**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***

| | |
|---|---|
| **STEVEN GO LO,** *Petitioner,* | **CTA *EB* CRIM. NO. 049** (Crim. Case No. 16-331587) (477439-CR) |
| | Present: |
| -*versus*- | **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.* |
| | Promulgated: |
| **PEOPLE OF THE PHILIPPINES,** *Respondent.* | NOV 22 2019 3:23 p.m. |

x- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - x

## DECISION

**MANAHAN, J.:**

This is a verified *Petition for Review*[1] filed by accused-petitioner Steven Go Lo on March 26, 2018 pursuant to Section 9(c), Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA), praying that the *Order*[2] dated 1 February 2018 (assailed Order) and the *Decision*[3] dated 24 July 2017 (assailed Decision) of the Regional Trial Court (RTC) – Branch 21, City of Manila, under Criminal Case No. 16-331587, which affirms the conviction of the former of the crime of Violation of Sections 5 and 14 in relation to Sections 266, 253, and 256 of the 1997 National Internal Revenue Code (NIRC), as amended, by the Metropolitan Trial Court (MeTC) – Branch VIII, City of Manila, under Crim Case No. 477439-CR entitled "*People of*

---

[1] *Rollo*, CTA EB Crim No. 049, pp. 11-54.
[2] *Id.*, Annex "A", pp. 57-59.
[3] *Id.*, Annex "D", pp. 70-76.

*the Philippines v. Steven Go Lo et al.*", be reversed and set aside, and that he be acquitted of the crime charged.

The dispositive portions of the assailed *Decision* and *Order* read:

*Decision*[4] dated July 24, 2017:

> "IN LIGHT OF ALL THE FOREGOING, the Decision dated September 6, 2016 of the court a quo finding appellant Steven Go Lo guilty beyond reasonable doubt of the crime of Violation of Sections 5 and 14 in relation to Sections 266, 253, and 256, Tax Code of 1997, as amended by R.A. 8424, as amended is AFFIRMED IN TOTO.
>
> SO ORDERED."

*Order*[5] dated February 1, 2018:

> "WHEREFORE, finding no cogent reason to disturb the Court's earlier ruling, the Motion for Reconsideration of the Decision dated July 24, 2017 is hereby DENIED.
>
> SO ORDERED."

## The Facts

As culled from the assailed Decision of RTC-Branch 21 and MTC-Branch VIII, on February 7, 2013, a certain Cita Angeles handed to the accused-petitioner a letter for Stevemar International Trading Co. (SITC) denominated as Letter Notice (LN) No. 029-RLF-11-00-00222 dated February 6, 2013, together with Details of Taxpayer's Customers Record and Computation Sheet under Relief and Third Party Matching.[6]

On February 19, 2013, Cita Angeles handed to the accused-petitioner a Follow Up Letter dated February 18, 2013 from a certain Rosemarie Ramos-Ragasa, a Revenue District Officer of Revenue District Office (RDO) No. 29, Bureau of Internal Revenue (BIR) – Manila. In response to said letters,

---

[4] *Supra*, Note 3.
[5] *Supra*, Note 2.
[6] *Rollo*, Annex "B", MTC Decision dated September 6, 2016, p. 62.

the accused-petitioner's mother, Elina G. Lo, sent a letter to said revenue officer on February 28, 2013.[7]

On July 12, 2013,[8] Cita Angeles handed to the accused-petitioner a Letter of Authority (LOA) with SN No. eLA201100031153 (LOA-029-2013-0000369) dated July 10, 2013 together with a Checklist of Requirements dated July 11, 2013. Said LOA authorized Andrew Delos Santos, a Revenue Officer (RO) in BIR–RDO No. 29, Revenue Region (RR) No. 6, Manila to audit/investigate all internal taxes for taxable year (TY) 2011 of SITC which is engaged in trading of hardware and with registered address at 532 Moriones St., Tondo Manila.[9] The accused-petitioner is admittedly one of the partners in SITC.[10]

After two weeks from receipt of said LOA, accused-petitioner received from Cita Angeles a First Notice dated July 25, 2013 which was received by a certain Nick Tacadena on July 26, 2013.[11]

Likewise, on August 30, 2013, accused-petitioner received a Second and Final Notice dated August 28, 2013, which was received by Cita Angeles on the same day.[12]

On October 9, 2013, upon failure of the accused-petitioner to submit the documents required in the LOA and checklist despite due notice, RO Delos Santos sent a memorandum to the Regional Director, RR No. 6 recommending the issuance of a *subpoena duces tecum* for SITC.[13]

Thus, a *subpoena duces tecum* with SDT No. RR6-2013-0447 was issued to SITC directing the accused-petitioner, the partners, and owners to bring and submit SITC's Books of Account, and other accounting records for TY 2011 on November 5, 2013 at 10:00 a.m.[14]

---

[7] *Rollo*, Annex "B", MTC Decision dated September 6, 2016, p. 62.
[8] *Id.*; and Annex "D", RTC Decision dated July 24, 2017, p. 70.
[9] *Rollo*, Annex "D", RTC Decision dated July 24, 2017, p. 70.
[10] *Id.*, Annex "B", MTC Decision dated September 6, 2016, p. 62 and 64.
[11] *Id.*, Annex "B", MTC Decision dated September 6, 2016, p. 62 and 64; and Annex "D", RTC Decision dated July 24, 2017, p. 71.
[12] *Id.*
[13] *Rollo*, Annex "D", RTC Decision dated July 24, 2017, p. 71.
[14] *Id* at p. 74.

On October 24, 2013, said *subpoena duces tecum* was received by Cita Angeles and was also given by the latter to the accused-petitioner on the same day.[15] However, accused-petitioner failed to submit the required documents subject of said *subpoena duces tecum.*[16]

Thus, BIR-Manila filed a case against the accused-petitioner for violation of Section 266 in relation to Sections 5, 14, 253(d) and 256 of the 1997 NIRC, as amended.[17]

After trial of the said case, MeTC-Branch VIII, Manila convicted the accused-petitioner as charged under its Decision dated September 6, 2016[18] and Order dated November 14, 2016,[19] which were affirmed by the RTC-Branch 21, Manila under the assailed Decision dated July 24, 2017[20] and Order dated February 1, 2018[21].

Accused-petitioner elevated the case before this Court by filing the instant Petition for Review on March 26, 2018 after the receipt of the assailed Order on February 23, 2018.[22]

On April 11, 2018, respondent was ordered[23] to file its comment on the said petition but failed to do so[24] despite granting[25] its motion for extension of time[26] to file a comment by this Court.

On August 7, 2018, this Court gave due course on the said petition and required the parties to submit their respective memoranda.[27]

On September 25, 2018, accused-petitioner filed his Memorandum[28] while respondent did not submit[29] its memorandum despite due notice[30].

---

[15] *Rollo*, Annex "B", MTC Decision dated September 6, 2016, p. 62 and 64; and Annex "D", RTC Decision dated July 24, 2017, p. 71.
[16] *Id.*, Annex "D", RTC Decision dated July 24, 2017, p. 71.
[17] *Id.*
[18] *Rollo*, Annex "B", pp. 60-67.
[19] *Id.*, Annex "C", pp. 68-69.
[20] *Supra*, Note 3.
[21] *Supra*, Note 2.
[22] *Rollo*, Petition for Review, p. 11.
[23] *Id.*, Resolution dated April 11, 2018, pp.78-79.
[24] *Id.*, Records Verification dated July 11, 2018, p. 84.
[25] *Id.*, Minute Resolution dated June 4, 2018, p. 83.
[26] *Id.* at pp. 80-82.
[27] *Id.*, Resolution dated August 7, 2018, pp.86-87.

Thus, on November 22, 2018, the instant case was deemed submitted for decision.[31]

### The Issue

Whether or not accused-petitioner is guilty as charged of violating Sections 5 and 14 in relation to Sections 266, 253, and 256 of the 1997 NIRC, as amended.

### Arguments of Accused-petitioner[32]

Accused-petitioner argues that the crime of failure to obey summons under Section 266 of the 1997 NIRC, as amended, requires proof of volition or an intent to commit to act on his part and he cannot be convicted of such crime considering that there was an improper service of the *subpoena duces tecum.*

Accused-petitioner further argues that he cannot be convicted of said crime because the documents sought to be produced by the *subpoena duces tecum* are not shown to be relevant, material, or existent and that he did not neglect to produce said documents or information.

Accused-petitioner insists that the presumption of regularity of performance of official duties by the BIR's Revenue Officers cannot overcome his constitutional right to be presumed innocent until proven guilty beyond reasonable doubt.

### Ruling of the Court *En Banc*

This Court shall determine first whether it has jurisdiction on the instant case.

The jurisdiction of the CTA regarding criminal case from the lower courts is provided under Section 7(b)(2)(b) of Republic Act (RA) No. 1125, as amended by RA Nos. 9282 and 9503, *viz.*:

---

[28] *Id.* at pp. 88-161.
[29] *Id.*, Records Verification dated October 25, 2018, p. 162.
[30] *Id.*, Notice of Resolution dated August 8, 2018, p. 85; Resolution dated August 7, 2018, pp. 86-87.
[31] *Id.*, Resolution dated November 22, 2018, pp. 164-165.
[32] *Supra*, Note 28.

> "SEC. 7. *Jurisdiction*. – The CTA shall exercise:
>
> xxx xxx xxx
>
> (b) Jurisdiction over cases involving criminal offenses as herein provided:
>
> xxx xxx xxx
>
> (2) Exclusive appellate jurisdiction in criminal offenses:
>
> xxx xxx xxx
>
> (b) Over petitions for review of the judgments, resolutions or orders of the Regional Trial Courts in the exercise of their appellate jurisdiction over tax cases originally decided by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in their respective jurisdiction.

Similarly, Section 2(h), Rule 4 and Section 9(c), Rule 9 of the RRCTA states:

> "SEC. 2. *Cases within the jurisdiction of the Court en banc*. – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
>
> xxx xxx xxx
>
> (h) Decisions, resolutions or orders of the Regional Trial Courts in the exercise of their appellate jurisdiction over criminal offenses mentioned in subparagraph (f).
>
> xxx xxx xxx
>
> "SEC. 9. *Appeal; period to appeal*. –
>
> xxx xxx xxx
>
> (c) An appeal to the Court in criminal cases decided by the Regional Trial Courts in the exercise of their appellate jurisdiction shall be taken by filing a petition for review as provided in Rule 43 of the Rules of Court within fifteen days from receipt of a copy of the decision or final order appealed from. The Court *en banc* shall act on the appeal.
>
> xxx xxx xxx

The records of the case reveal that accused-petitioner received the Order of the RTC–Branch 21, City of Manila, on February 23, 2018 denying his motion for reconsideration on the assailed decision. Thus, accused-petitioner had fifteen days or until March 10, 2018 to file his petition for review in this Court.

Accused-petitioner filed a motion for extension of time to file petition for review on March 8, 2018, which this Court granted[33] on March 12, 2018 and had given him until March 25, 2018 to file said petition.

However, said date fell on a Sunday, hence, the next working day was March 26, 2018. The filing of said petition on March 26, 2018 was timely filed.

*Subpoena duces tecum was properly served*

The accused-petitioner was charged with violation of Sections 5 and 14 in relation to Sections 266, 253, and 256 of the 1997 NIRC, as amended, which provide the following:

> SEC. 5. *Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons.* - In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:
>
> (A) xxx xxx xxx;
>
> (B) xxx xxx xxx;
>
> (C) **To summon the person liable** for tax or required to file a return, or any officer or employee of such person, or any person having possession, custody, or care of the books of accounts and other accounting records containing entries relating to the business of the person liable for tax, **or any other person, to appear before the Commissioner or his duly authorized representative at a time and place specified in the summons and to produce such books, papers, records, or other data, and to give testimony**;
>
> (D) xxx xxx xxx; and
>
> (E) xxx xxx xxx. (*Emphasis supplied*)
>
> xxx xxx xxx
>
> SEC. 14. *Authority of Officers to Administer Oaths and Take Testimony.* - The Commissioner, Deputy Commissioners, Service Chiefs, Assistant Service Chiefs, Revenue Regional Directors, Assistant Revenue Regional Directors, Chiefs and Assistant Chiefs of Divisions, Revenue District Officers, special deputies of the Commissioner, internal revenue officers and any other employee of the Bureau thereunto especially deputized by the Commissioner

---

[33] *Rollo*, Minute Resolution dated March 12, 2018, p. 10.

> shall have the power to administer oaths and to take testimony in any official matter or investigation conducted by them regarding matters within the jurisdiction of the Bureau.
>
> Xxx xxx xxx
>
> Sec. 266. *Failure to Obey Summons.* - **Any person who, being duly summoned** to appear to testify, or **to appear and produce books of accounts, records, memoranda or other papers, or to furnish information** as required under the pertinent provisions of this Code, **neglects to appear or to produce such books of accounts, records, memoranda or other papers, or to furnish such information**, shall, upon conviction, be punished by a fine of not less than Five thousand pesos (P5,000) but not more than ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than two (2) years. (*Emphasis supplied*)
>
> xxx xxx xxx
>
> SEC. 253. *General Provisions.* -
>
> (a) xxx xxx xxx.
>
> (b) xxx xxx xxx.
>
> (c) xxx xxx xxx.
>
> (d) In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and the employees responsible for the violation.
>
> (e) xxx xxx xxx.
>
> xxx xxx xxx
>
> SEC. 256. *Penal Liability of Corporations.* - Any corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000).

The abovementioned provisions of the 1997 NIRC, as amended, reveal that the Commissioner of the BIR or his authorized representative has the power to summon any person to produce all his financial records so that the former may ascertain whether said person has properly paid the correct taxes.

The failure of such person to heed that summon has a corresponding consequence. In Section 266, in relation to Sections 253 and 256, of the 1997 NIRC, as amended, the crime of Failure to Obey Summons has the following elements, to wit:

1. Offender is duly summoned;
2. Offender is summoned to appear and produce books of accounts, records, memoranda or other papers, or to furnish information as required under the pertinent provisions of the 1997 NIRC, as amended;
3. Offender neglects to appear or to produce such documents; and
4. In case the offender is an artificial person, such as a partnership or corporation, the accused is its partner, president, general manager, branch manager, treasurer, officer-in-charge, or responsible officer or employee.

The factual antecedents of the case, as admitted by the accused in the course of the trial, reveal that SITC is a duly registered partnership with TIN 007-359-143 which is engaged in trading of hardware and the accused-petitioner is one of the partners in said partnership.[34]

Records also reveal that a *subpoena duces tecum* was issued by the BIR to SITC which directed the accused-petitioner and his partners to bring and submit SITC's Books of Account, and other accounting records for TY 2011 on November 5, 2013 at 10:00 a.m. However, neither the accused-petitioner or his partners appeared and submitted said documents on said date and time. Thus, the second (2$^{nd}$), third (3$^{rd}$), and fourth (4$^{th}$) elements of said offense were present.

Now, the question is, whether the *subpoena duces tecum* was properly served which will prove that accused-petitioner was duly summoned.

Accused-petitioner insists that there was an improper service of such subpoena as it was not served to him personally, as prescribed under Section 6, Rule 21 of the Rules of Court.

---

[34] Rollo, Annex "B", p. 62.

The MeTC found that the service of said subpoena and other notices to Ms. Cita Angeles was proper as the BIR could not be faulted in serving such to Ms. Angeles, since she was found in the same business address provided by the accused-petitioner in all his official dealings with the BIR. These were the same findings by the RTC during the appeal of the instant case.

However, what was not emphasized by the lower courts is the admission made by the accused-petitioner during his cross-examination wherein he said that he only instructed Ms. Angeles not to receive communications from the BIR after receiving the subpoena from her.[35]

Putting such statement in another context, it means that the accused-petitioner allowed Ms. Angeles to receive any communication prior to the receipt of said subpoena. There was no indication from the factual findings of the lower court that he instructed Ms. Angeles to tell the revenue officer to stop serving any communication to her on his behalf prior to the service of the subject subpoena.

The testimony made by the accused-petitioner during the cross-examination was an indication of his implied ratification of the action of Ms. Angeles in receiving the BIR notices and the subject subpoena. *In Koji Yasuma v. Heirs of Cecilio S. De Villa, et al.*[36], the Supreme Court ruled that implied ratification may take various forms such as the silence or acquiescence, to wit:

> "...Ratification means that the principal voluntarily adopts, confirms and gives sanction to some unauthorized act of its agent on its behalf. It is this voluntary choice, knowingly made, which amounts to a ratification of what was theretofore unauthorized and becomes the authorized act of the party so making the ratification. The substance of the doctrine is confirmation after conduct, amounting to a substitute for a prior authority. Ratification can be made either expressly or impliedly. **Implied ratification may take various forms — like silence or acquiescence, acts showing approval or adoption of the act, or acceptance and retention of benefits flowing therefrom.**" (*Emphasis supplied*)

[35] *Rollo*, Annex "B", MTC Decision, p. 63.
[36] G.R. No. 150350, August 22, 2006.

In the instant case, the silent acquiescence of the accused-petitioner to the act of the revenue officers in serving the notices and the *subpoena duces tecum* to Ms. Angeles is controlling. It indicated his consent to the action of Ms. Angeles in receiving the notices and the *subpoena duces tecum* by continually receiving said documents from Ms. Angeles without any clear and empirical act of protest on his part. It was only when the subject subpoena was received by Ms. Angeles that accused-petitioner barred her from receiving any further communications from the BIR. But prior thereto, the LOA, the First, Second and Final Notices from the BIR, which were received by Ms. Cita Angeles and turned over to accused-petitioner were not rejected by him.

It should be pointed out that such testimony was given during the course of the trial, hence, it is considered a judicial admission. Section 4, Rule 129 of the Rules of Court provides that judicial admission requires no proof, to wit:

> Sec. 4. *Judicial admissions.* — An admission, verbal or written, made by the 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.

Thus, such statement made by the accused-petitioner during trial is an admission of such fact and that its probative value may be used by the courts in deciding the case.

Further, paragraph 3.13(b) of Revenue Memorandum Order No. 10-2013 dated April 17, 2013, otherwise known as the "Revised Guidelines and Procedures in the Issuance and Enforcement of Subpoenas Duces Tecum and the Prosecution of Cases for Non-Compliance Therewith", allows substituted service of subpoena to the registered or known address of the person named therein to the person charged thereof.

In the factual findings of the lower court, the service of said subpoena was made on the registered address of SITC in which the accused-petitioner is a partner. Thus, the service was valid.

*Volition or Intent to commit the act under Section 266 of the 1997 NIRC, as amended, is not required*

Accused-petitioner argues that the crime of failure to obey summons under Section 266 of the 1997 NIRC, as amended, requires proof of volition or an intent to commit to act on his part is required for him to be convicted of said crime. His argument presupposes evidence of his knowledge not to obey the *subpoena duces tecum* issued by the BIR.

Article 3 of the Revised Penal Code provides that felonies are acts and omissions punishable by law and they can be committed either by deceit (*dolo*) or by means of fault (*culpa*). There is deceit when the act is performed with deliberate intent and there is fault when the wrongful act results from imprudence, negligence, lack of foresight, or lack of skill.

However, the third element of the crime under Section 266 of the 1997 NIRC, as amended, requires merely "neglect" or by means of fault, hence, intent is not necessary.

Further, the penal provisions in the 1997 NIRC, as amended, are considered special penal provisions and the acts punishable are classified as acts *mala prohibita* or *malum prohibitum*. In *Datu Guimid P. Matalam v. People of the Philippines*[37], the Supreme Court explains their difference from acts *mala in se* or *malum in se*, to wit:

> In *ABS-CBN Corp. v. Gozon*, we discussed the difference between acts *mala prohibita* and *mala in se*:
>
> > The general rule is that acts punished under a special law are *malum prohibitum*. "An act which is declared *malum prohibitum*, malice or criminal intent is completely immaterial."
> >
> > In contrast, crimes *mala in se* concern inherently immoral acts:
> >
> > > Not every criminal act, however, involves moral turpitude. It is for this reason that "as to what crime involves moral turpitude, is for the Supreme Court to determine." In resolving the foregoing

[37] G.R. Nos. 221849-50, April 04, 2016.

> question, the Court is guided by one of the general rules that crimes *mala in se* involve moral turpitude, while crimes mala prohibita do not, the rationale of which was set forth in "*Zari v. Flores,*" to wit:
>
> *It (moral turpitude) implies something immoral in itself, regardless of the fact that it is punishable by law or not. It must not be merely mala prohibita, but the act itself must be inherently immoral. The doing of the act itself, and not its prohibition by statute fixes the moral turpitude.* Moral turpitude does not, however, include such acts as are not of themselves immoral but whose illegality lies in their being positively prohibited.
>
> [These] guidelines nonetheless proved short of providing a clear-cut solution, for in *International Rice Research Institute v. NLRC,* the Court admitted that it cannot always be ascertained whether moral turpitude does or does not exist by merely classifying a crime as *malum in se* or as *malum prohibitum.* There are crimes which are *mala in se* and yet but rarely involve moral turpitude and there are crimes which involve moral turpitude and are *mala prohibita* only. In the final analysis, whether or not a crime involves moral turpitude is ultimately a question of fact and frequently depends on all the circumstances surrounding the violation of the statu[t]e.

> "Implicit in the concept of *mala in se* is that of *mens rea.*" *Mens rea* is defined as "the nonphysical element which, combined with the act of the accused, makes up the crime charged. Most frequently it is the criminal intent, or the guilty mind[.]"
>
> Crimes *mala in se* presuppose that the person who did the felonious act had criminal intent to do so, while crimes *mala prohibita* do not require knowledge or criminal intent:

In crimes *mala prohibita*, it is the commission of that act as defined by the law, and not the character or effect thereof, that determines whether or not the provision has been violated[38]. The only inquiry is, has the law been violated? When an act is illegal, the intent of the offender is immaterial.[39]

---

[38] *Id.*

[39] *Ernesto P. Dunlao, Sr. v. The Horoable Court of Appeals et al.*, G.R. No. 111343, August 22, 1996.

In the instant case, accused-petitioner personally confirmed during trial that he received the notices and the subpoena from Ms. Angeles.[40] Hence, he has knowledge that he was being summoned to produce said required documents at a particular time and date. However, he failed to do so. His alibi that his mother was the one who went to the BIR and tried to present the financial records was bereft of evidence as found by the trial court. Thus, the factual antecedents of the case had proven that he violated Section 266 of the 1997 NIRC, as amended.

Accused-petitioner should be aware that these were factual findings of the trial court, hence, they deserve the highest degree of respect as it was in a much better position to determine which party was able to present evidence with greater weight and absence of any clear showing of abuse, arbitrariness, or capriciousness committed on the part of the lower court, its findings of facts are binding and conclusive upon the Court.[41]

Accused-petitioner further argues that the documents sought to be produced by the *subpoena duces tecum* are not shown to be relevant, material, or existent. It should be emphasized that nowhere in the provisions of the 1997 NIRC, as amended, is it stated that said documents must be relevant, material, or existent. The elements of the crime only provide that such documents are required. Thus, he is totally mistaken.

*Proof beyond reasonable doubt overcomes the constitutional presumption of innocence*

Accused-petitioner also argues that respondent is not entitled to the presumption of regularity of performance of official duty as records prove that the subject subpoena was improperly served upon the taxpayer and such cannot overcome the presumption of his innocence on said crime.

A scrutiny of the decision[42] rendered by the trial court reveals that the defense of presumption of regularity on the

---

[40] *Rollo*, Annex "B" MTC Decision dated September 6, 2016, p. 62.
[41] *Heirs of Teresita Villanueva, et al. v. Heirs of Petronila Syquia Mendoza et al.*, G.R. No. 209132, June 05, 2017.
[42] *Rollo*, Annex "B" MTC Decision dated September 6, 2016, p. 66.

performance of revenue officers was not directed to the service of the subject subpoena but on the alibi of the accused-petitioner that his mother, Elina Go, had brought the required documents to the BIR. Such defense was made to counter the testimony[43] of prosecution's witness that SITC failed to submit said required documents.

Granting that such presumption was indeed relied on by the trial court as far as the service of the subject subpoena, it was able to establish that all the factual elements of the crime punishable under Section 266 were present and the liable person was the accused-petitioner himself.

In *Guilbemer Franco v. People of the Philippines,*[44] the Supreme Court ruled that the constitutional right of the accused to be presumed innocent can be overcome by evidence that constitutes proof beyond reasonable where all the elements of the crime are present and the accused was the perpetrator of the crime, to wit:

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

In the instant case, as discussed above, all the elements of the crime under Section 266 were present and the accused-petitioner being one of the partners of SITC is the responsible officer that should be liable for the said offense. Thus, the latter's constitutional right to be presumed innocent was overcome by proof beyond reasonable doubt.

However, as to the RTC's decision confirming MeTC's imposition of Fifty Thousand Pesos (Php50,000.00) additional fine on accused-petitioner as partner of SITC under Section 256 of the 1997 NIRC, as amended, such was improperly imposed because the said provision only applies to

---

[43] *Id.* at pp. 61-62.
[44] G.R. No. 191185, February 01, 2016.

corporations, associations, or general co-partnerships in addition to the penalty imposed on its responsible corporate officers, partners and employees. Further, considering that it was only the accused-petitioner who was charged in the MeTC, the penalty should not have been imposed on SITC as such would violate its right to due process.

**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the assailed July 24, 2017 *Decision*[45] and February 1, 2018 *Order*[46] rendered by RTC-Branch 21, City of Manila, are hereby **AFFIRMED** with **MODIFICATION**. The fine imposed on SITC amounting to Php50,000.00 is hereby **NULLIFIED** and **CANCELLED**.

**SO ORDERED.**

**CATHERINE T. MANAHAN**
Associate Justice

**WE CONCUR:**

**ROMAN G. DEL ROSARIO**
Presiding Justice

(On Leave)
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

**CIELITO N. MINDARO-GRULLA**
Associate Justice

---

[45] *Supra*, Note 3.
[46] *Supra*, Note 2.

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

(On Leave)
**MARIA ROWENA MODESTO-SAN PEDRO**
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