REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	C.T.A. CRIM CASE NO. O-087
	For: Violation of Sec. 255 in relation to Sec. 253(d) of the NIRC
-versus-	Members:
	UY, *Chairperson*; and FABON-VICTORINO, JJ.
EFREN O. DOCENA and ROLANDO E. PALAD, South Sea Surety & Insurance Co., Inc., Accused.	Promulgated: JUL 15 2013 10:03 AM

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DECISION

Fabon-Victorino, J.:

In the Information dated January 24, 2008, but filed with the Court on June 30, 2008, accused **EFREN O. DOCENA** and **ROLANDO E. PALAD** were charged with violation of Section 225 in relation to Sections 253(d) and 256 of the 1997 National Internal Revenue Code (NIRC), as amended, for alleged willful failure and refusal to pay deficiency income tax and compromise penalty for taxable year 2003, without any formal protest despite due notice and demand, to the prejudice of the Government in the amount Php5,758,176.07.

On October 14, 2009, the case was archived subject to revival upon the apprehension of the two accused.

On April 7, 2010, the two accused voluntarily surrendered their persons to the jurisdiction of the Court and posted the recommended bond for their provisional liberty.

On May 24, 2010, the prosecution, in compliance with the Resolution dated April 29, 2010, filed an Amended Information dated May 17, 2010 only to change the subject deficiency from income tax to documentary stamp tax. The act in violation of Section 225 in relation to Sections 253(d) and 256 of the 1997 NIRC, as amended, is allegedly committed as follows:

> That on or about May 9, 2005, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping each other and being then the President and EVP/COO, respectively, of SOUTH SEA SURETY & INSURANCE CO., INC., with business address at Suite 501 5/F East Tower, Philippine Stock Exchange Center, Exchange Road, Ortigas Complex, Pasig City, having been filed their internal revenue tax for the year 2003, and after an examination and audit of the same, it has been found out that there is due and collectible from said SOUTH SEA SURETY & INSURANCE CO., INC., under Assessment Notice No. LN No. 025-34-2004 dated May 9, 2005, the amounts of Php 5,733,176.07 and Php 25,000.00 or all valued at Php 5,758,176.07 representing **DEFICIENCY DOCUMENTARY STAMP TAX AND COMPROMISED PENALTY** for the said year, did then and there willfully and unlawfully fail, refuse and neglect to pay said taxes and without formally protesting against or appealing the same despite due notice and demand to do so, to the damage and prejudice of the Republic of the Philippines, in the aforesaid amount of Php 5,758,176.07, Philippine Currency.
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> Contrary to law.

When arraigned on July 8, 2010, accused, duly assisted by counsel, pleaded "NOT GUILTY" of the crime charged.

To prove its case, the prosecution presented the following employees from the Bureau of Internal Revenue (BIR), namely: John V. Abris, Prescila H. Pagayonan, Wilfredo A. Alday and Attorney Ramon B. Lorenzo.

Witness **John V. Abris** testified that prior to his assignment to Regional District Office (RDO) 30 in Binondo, Manila, he was a Revenue Officer at the Special Investigation Division, Revenue Region No. 6, Manila. Sometime in November 2004, he served Letter Notice No. 025-34-2004 dated October 25, 2004 to South Sea Surety & Insurance Co. Inc., addressed to its President Efren O. Docena.[1] The Letter Notice signed by Regional Director Alfredo B. Misajon[2] was received by Marites R. Antonio[3], the Bookeeper of Corporation. In a letter dated November 12, 2004, accused Rolando E. Palad, Senior Vice President/Chief Operating Officer (SVP/COO) of the Corporation acknowledged its documentary stamp tax (DST) liability but at a reduced amount of P2,165,380.84[4]. In a letter response dated November 19, 2004, the BIR required the Corporation to submit pertinent documents to reconcile the data.[5] In a letter dated December 14, 2004, the Corporation reiterated their request that it be allowed to pay DST deficiency in 12 monthly installments.[6] When the Corporation failed to meet their undertaking, he prepared a Memorandum dated January 5, 2005 for the Regional Director, RR6 Manila, for the return of the entire docket of the case to the latter's office for appropriate action.[7]

On cross-examination, Abris declared that he was not aware that the case was subsequently filed with Office of the Prosecutor, Manila.

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[1] Exhibit "A".
[2] Exhibit "A-1".
[3] Exhibit "A-2".
[4] Exhibit "B".
[5] Exhibits "C" and "C-1".
[6] Exhibit "D".
[7] Exhibit "F".

Witness **Prescila H. Pagayonan** testified that as Revenue Officer III in the BIR, she reviewed the docket of this case sometime in January 2005. Thereafter, she prepared the Preliminary Assessment Notice (PAN) dated January 24, 2005, subsequently signed by Regional Director Alfredo V. Misajon[8]. She also prepared an Audit Report[9] which was received by the Corporation through mail. In response thereto, the Corporation filed a letter dated February 8, 2005, requesting that the interest be waived and reiterated that the payment be in twelve (12) monthly installments.[10]

Upon her recommendation, a Final Assessment Notice (FAN)[11] and Formal Letter of Demand (FLD),[12] both dated May 9, 2005 for deficiency DST for the taxable year 2003 were issued against the Corporation. In a reply letter dated July 15, 2005, the Corporation again moved to settle its DST deficiency but this time within a shorter period of six (6) months.[13]

Subsequently, the Corporation filed an Application for Installment Payment dated August 1, 2005 signed by Rolando E. Palad addressed to the Commissioner of Internal Revenue (CIR).[14] In view thereof, she prepared the First Indorsement dated August 3, 2005 signed by Enriqueta R. Rodeles, Chief, Assessment Division[15] for the Regional Director of Revenue Region No. 6. Pursuant thereto, the Corporation paid its first installment on November 3, 2005 which the BIR acknowledged in a letter dated November 15, 2005. In the same letter, the BIR requested the Corporation to update its monthly installment payments.[16]

Since no other payment was made by the Corporation, she prepared the First Indorsement dated December 19, 2005 to the Collection Division[17] and a letter addressed to

[8] Exhibits "G" and "G-1".
[9] Exhibits "H", "H-1" and "H-2".
[10] Exhibit "I".
[11] Exhibit "M".
[12] Exhibits "N" and "N-1".
[13] Exhibit "Q".
[14] Exhibits "R", "R-1" and "R-2".
[15] Exhibits "S" and "S-1".
[16] Exhibits "T" and "T-1".
[17] Exhibits "V" and "V-1".

Corporation informing it that the case would be forwarded to the Collection Division.[18]

Witness **Wilfredo A. Alday** declared that as a Revenue Officer II-Collection assigned at RDO No. 34, he sends notices/demand letters and serves warrant of distraint and/or levy to taxpayers with delinquent accounts.

Sometime in January 2006, the case of South Sea Surety & Insurance Co. Inc. was assigned to him for collection upon recommendation of the Chief of Collection Division per Indorsement Letter dated January 5, 2006.[19] He served to the Corporation the Preliminary Collection Letter dated February 15, 2006,[20] a letter dated October 19, 2006,[21] and the Warrant of Distraint and Levy dated June 26, 2007 to effect collection of deficiency DST in the amount of P5,758,176.07.[22]

Subsequent to the receipt of the said documents, accused Rolando E. Palad submitted a Promissory Note dated April 3, 2006,[23] with attached schedule of payments.[24] However, the Corporation failed to make good its undertaking under the promissory note. Consequently, he issued a Memorandum dated June 29, 2007 recommending that the case docket together with a Report on Delinquent accounts,[25] be transferred to the Legal Division for appropriate action.[26]

The last witness **Attorney Ramon B. Lorenzo** testified that he recommends the criminal prosecution of taxpayers for violation of the NIRC.

On August 7, 2007, the Chief of the Collection Division, through a Second Indorsement dated August 1, 2007,[27] forwarded to his office the docket of this case.

[18] Exhibits "U" and "U-1"
[19] Exhibit "W".
[20] Exhibit "Z".
[21] Exhibits "AA" and "AA-1".
[22] Exhibits "BB" and "BB-1".
[23] Exhibit "X".
[24] Exhibit "Y".
[25] Exhibit "DD".
[26] Exhibits "CC" and "CC-1".
[27] Exhibits "EE" and "EE-1".

After evaluation, he prepared a Demand Letter dated August 9, 2007 addressed to accused Efren O. Docena and Rolando E. Palad, President and EVP/COO, respectively of South Sea Surety & Insurance Co., Inc.[28] On October 23, 2007, he prepared a Referral Letter to the City Prosecutor of Manila[29] for the indictment of the two accused for their failure to pay DST deficiency for taxable year 2003. In relation thereto, he executed an Affidavit of even date. (Exhibit "HH")

Attorney Lorenzo admitted that prior to the filing of the instant case, the Corporation already paid three installments to the BIR. However, this was not disclosed when the case was filed with the Prosecutor's Office of Manila. Thus, the Corporation's total payment was not deducted from the total DST liability reflected in the FAN.

On March 1, 2011, or after the prosecution rested its case, both accused filed a Demurrer to Evidence which the Court denied in its Resolution dated May 2, 2011.[30]

Without any pretension, accused **Rolando E. Palad** acknowledged South Sea Surety & Insurance Co. Inc.'s receipt of several notices from the BIR and admitted that the Corporation is liable to deficiency DST for taxable year 2003. As EVP/COO of the Corporation, he sent several letters to the BIR in response to the notices received.[31] He also filed and signed the Application for Installment Payments of the Corporation's tax liabilities which the BIR duly approved.

However, he denied that he and his co-accused Efren O. Docena willfully and unlawfully neglected to pay the taxes and liabilities of the Corporation. In fact, they exerted their best efforts to settle the said tax obligation as evidenced by the arrangement for payment they made with the BIR. They actually paid the BIR the sums of P479,484.00, P300,000.00 and P200,000.00, which the latter duly-acknowledged.

[28] Exhibit "FF".
[29] Exhibits "GG" and "GG-1".
[30] Docket, pp. 000320-000329.
[31] Exhibits "8", "9", "10" and "12".

The payments were halted when the Office of the Insurance Commission, in a letter dated September 13, 2006, directed the Corporation to cease and desist from transacting business.[32] Eventually the Corporation was placed under a Receiver[33] who was authorized to run the affairs of the Corporation. Hence he and his co-accused Docena lost control of the management and operation of the Corporation forcing him to stop reporting for work. Thus, he was not aware of the other notices or communications sent by the BIR to the Corporation after it was placed under receivership.

He did not also receive any notice from the Office of the City Prosecutor of Manila in relation to the filing of the instant case. It was only when his co-accused Docena informed him through the telephone that warrants of arrest had been issued against them. This information was verified by the secretary of his co-accused.

In addition, accused Palad stated that as early as October 25, 2004 there was already a demand for payment for DST deficiency for 2003 from the BIR. Upon receipt of the Assessment Notice, he immediately offered to pay the assessed DST deficiency in six (6) equal monthly installments beginning July 15, 2005 to January 15, 2006. But the Cease and Desist Order issued by the Insurance Commission on September 13, 2006 prevented them from meeting this obligation.

Further, business was not good for the Corporation in 2005 causing the impairment of its capital for which it received several warnings for correction. The Corporation's poor financial standing later circulated in the insurance industry adversely affecting the Corporation's business considerably. The Corporation's cash flow was further affected making it difficult to meet its undertaking to pay the BIR in six (6) equal monthly installments. This notwithstanding, the Corporation was able to make several payments to the BIR.

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[32] Exhibit "1".
[33] Exhibit "7".

Even prior to the Corporation's receipt of the assessment notice from the BIR, it was already suffering from business reverses. But it was the Cease and Desist Order from the Insurance Commission that actually made the subsequent payments to the BIR impossible.

The Corporation was already in financial distress when he joined in its operation in 2003. It was about this time that the deficiency assessment was issued by the BIR. The deficiency assessment, according to the witness, was caused by agents who sold the insurance policies at a reduced rate and pocketed portions belonging to the Corporation. He was not aware if cases were filed against these erring agents. In any event, the Corporation acknowledged its tax liabilities but due to serious financial problems it was unable to meet its obligation with the BIR.

Defense witness **Rosauro Maghirang** testified that as an Executive Assistant to the President, he reviewed the financial condition of South Sea Surety & Insurance Co. Inc. and oversaw its financial transactions, including its collections and disbursements.

In the course of his employment some documents came into his possession, one of which was the Audited Financial Statement of the Corporation for the period ending December 31, 2002. With this document was a comparative figures for the year 2001, indicating that the Corporation suffered a net loss of P7,899,132.87 and P1,075,616.79 for 2002 and 2001, respectively.[34]

Upon his request, the then President of the Corporation, Attorney Emerito A. Dazo submitted a list of outstanding losses of the Corporation which showed a total of P30,319,170.43[35]. Per his advise the Corporation's legal counsel Attorney Homer Mendoza filed appropriate cases against the erring brokers/agents of the Corporation.[36]

[34] Exhibits "21, "21-a", "21-b", 21-c", "21-d", and "21-e".
[35] Exhibits "23", "23-a", "23-b", "23-c", "23-d", "23-e", "23-f", "23-g", "23-h", "23-I", "23-j", "23-k", "23-l" and "23-m".
[36] Exhibits "24", "24-a", "24-b", "25", "25-a", "25-b", "26", "26-a", "26-b".

On cross-examination, Maghirang pointed out that the Corporation suffered losses in the years 2003, 2004, 2005 and 2006. While he was aware of the DST tax deficiency assessment, he had no part or involvement therein since the person-in-charge was accused Palad. On recall, Maghirang presented to the Court the original Financial Statement of the Corporation.

On August 13, 2012, the case was deemed submitted for decision after the parties filed their respective memoranda.

THE RULING OF THE COURT

Under the Constitution, accusation is not synonymous with guilt. Thus, in any criminal case, such as the instant case, the accused is presumed innocent until proven otherwise. That being the case, the prosecution has the burden of proving beyond reasonable doubt all the essential elements of the offense with which the accused is charged; and if the proof fails to establish any of the essential elements necessary to constitute a crime, the accused is entitled to acquittal. Hence, the evidence of the prosecution must be strong to pierce the shield of presumptive innocence and to establish the guilt of the accused beyond reasonable doubt.[37]

In other words, the prosecution bears the *onus probandi* of showing beyond moral certainty that each and every essential element of the crime charged exists to sustain a conviction. Otherwise, the scale of justice must necessarily tilt in favor of accused who must be acquitted. [38]

Proof beyond reasonable doubt does not mean such a degree of proof as, excluding the possibility of error, produces absolute certainty. Moral certainty is required, or

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[37] People v. the Court of First Instance of Rizal, Branch IV, and Victorino Robillos, 161 SCRA 249.
[38] Rollie Calimutan vs. People of the Philippines, et al., G.R. No. 152133, February 9, 2006.

that degree of proof which produces conviction in an unprejudiced mind.[39]

In the instant case, the alleged erring taxpayer is South Sea Surety & Insurance Co. Inc. but pursuant to Section 253 of the NIRC, as amended, accused Efren O. Docena and Rolando E. Palad are the ones indicted as the responsible officers of the Corporation for their alleged willful and unlawful failure, refusal or neglect to pay the DST for taxable year 2003 in the total amount of Php 5,758,176.07, in violation of Section 255. The relevant provisions are hereby quoted for easy reference:

> 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 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.
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> SEC. 253. General Provisions. —
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> xxx xxx xxx
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> (d) In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager,

[39] Imelda Darvin vs. Hon. Court of Appeals and People of the Philippines, G.R. No. 125044, July 13, 1998.

> treasurer, officer-in-charge, and employees responsible for the violation.

By express provision of the law, the prosecution has the *onus probandi* to prove the following elements of the crime charged, to wit:

> 1. That the corporate taxpayer, South Sea Surety & Insurance Co. Inc. is by law and regulations required to pay the assessed DST in the amount of Php 5,758,176.07 incurred in relation to the conduct of its business,
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> 2. That the two accused, as the responsible officers of the Corporation, willfully and feloniously failed to pay the assessed DST,
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> 3. At the time they were legally required to do so.

There is no dispute insofar as the first two elements of the crime charged are concerned.

It was never disputed that the taxpayer Corporation South Sea Surety & Insurance Co., Inc. was into selling insurance policy and that at the time the subject assessment was issued, the two accused Efren O. Docena and Rolando E. Palad were its responsible officers, being its President and Executive Vice-President/Chief Operating Officer, respectively.

Also undisputed is the fact that the Corporation had the legal obligation to pay the BIR DST and compromise penalty for taxable year 2003 in relation to the conduct of its business, detailed as follows:

Kind of Tax	Assessment No./ Demand No.	Amount
Deficiency DST	L.N. No. 025-34-2004	P5,733,176.07
Comp. Penalty	L.N. No. 025-34-2004	25,000.00

Significantly, accused Palad never denied that DST deficiency exists and humbly admitted that the Corporation was liable for such deficiency. He likewise admitted that the Corporation was never deprived of notice of such deficiency. He stated that Corporation received several notices from the BIR, to wit: the Letter Notice No. 025-34-2004 dated October 25, 2004 to the Corporation addressed to its President Efren O. Docena,[40] the PAN dated January 24, 2005,[41] Assessment Notice LN. No. 025-34-2004 dated May 9, 2005, all signed by Regional Director Alfredo V. Misajon[42], the Demand Letter dated May 9, 2005 for deficiency DST and for compromise penalty on DST,[43] and Demand Letter dated August 9, 2007 signed by Mario A. Saldevar, Chief of Legal Division-BIR.

Acting on the said notices, the Corporation, through him or co-accused Docena, wrote the BIR[44] acknowledging such DST deficiency and manifested its intention to pay the assessed tax liabilities but on installment basis. In accord with such manifestation, the Corporation subsequently filed an Application for Installment Payment, which the BIR duly approved.[45]

Pursuant to the undertaking, the Corporation was able to pay the sums of P479,848.00[46], P300,000.00[47] and P200,000.00,[48] receipts of which were duly acknowledged by the BIR. Note that the BIR, through its witness Attorney Ramon B. Lorenzo, admitted that these payments albeit received and duly acknowledged by the BIR were not disclosed or brought to the attention of the investigating

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[40] Exhibits "A" to "A-1".
[41] Exhibits "G" to "G-1".
[42] Exhibits "M' to "M-1".
[43] Exhibits "N", "N-1", "O" and "O-1".
[44] Exhibits "8" to "12".
[45] Exhibits "R" to "R-2".
[46] Exhibit "13".
[47] Exhibits "16" and "17".
[48] Exhibits "18" and "19".

prosecutor of Manila when the case was filed with the Department of Justice (DOJ). There was even no attempt to rectify this error when the prosecution amended the Information. Attorney Lorenzo was tellingly silent as to the reason for such flaw. In fine, the total tax liability was erroneous as it did not reflect the correct amount with which the Government, the complainant in this case, was supposed to suffer, rendering the Amended Information infirmed.

Evidence also unfolded the cause of the failure of the Corporation to continue paying the remaining installments. It was the Cease and Desist Order[49] to transact business issued by the Insurance Commission against the Corporation shortly or two (2) weeks to be exact, after its third installment to the BIR was made. This effectively leashed the hands of the Corporation as well as the two accused barring them from servicing the tax obligation with the BIR as the power and control to run the corporate affairs were removed from them and bestowed upon the appointed receivers, the first of whom was Attorney Rosario Setias Reyes.[50] That this occurred in the interim was never disputed by the BIR. Neither did the BIR present evidence to prove the contrary.

It was also established that the Corporation was in the verge of financial crisis even before the assessment was issued. Nevertheless it offered to spread the payment on the DST deficiency over six (6) months but was prevented by the intervening events, to wit: the issuance of the Cease and Desist Order and subsequent directive placing the Corporation under receivership, both by the Insurance Commission.

All the foregoing coupled by the demeanor of accused Palad on the witness stand which mirrored his soul do not instill belief that he and his co-accused willfully and feloniously failed and refused to pay the assessed DST and compromise penalty to the damage and prejudice of the Government. In a criminal case, every circumstance

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[49] Exhibit "1".
[50] Exhibit "2".

favoring the innocence of the accused must be duly taken into account.[51]

The term "willful" in tax crimes statutes means a "voluntary, intentional violation of a known legal duty and bad faith or bad purpose need not be shown."[52]

As defined in Black's Law Dictionary:

> Act is 'willful' within meaning of section of Internal Revenue Code imposing penalty for willful failure to pay federal income and social security taxes withheld from employees if it is voluntary, conscious and intentional; no bad motive or intent to defraud need be shown, and a 'reasonable cause' or 'justifiable excuse' element has no part in definition. *Harrington v. U.S.*, C.A.R.I., 504 F.2d 1306, 1315.[53]

Further, "willfulness" is a state of mind that may be inferred from the circumstances of the case.[54] Proof of willfulness may be, and usually is, shown by circumstantial evidence alone.[55]

Based from the foregoing definition and under the established circumstances, willfulness in the alleged failure and refusal to pay the assessed DST and compromise penalty is certainly lacking to sustain a conviction under the present Amended Information filed against the two accused.

The pieces of evidence presented show a pattern of affirmative acts on the attempt of Corporation, through both

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[51] People v. Cui, 162 SCRA 222.
[52] Mertens' Law of Federal Income Taxation, Chapter 47.05, page 28, Volume 13, see U.S. v. Green, 757 F2d 116, 85-1 USTC 9178 (CA7 1985), in which the Court, Citing U.S. v. Moore, 627 F2d 830 (CA7 1980) and U.S. v. Verkuilen, 690 F2d 648, 82-2 USTC 9618 (CA7 1982), upheld the conviction of a tax protester for willful failure to file returns.
[53] Black's Law Dictionary, 6th Edition, p. 1599.
[54] *Ibid.*
[55] United States v. Grumka, 728 F.2d 794, 796-97 (6th Cir. 1984); United States v. Gleason, 726 F.2d 385, 388 (8th Cir. 1984); United States v. Marabelles, 724 F.2d 1374, 1379 (9th Cir. 1984).

accused, to pay the tax liability of Corporation amidst financial distress. Clearly, these acts negate voluntary or purposeful intention, on the part of both accused, not to pay the tax liabilities of the Corporation.

Precisely the Court cannot subscribe to the prosecution's contention that the two accused are criminally liable for non-payment of DST and compromise penalty assessed by the BIR. It must be emphasized that the prosecution has the primordial duty not only to prove that a tax is due, but also to establish that the accused "willfully fails" to pay the tax due. In this regard, the prosecution utterly failed. It has been held that where the quantum of proof beyond reasonable doubt to warrant conviction of the accused for the offense charge was not established, accused should be acquitted.[56]

Be that as it may, the Court cannot veer away from the fact that accused Palad himself admitted that the Corporation is indeed liable to the pay the total assessed amount of Php5,758,176.07 for deficiency DST and compromise penalty for which it already paid the sums of Php479,484.00, Php300,000.00 and Php200,000.00 or a total of Php979,484.00, pursuant to the Application for Installment Payment dated August 1, 2005 and approved the following day, August 2, 2005. These payments made by the Corporation were neither refuted nor contradicted by any of the prosecution witnesses.

While the two accused cannot be held criminally liable under the Amended Information as they were legally prevented from making further installments to settle the tax liability of the Corporation by virtue of the Cease and Desist Order issued by the Insurance Commission in the letter dated September 13, 2006 and the subsequent directive placing the Corporation under receivership, the fact remains that the Government still has the right to collect and be paid the remaining deficiency DST and compromise penalty assessed against the Corporation of which the two accused, at the time of the assessment, were the responsible officers.

In fine, the Court finds the two accused civilly liable for the unpaid portion of the assessed deficiency DST and

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[56] People v. Court of First Instance of Rizal, Branch IV, Quezon City, 161, SCRA 249.

compromise penalty, plus deficiency interest of twenty (20%) percent from day of default as indicated in the schedule of payment (Exhibit Y) submitted by the Corporation to the BIR, until full payment thereof.

WHEREFORE, the two accused **EFREN O. DOCENA** and **ROLANDO E. PALAD** are hereby **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt.

However, the two named accused are directed to jointly or severally pay the remaining balance of the assessed deficiency DST and compromise penalty in the amount of Php4,778,692.07 plus deficiency interest of twenty (20%) percent thereof from the day of default, as indicated in the schedule of payment pursuant to Section 249 D, in relation to Section B of the NIRC, as amended.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

ERLINDA P. UY
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.

ERLINDA P. UY
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.

ROMAN G. DEL ROSARIO
Presiding Justice