under Section 6B of the NIRC, as indicated in your answer to Question No. 44?

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. Yes, Your Honors.

---

[176] G.R. Nos. 208310-11 and 208662, March 28, 2023.
[177] *Supra*, Note 19.
[178] TSN, hearing during May 18, 2022, pp. 58-68.

JUSTICE DEL ROSARIO:

Kindly clarify this particular, enlighten the Court. What is the best evidence obtainable that you are saying here? What evidence was used in order to come up with the Formal Letter of Demand?

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. Let me relate the history of the case. The National Office of the Bureau of Internal Revenue Sent Letter Notices to the Revenue District Office, which used the income of the taxpayer. Now, that is our basis in assessing the tax liability of the taxpayer because she did not appear. She did not comply with our request that we have nothing to, we cannot do anything but to assess based on best evidence obtainable because it is part of our job.

JUSTICE DEL ROSARIO:

Precisely, the Court is asking you to enlighten the Court regarding this best evidence obtainable. Go to your Answer No. 18. There is here a supposed under declaration, you are saying. Can you see that? You said there is under declaration?

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. Yes, Your Honors.

JUSTICE DEL ROSARIO:

What is your basis in saying that there was an under declaration? There is an under declaration of sales. So that, more or less, the Court would be enlightened, were you admitting your information? There is your Answer to Question No. 15 and also, there is your answer to Question No. 14. There is a computerized matching and reconciliation. So, again, will you enlighten the Court, what is the basis in making a conclusion that there was an under declaration of sales amounting to eighty-six point fifty-six percent and there is the phrase, "computerized matching and reconciliation and authentication". What do you mean by that?

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. The taxpayer has filed its returns, Income Tax Returns, VAT Returns and (Inaudible) taxes. Now, when we received the Letter Notice, we compare it, and there was significant discrepancy which is about eighty-five percent.

JUSTICE DEL ROSARIO:

You compare Income Tax Returns with what?

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. With the data from the National Office.

JUSTICE DEL ROSARIO:

And what data is that? What is contained in that data?

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. There was a program of the Bureau of Internal Revenue that all sellers, suppliers submit documents. Then, upon submitting the documents, the Bureau of Internal Revenue consolidate all of those things. Then, try to compare with the returns using the Integrated Tax System of the BIR. Once they noted that there is a discrepancy, they send the data to the Revenue District Office concerned.

JUSTICE DEL ROSARIO:

Wait. You are going too fast. There is a discrepancy. There is an Income Tax Return. Correct?

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. Yes, Your Honors.

JUSTICE DEL ROSARIO:

You make use of the Income Tax Returns and there is that data of the sales made by the seller itself. Correct?

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. No. Coming from third party.

JUSTICE DEL ROSARIO:

Coming from the buyers?

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. Yes, Your Honors.

JUSTICE DEL ROSARIO:

I see. Now, in this particular data, is the name of the buyer supposedly appearing or is it only the Tax Information Number, the TIN that is submitted by the supposed purchaser? It is only the TIN that being used to make the (Inaudible). Is it not?

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. It used also the name and the TIN of the buyer.

JUSTICE DEL ROSARIO:

No. The buyer is supposed to make a report of the purchases. Right? There is a data being submitted by the buyer. Is that it?

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. Yes, Your Honors.

JUSTICE MANAHAN:

SLP (Interrupted).

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. Yes (Interrupted).

JUSTICE MANAHAN:

Comparing the SLS with the SLP (Interrupted)?

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. Yes. SLP.

JUSTICE DEL ROSARIO:

The SLP now supposedly indicates also the name of the seller. There is a purchase. The purchaser now indicates in the SLP the name of the party from whom the purchases was made... (Interrupted).

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. Yes, Your Honors. . . (interrupted).

JUSTICE DEL ROSARIO:

Only the TIN of the party from whom the purchase was made.

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. It used the TIN of the (Interrupted)

JUSTICE DEL ROSARIO:

Of the seller?

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. Of the seller, also the name.

JUSTICE DEL ROSARIO:

How about the name of the seller? Does it appear on there? Just please be sure on this because

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. Yes.

JUSTICE DEL ROSARIO:

I got some documents of the BIR (Interrupted).

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. Yes.

JUSTICE DEL ROSARIO:

Of the BIR.

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. Yes, Your Honors. That is why we sent a confirmation receipt to the taxpayer so that, we were giving them the opportunity to present their side.

JUSTICE DEL ROSARIO:

I see. The document that is being compared would be information gathered from the purchasers (Interrupted).

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. Yes, Your Honors.

JUSTICE DEL ROSARIO:

And that is actually compared to the Income Tax Return (Interrupted).

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. Income Tax Returns of the accused.

JUSTICE DEL ROSARIO:

In this particular case, how many, do you have an idea how many purchasers were included in the process of matching? More or less?

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. More or less, ten (Interrupted).

JUSTICE DEL ROSARIO:

I see (Interrupted).

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. Major purchaser.

JUSTICE DEL ROSARIO:

All right. There is a statement here there is verification. That is your answer to Question No. 14. There is computerized matching, reconciliation and verification on information on the PAN. How do you make the verification as to the accuracy of the information you received? What is this verification process?

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. Actually, we can verify the accuracy of that data to the taxpayer. We will ask them. We ask them the records, whatever documents they can produce.

JUSTICE DEL ROSARIO:

You are asking the taxpayer or the third party for the information. In the process of verification, that's what the Court is asking you, in this process of verification, with whom do you make this supposed validation of information? Do you get in-touch with the third-party sources regarding the accuracy of what appears in the data?

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. Actually, there was no third party conducted, Your Honors.

JUSTICE DEL ROSARIO:

I see. So, let us clarify that.

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. Yes.

JUSTICE DEL ROSARIO:

After getting the matching of this information, you do not get in touch with the third-party source any more to at least confirm under oath whether that is an accurate data or information being submitted?

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. We rely heavily on the data from the National Office (Interrupted).

JUSTICE DEL ROSARIO:

I see.

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. And we had contacted the taxpayer concerned (Interrupted).

JUSTICE DEL ROSARIO:

The taxpayer subject of your investigation?

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A: Yes, Your Honors.

JUSTICE DEL ROSARIO:

But not the (Interrupted).

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. The third party (Interrupted).

JUSTICE DEL ROSARIO:

The third-party source.

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. Yes, Your Honors.

JUSTICE DEL ROSARIO:

So, the reliance is made only on the basis of the data appearing in the supposed record of the BIR?

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. **Yes, Your Honors.**

JUSTICE DEL ROSARIO:

Is there no possibility of error there? You do not validate whether what was submitted by the third-party source is accurate? There is no further validation of that?

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. **Actually, we can also resort to a validation to** (Interrupted).

JUSTICE DEL ROSARIO:

Yes. But in this particular case, that was not (Interrupted).

REVENUE DISTRICT OFFICER MONIB Y. DIMALOMPING:

A. **Yes, Your Honors. Definitely** (Interrupted).

(*Emphasis supplied*)

In the said LN,[179] there was an attached schedule.[180] It indicates that Accused Labao is the supposed seller while the entities specified therein are the supposed purchasers and the entries as to the amount indicated are the supposed purchases by the same. Purchases are more applicable for those business entities engaged in selling or transacting goods.

It should be recalled that accused Labao admitted that it is the registered proprietor of San Miguel Security Agency, which is allegedly engaged in security, janitorial, messengerial and allied services business. It provides services and it is not into selling of goods.

When an entity secures the services of a service provider, there must be a contract of service. However, such contracts between accused Labao and the supposed clients were not presented by the prosecution during trial which would corroborate that the supposed "purchases" of said entities are indeed income from rendition of said services.

It was admitted by the head of the investigation team that they did not conduct validation to the said entities to prove that said entries were indeed income earned by accused Labao. They merely relied on unverified information or they merely presumed that all those entries were indeed income of accused Labao. Hence, it casts doubts as to the accuracy of said information.

In *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*,[181] the Supreme Court ruled that the assessment must be based on credible evidence, otherwise such assessment becomes arbitrary and capricious, to wit:

> The rule is that in the absence of the accounting records of a taxpayer, his tax liability may be determined by estimation. The petitioner is not required to compute such tax liabilities with mathematical exactness. Approximation in the calculation of the taxes due is justified. To hold otherwise would be tantamount to holding that skillful concealment is an invincible barrier to proof. However, the rule does not apply where the estimation is arrived at arbitrarily and capriciously.

---

[179] Docket, Vol. I, Exhibit "P-4", p. 251.
[180] Id., Vol. I, Exhibits "P-4-a" to "P-4-c", pp. 252-254.
[181] G.R. No. 136975, March 31, 2005.

> We agree with the contention of the petitioner that, as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the *prima facie* presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.
>
> However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a "naked assessment," i.e., without any foundation character, the determination of the tax due is without rational basis. In such a situation, the U.S. Court of Appeals ruled that the determination of the Commissioner contained in a deficiency notice disappears. *Hence, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.*

Further, the absence of the contract of services that would corroborate the income allegedly derived from those supposed clients of accused Labao renders the same in kaput. The possibility that those payments were not income related cannot be discounted in the absence of such vital supporting documentary evidence.

WHEREFORE, accused is hereby **ACQUITTED** in CTA Crim. Case No. O-834 for failure of the prosecution to establish the accused's guilt beyond reasonable doubt and is **DECLARED** without any civil liability.

The cash bail bond posted by accused is hereby **CANCELLED** and **ORDERED RELEASED** to the accused upon presentation of the proper documents, in accordance with usual accounting rules and regulations.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(With Separate Concurring Opinion)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice

ATTESTATION

I attest 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's Division.

CATHERINE T. MANAHAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES
Plaintiff,

- versus -

ANNE GIL RACHEL LABAO y KUAN, (Don Pedro Celdran Avenue, Corpus Christi Village, Tubod, Iligan City)
Accused.

CTA Crim. Case No. O-834
For: Violation of Section 255 of the NIRC of 1997, as amended

Members:
MANAHAN, *Chairperson,*
REYES-FAJARDO, *and*
ANGELES, *JJ.*

Promulgated:
FEB 07 2024
8:38 a.m.

x- -x

SEPARATE CONCURRING OPINION

REYES-FAJARDO, J.:

I concur in the *ponencia* of my esteemed colleague, Associate Justice Catherine T. Manahan, acquitting herein accused Anne Gil Rachel Labao (Labao). I would like to take this opportunity to expound on my position.

Under Section 255 of the National Internal Revenue Code of 1997 (Tax Code),[1] criminal liability shall attach upon proof beyond reasonable doubt that the following elements are present: "(1) the taxpayer is required to pay any tax, make or file a return, keep any

[1] SECTION 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 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.

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; (2) the taxpayer failed to do so; and (3) the act is willful."[2]

In other words, it shall not be sufficient that there is neglect or failure on the part of the taxpayer to pay any tax or supply correct and accurate information as required by law; it must be shown that the taxpayer acted willfully. There must be evidence illustrating "any accompanying state of mind which could be described as **evil, in bad faith, willful, deliberate, or not accidental**."[3] The prosecution must demonstrate that the taxpayer knew its legal duties to pay tax—in this case, that due on the income of a sole proprietorship—and to supply the required information, "yet, the taxpayer **knowingly, voluntarily, and intentionally** neglected to do so."[4] To be sure, the taxpayer's failure must be "established fully as a fact and cannot be attributed to a mere inadvertent or negligent act."[5]

In *People v. Mendez*,[6] the taxpayer was found guilty of the crime defined under Section 255 of the Tax Code on account of his willful blindess; that is, he failed "to make a reasonable inquiry about suspected wrongdoing despite being aware that it is highly probable."

While there may have been neglect or inadvertence in providing the necessary information and paying the correct amount of taxes, accused Labao must be acquitted for the prosecution's failure to establish moral certainty[7] that her lapses were intentional or amounted to willful blindness. In this regard, the *ponencia* underscored that "it is imperative for the prosecution to prove that the accused has knowledge of such assessment and despite knowledge thereof, the accused failed to act on it thereby violating a known legal duty of supplying correct and accurate information in San Miguel Security Agency's [income tax return] and to pay corresponding taxes."[8] Ultimately, it found that the Letter Notice, Notice of Informal Conference, Preliminary Assessment Notice, and Formal Letter of

---

2 *People v. Mendez*, G.R. Nos. 208310-11 & 208662, March 28, 2023.
3 *People v. Court of Tax Appeals-Third Division*, G.R. No. 248802 (Notice), June 21, 2021.
4 *People v. Mendez*, G.R. Nos. 208310-11 & 208662, March 28, 2023.
5 *People v. Mendez*, G.R. Nos. 208310-11 & 208662, March 28, 2023.
6 G.R. Nos. 208310-11 & 208662, March 28, 2023.
7 Rule 133, Section 2, Revised Rules on Evidence; *Daayata v. People*, G.R. No. 205745, March 8, 2017, 807 PHIL 102-120.
8 *Ponencia*, p. 21.

Demand were not received by the accused or any authorized representative.

To add to this, in *People v. Mendez*, the conviction was founded upon a *combination* of several circumstances, *viz*:

> We are convinced that Joel was aware of his obligation to file ITR, and he consciously and voluntarily refused to comply with his duty to make the return. In the *First* place, Joel is a doctor by profession and a businessman. As the CTA aptly held, Joel ought to know and understand, as he should, all the matters concerning his practice and business. The legal presumption is that a person takes ordinary care of his concerns. *Secondly*, the Roces Avenue branch was registered with RDO-South Quezon City on May 6, 2002, under the trade name "Mendez Body and Face Salon and Spa." Under Section 51(A)(2)(a) of the Tax Code, a Filipino citizen engaged in business or practice of profession within the Philippines shall file an ITR, **regardless** of the amount of gross income earned. Thus, the non-operation or suspension of operation of the Roces branch is inconsequential. Joel should have filed his Annual ITR, even only reporting the expenses incurred during the year. Lastly, it cannot escape our attention that the BIR issued an LoA to examine Joel's books of accounts and accounting records, which was followed by three-letter notices to produce records and documents. As a result, Joel was made aware of a possible tax violation. Joel's failure to take any action on the letter requests is simply an indication of his conscious and intentional refusal to comply with his obligation under the tax laws.

In other words, even if we assume that the service of the above-mentioned notices to Labao had been regular, the element of willfulness remains absent in the present case.

To be sure, the issuance of an assessment for tax deficiency based on the best evidence obtainable, the receipt of notices thereto by the accused or its authorized representative, and its failure to file a timely and effective protest against the assessment may support a conclusion that a taxpayer is *civilly liable* for a tax deficiency. However, these circumstances alone do not demonstrate the willful and deliberate nature of the taxpayer's acts or omissions, which is required to hold the taxpayer *criminally liable* under Section 255 of the Tax Code.

Aside from prosecution witnesses' testimonies suggesting that Labao failed to respond to assessment notices, despite being properly notified, there is nothing in the records pointing to other circumstances that would support a conclusion that Labao deliberately refused to comply with directives and/or to file a protest in defense or that her acts or omissions were in bad faith.

It is doctrinal that "proof beyond reasonable doubt charges the prosecution with the immense responsibility of establishing moral certainty. The prosecution's case must rise on its own merits, not merely on relative strength as against that of the defense. Should the prosecution fail to discharge its burden, acquittal must follow as a matter of course."[9]

Based on these considerations, I CONCUR in the result.

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

---

[9] *People v. Court of Tax Appeals-Third Division*, G.R. No. 248802 (Notice), June 21, 2021.