REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA Crim. Case No. O-659**
- versus -	**For: Violation of Section 255 of the National Internal Revenue Code of 1997, as amended by Republic Act 8424**
SIXTA LEE GO, G-40 City Plaza Mall, she claims that she only learned of the subject assessments when she was served with a Warrant of Arrest.[1]	***Members:*** **UY**, *Chairperson,* **RINGPIS-LIBAN**, *and* **MODESTO-SAN PEDRO**, JJ.
Quiapo, Manila, #4 Kingfisher Street, Zabarte Subdivision, Novaliches Proper, Quezon City, Accused.	**Promulgated:** NOV 27 2019 2:00 p.m.

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DECISION

UY, J.:

Accused Sixta Lee Go is charged before this Court in CTA Crim. Case No. O-659 for violation of Section 255 of the NIRC of 1997, as amended, under the Amended Information dated January 4, 2018, the accusatory portion of which reads:

> "That in *(sic)* or about and during the period comprised from the year 2009 to November 8, 2012, inclusive, in the City of Manila, Philippines, the said accused, SIXTA LEE GO, being then the owner/proprietress and, therefore, the responsible officer,

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[1] TSN dated May 22, 2019, p. 31.

of HUG QUIAPO TRADING with business address at No. 2345 Osmeña Highway, San Andres, this city, did then and there willfully and unlawfully fails, refuses and neglects, as she still fails, refuses and neglects to pay her deficiency internal revenue tax liabilities for the year 2009, to wit:

Kind of Tax	Assessment/ Demand No.	Year	Date	Amount
Deficiency **Income Tax**	32-09-IT-03790	2009	11/08/2012	1,259,443.98
Deficiency Value Added Tax	32-09-VT-3791	2009	11/08/2012	1,021,719.06
			TOTAL	2,281,163.04

or in the total amount of ₱2,281,163.04, **exclusive of charges and penalties,** despite notice and service of assessment and Warrant of Distraint and/or Levy dated November 8, 2012, without formally protesting against or appealing the same, and repeated demands made upon her to do so, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount of **₱2,281,163.04**, Philippine currency, **exclusive of charges and penalties.**

CONTRARY TO LAW."[2]

After careful consideration of the allegations in the Amended Information and the attachments thereto, the Court found probable cause for the issuance of a warrant of arrest against accused in the Resolution dated March 23, 2018[3] and issued a Warrant of Arrest on April 12, 2018.[4]

On May 18, 2018, accused voluntarily appeared and submitted herself to the jurisdiction of the Court and posted the required bail bond for her provisional liberty in the instant case.[5]

When arraigned on June 13, 2018, accused Sixta Lee Go, assisted by her counsel, Atty. Laureano L. Galon, Jr., entered a plea of "Not Guilty" to the crime charged in the Amended Information dated January 4, 2018.[6]

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[2] Amended Information; Docket (CTA Crim. Case No. O-659), pp. 79 to 80.
[3] Docket (CTA Crim. Case No. O-659), pp. 92 to 93.
[4] Docket (CTA Crim. Case No. O-659), p. 94.
[5] Docket (CTA Crim. Case No. O-659), pp. 107 to 108.
[6] Docket (CTA Crim. Case No. O-659), pp. 236, 248 to 251.

Pre-trial was held on June 13, 2018,[7] and thereafter, the parties filed their *Joint Stipulation of Facts and Issues*[8] on June 29, 2018, which was approved by the Court on July 5, 2018.[9]

As stated in the *Pre-Trial Order* dated August 1, 2018,[10] the parties stipulated on the following facts and issues, to wit:

"**A. Facts:**

1. The identity of the accused Sixta Lee Go as the same person charged in the Information;
2. The jurisdiction of the Honorable Court over the case;
3. The accused was then doing business under the name and style of Hug Quiapo Trading;
4. Hug Quiapo Trading is a single proprietorship type of business;
5. The registered business address of Hug Quiapo Trading was at G40 City Plaza Mall, Quiapo, Manila until November 2010.

B. Issues:

1. Whether the accused Sixta Lee Go is criminally liable for violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 8424; and
2. Whether or not accused is civilly liable to pay Deficiency Income Tax in the amount of One Million Two Hundred Fifty-Nine Thousand Four Hundred Forty-Three Pesos and 98/100 centavos (Php1,259,443.98) and Deficiency Value Added Tax in the amount of One Million Twenty-One Thousand Seven Hundred Nineteen Pesos and 06/100 centavos (Php1,021,719.06), or in the total amount of Two Million Two Hundred Eighty-One Thousand One Hundred Sixty-Three Pesos and 04/100 centavos (Php2,281,163.04) for taxable year 2009."

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[7] Docket (CTA Crim. Case No. O-659), pp. 248 to 251.
[8] Docket (CTA Crim. Case No. O-659), pp. 259 to 263.
[9] Docket (CTA Crim. Case No. O-659), pp. 323 to 324.
[10] Docket (CTA Crim. Case No. O-659), pp. 357 to 366.

To establish the culpability of accused, the prosecution presented six (6) witnesses, namely: (1) Amalia S. Canlas; (2) Celestino F. Centino II; (3) Ma. Paz Arcilla; (4) Henry B. Benitez; (5) Benhur C. Nacorda; and (6) Felicidad De La Rosa. They testified as follows:

1. **Amalia S. Canlas** testified on *direct examination* that from 2010 to 2012, she was a Revenue Officer assigned at Revenue District Office No. 32, Revenue Region No. 6, BIR, Manila; tasked, among others, to examine the books of accounts and other accounting records of taxpayers, pursuant to a Tax Verification Notice and/or Letter of Authority. After investigation, she prepares the corresponding audit reports reflecting deficiency internal revenue taxes, if any.

Allegedly, she was assigned and authorized to investigate accused's books of accounts and other accounting records for taxable year 2009 by virtue of Tax Verification Notice No. (TVN) 2003 00115883 dated June 11, 2010, issued by Revenue District Officer Atty. Claire Corpus of Revenue District Office No. 32, Revenue Region No. 6, BIR, Manila.

On June 23, 2010, she personally served the original copy of the subject TVN and the First Request for Presentation of Records to accused at her registered address at G40 City Plaza Mall, Quiapo, Manila, and it was received by a certain Catherine Gallardo, Assistant Area Supervisor. Despite receipt thereof, accused failed to present and submit her books of accounts and other accounting records for taxable year 2009. Thus, she prepared and served the 2nd Request for Presentation of Records, Final Request for Presentation of Records, and Issuance of *Subpoena Duces Tecum*, to accused at her registered address.

Thereafter, Regional Director Alfredo V. Misajon issued Letter of Authority No. SN: eLA201000043185 (LOA-023-2011-00000064) dated January 31, 2011, authorizing her to examine the books of accounts and other accounting records of accused for taxable year 2009. On February 1, 2011, she personally served the original copy thereof to accused at her residential address at 4 Kingfisher St., Kaligayahan, Novaliches, Quezon City, where it was received by a certain Lilian Villaraiz.

For failure of accused to submit her books of accounts and other accounting records, she computed accused's deficiency taxes based on the best evidence obtainable rule under Section 6(B) of the NIRC of 1997, as amended, in relation to RMO No. 23-2000. On May

28, 2012, accused was informed of the result of the investigation through a Post Reporting Notice with Computation of Deficiency Taxes and by inviting her for an informal conference.

Since accused still failed to submit any evidence to controvert the proposed assessment, the entire docket of accused was indorsed and forwarded by the Revenue District Officer of RDO No. 32 to the Assessment Division of Revenue Region No. 6, BIR, Manila, for review.[11]

On *cross-examination*, she testified that the issuance of TVN is not found in the NIRC of 1997, as amended. The issuance of TVN under the reasons stated in Revenue Memorandum Order No. 19-2009 are exclusive, but the taxpayer does not fall within the list. That is why an LOA was issued after the issuance of the TVN, because it was found out that the TVN is not the proper mode of looking into the records of the taxpayer in this case. Allegedly, a TVN is only good for sixty (60) days, while an LOA has no expiration until the audit is completed.

The TVN, First, Second, and Final Notice were allegedly sent to the address of accused at G40 City Plaza Mall, Quiapo, Manila. However, the Letter of Authority was served at the residence of accused, because by that time, she already knew for a fact that accused was no longer holding office at Quiapo, Manila.[12]

2. **Celestino F. Centino II** testified on *direct examination* that in 2012, he was a Revenue Officer-Reviewer, assigned at the Assessment Division, Revenue Region No. 6, BIR, Manila. He was tasked to review the reports of investigation of revenue officers of various districts of Revenue Region No. 6, BIR, Manila, where taxpayers were audited by virtue of a Tax Verification Notice and/or Letter of Authority duly issued by the Revenue District Officer and Regional Director, respectively.

On July 3, 2012, the internal revenue tax docket of accused for taxable year 2009, together with the report of investigation, was assigned to him for review. He then conducted a review of the records, as well as the report of investigation of Revenue Officer Amalia S. Canlas. Thereafter, he prepared the Preliminary Assessment Notice with Details of Discrepancies dated October 3, 2012, which was duly signed by the Regional Director.

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[11] Judicial Affidavit of Amalia S. Canlas dated June 6, 2018, Exhibit "P-42," Docket (CTA Crim. Case No. O-659), pp. 197 to 203.
[12] TSN dated August 1, 2018, pp. 8 to 25.

The Billing Section of the Assessment Division transmitted the original Preliminary Assessment Notice with Details of Discrepancies dated October 3, 2012, to the Administrative Division for mailing to accused at her registered address at G40 City Plaza Mall, Quiapo, Manila. On November 8, 2012, the Billing Section of the Assessment Division issued Assessment Notice Nos. 32-09-IT-3790 and 32-09-VT-3791, as well as the Formal Letter of Demand with Details of Discrepancies, to accused at her registered address at G40 City Plaza Mall, Quiapo, Manila, for deficiency income tax and VAT in the amount of ₱ 1,259,443.98 and ₱ 1,021,719.06, respectively, inclusive of increments.

The deficiency income tax amounting to ₱ 1,259,443.98 was computed by disallowing 50% of the claimed purchases and operating expenses for being unsupported, pursuant to Section 6(B) of the NIRC of 1997, as amended, in relation to RMC No. 23-2000.

The deficiency VAT amounting to ₱ 1,021,719.06 was based on unaccounted rental in the amount of ₱ 315,626.00 which should be subject to VAT, pursuant to Section 106 of the NIRC of 1997, as amended; and input taxes that were disallowed for failure of accused to present supporting documents, pursuant to Section 113 of the NIRC of 1997, as amended.

Thereafter, the original copy of Assessment Notice Nos. 32-09-IT-3790 and 32-09-VT-3791, and the corresponding Formal Letter of Demand with Details of Discrepancies dated November 8, 2012, were transmitted to the Administrative Division for mailing to accused.[13]

On *cross-examination*, he testified that after endorsing the docket to the Administrative Division, he has no personal knowledge whether the documents were sent by registered mail or not.[14]

On *re-direct examination*, he testified that in issuing the PAN and in determining the address of accused in this case, it is the procedure of the office to check with the ITS database of the BIR. In this case, the place of business of the taxpayer is the Plaza Mall, Quiapo.[15]

3. **Ma. Paz Arcilla** testified on *direct examination* that she is the Revenue Officer IV-Chief, Billing Section of the Assessment Division, Revenue Region No. 6, since June 15, 2001. She is tasked to personally supervise the service and monitoring of Preliminary

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[13] Judicial Affidavit of Celestino Centino II dated June 6, 2018, Exhibit "P-43," Docket (CTA Crim. Case No. O-659), pp. 165 to 169.
[14] TSN dated August 1, 2018, pp. 30 to 39.
[15] TSN dated August 1, 2018, pp. 39 to 40.

Assessment Notices with Details of Discrepancies and supervise the preparation, issuance, service and monitoring of Final Assessment Notices and Formal Letters of Demand with Details of Discrepancies, Final Decision on Disputed Assessment, demand letters and transcripts of assessments of tax cases.

The tax docket of accused for taxable year 2009 was forwarded to her office for the service of the Preliminary Assessment Notice with Details of Discrepancies dated October 3, 2012, issuance and service of Final Assessment Notice, and Formal Letter of Demand with Details of Discrepancies dated November 8, 2012, to accused at her registered address at G40 City Plaza Mall, Quiapo, Manila.

On November 8, 2012, the original copy of Assessment Notices No. 32-09-IT-3790 and 32-09-VT-3791, and the corresponding Formal Letter of Demand with Details of Discrepancies, were issued by her office, and transmitted to the Administrative Division of the BIR, for service to accused at her registered address.[16]

On *cross-examination*, she testified that her only participation in the case was for the service of the PAN. She further said that there is nothing in the PAN, Assessment Notices, and FLD, to indicate that it was received by accused.[17]

4. **Henry B. Benitez** testified on *direct examination* that in 2013, he was a Revenue Officer-Seizure Agent of the BIR, assigned at the Collection Division, Revenue Region No. 6, Manila. He was tasked to enforce the collection of final and demandable internal revenue taxes and to submit reports thereon.

On April 29, 2013, the internal revenue tax docket of accused for taxable year 2009, was assigned to him for the enforcement of collection proceedings through summary remedies. Thus, he conducted a review of the records of accused Lee Go for taxable year 2009, and prepared a Preliminary Collection Letter dated May 2, 2013.

On May 3, 2013, he served the PCL dated May 2, 2013 to accused at her registered business address at G40 City Plaza Mall, Quiapo, Manila, through registered mail, under Registry Receipt No. 911695. Thereafter, accused still failed to pay her deficiency taxes, prompting him to prepare and serve the Final Notice Before Seizure on May 21, 2013 to accused at her registered business address at

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[16] Judicial Affidavit of Ma. Paz Arcilla dated June 5, 2018, Exhibit "P-44," Docket (CTA Crim. Case No. O-659), pp. 182 to 185.
[17] TSN dated September 12, 2018, pp. 10 to 14.

G40 City Plaza Mall, Quiapo, Manila, through registered mail, under Registry Receipt No. 914639.

After serving the Final Notice Before Seizure, he prepared his report and forwarded the same to Arrears Management Team II, including the entire docket bearing the 2009 internal revenue tax case of accused, for the continuation of collection proceedings and administrative summary remedies.[18]

On *cross-examination*, he testified that his participation was only on the collection aspect of the case. The PAN and the Final Notice Before Seizure was served by registered mail to accused at G40 City Plaza Mall, Quiapo, Manila.[19]

On *re-direct examination*, he testified that he served the documents through registered mail because they did not have enough personnel to conduct personal service.[20]

5. **Benhur C. Nacorda** testified on *direct examination* that he is designated as Mailing-In-Charge at the Administrative Division, Revenue Region No. 6 of the BIR. His duties include sending by registered mail the PAN with Details of Discrepancies, Assessment Notices, FLD, and other correspondence to taxpayers, as well as records keeping.

The subject deficiency tax assessments under the PAN, Assessment Notices, and FLD were transmitted to the Administrative Division by the Assessment Division, for mailing to accused at her registered address at G40 City Plaza Mall, Quiapo, Manila.

As per their office records, the PAN was served to accused Lee Go on October 3, 2012, through registered mail, under Registry Receipt No. 909108, and it was not returned by the postmaster. Likewise, the subject Assessment Notices and FLD were also served to accused on November 8, 2012, through registered mail, under Registry Receipt No. 913426, and it was likewise not returned by the postmaster.[21]

On *cross-examination*, he testified that his duty was merely to serve copies of the documents to accused Lee Go, which he served by registered mail. He further said that there is no showing on the

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[18] Judicial Affidavit of Henry Benitez dated June 4, 2018, Exhibit "P-45" Docket (CTA Crim. Case No. O-659), pp. 154 to 158.
[19] TSN dated September 12, 2018, pp. 20 to 28.
[20] TSN dated September 12, 2018, pp. 28 to 29.
[21] Judicial Affidavit of Benhur C. Nacorda dated June 6, 2018, Exhibit "P-46," Docket (CTA Crim. Case No. O-659), pp. 221 to 225.

face of the PAN that it was ever received by accused Lee Go, while Exhibit "P-16" are only copies of the supposed registry receipts of the documents sent, with no return cards. Allegedly, there is also no showing on the subject Assessment Notices and the FLD, that it was received by accused nor a representative of accused.[22]

On *re-direct examination*, he testified that the mail matter containing the PAN and the FLD were not returned by the postmaster.[23]

On *re-cross examination,* he said that it is not a matter of procedure to wait for the registry return card to know who actually received the letter. He also stated that he was not the one who sent the mail, as it was Mr. Macatangay, a retired employee, who did the mailing and he is testifying based on records only.[24]

6. **Felicidad De La Rosa** testified on *direct examination* that she is a Revenue Officer of the BIR and currently assigned at the Collection Division, Revenue Region No. 6, BIR, Manila. As Revenue Officer-Seizure Agent of the Collection Division, she was tasked, among others, to enforce collection of final and demandable internal revenue taxes and to submit reports thereon.

On June 19, 2013, the internal revenue tax docket of accused Sixta Lee Go for taxable year 2009 was assigned to her for the enforcement of collection proceedings through summary remedies. She conducted a review of the records of accused and prepared the Warrant of Distraint and/or Levy dated November 22, 2013. Thereafter, she served the WDL at her registered business address at G40 City Plaza Mall, Quiapo, Manila.

After she served the WDL on November 22, 2013, accused still failed to pay her deficiency taxes, prompting her to prepare and serve, on various dates, Warrants of Garnishment to several banks. The said Warrants informed the said banks that the BIR is seizing, distraining, and garnishing the deposits of accused and other property in their possession or control, sufficient to cover accused's tax obligation; and ordered the said banks to transfer, surrender, transmit and/or remit to the BIR such property/cash in their possession owned by accused Lee Go. Upon service of the Warrants of Garnishment, she recommended to the Chief of the Collection Division, Revenue Region No. 6, BIR, Manila that the tax docket of accused be forwarded to the Legal Division, Revenue

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[22] TSN dated February 6, 2019, pp. 7 to 13.
[23] TSN dated February 6, 2019, p. 17.
[24] TSN dated February 6, 2019, pp. 18 to 21.

Region No. 6, BIR, Manila. Thereafter, the Chief of the Collection Division, through the Regional Director, indorsed and forwarded the tax docket to the Legal Division, for legal action.

On May 26, 2017, they filed a complaint against accused for violation of Section 255 of the NIRC of 1997, as amended, before the Office of the City Prosecutor of Manila.[25]

On *cross-examination*, she testified that she prepared the Warrants of Distraint and/or Levy, and Memorandum referring the case to the Chief of the Collection Division. She personally served the Warrant of Distraint and/or Levy, but there is nothing on its face to show that it was received by accused. She left the original copy at the registered address of accused at Quiapo, but she did not exert effort to personally serve the document to accused Lee Go.[26]

On *re-direct examination,* she testified that she served the Warrants of Garnishment to the main office of various banks, and not to accused Lee Go.[27]

On *re-cross examination*, she testified that she does not know whether the bank notified the taxpayer concerning the service of Warrants of Garnishment.[28]

Upon completion of the testimonies of the foregoing witnesses, the prosecution filed its *Plaintiff's Formal Offer of Evidence*[29] on February 13, 2019, to which accused filed her *Comments-Opposition and Objections (Of Plaintiff's Formal Offer of Evidence)*[30] on February 27, 2019 which the Court resolved in the Resolution dated May 20, 2019. [31]

To counter the prosecution's evidence, the defense presented accused Sixta Lee Go, while the supposed testimonies of the other three (3) defense witnesses were stipulated by both parties, as will be discussed hereinbelow.

On *direct examination,* accused **Sixta Lee Go** testified that she is a Filipino, 63 years old, a businesswoman, and a resident of No. 4 Kingfisher Street, Kaligayahan, Novaliches, Quezon City.

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[25] Judicial Affidavit of Felicidad Dela Rosa dated June 5, 2018, Exhibit "P-47," Docket (CTA Crim. Case No. O-659), pp. 133 to 137.
[26] TSN dated February 6, 2019, pp. 26 to 35.
[27] TSN dated February 6, 2019, pp. 36 to 38.
[28] TSN dated February 6, 2019, pp. 39 to 41.
[29] Docket (CTA Crim. Case No. O-659), pp. 382 to 395.
[30] Docket (CTA Crim. Case No. O-659), pp. 397 to 407.
[31] Docket (CTA Crim. Case No. O-659), pp. 419 to 420.

From her understanding, she was charged for her failure to pay tax in 2009. In 2009, she was engaged in business of selling electronics, under the name Hugs Quiapo Trading, with address at G40 City Plaza Mall, Quiapo, Manila. By November 2010, she closed her store because business was slow and she incurred losses. In support of this contention, she presented a Barangay Certification and a Certification issued by CKE International Holdings Corporation. She also had a photocopy of her BIR Form No. 1905, stating that she can no longer find the original, and a Certification from the City Treasurer of Manila.

She was surprised that a criminal case was filed against her before the CTA, as she was under the impression that the criminal case filed against her for the failure to submit documents, was already dismissed by Branch 21, METC, Manila. She stated that she never received any letter from the BIR after the case from METC, Manila was dismissed. Moreover, as of 2010, the BIR already knew that she already closed her business, because she filed BIR Form No. 1905.[32]

On *cross-examination,* she testified that she submitted her books to the BIR sometime in October 2010. Allegedly, the BIR has her home address, but she has no proof that she submitted the same to the BIR.[33]

On clarificatory questions, she testified that her home address is at "No. 4 Kingfisher Street, Zabarte Subdivision, Barangay Kaligayahan, Novaliches, Quezon City," which she provided to the BIR during the application process for her business. The BIR has the data in their files because the residential address appears in the subpoena and referral letter of Regional Director Arnel Guballa to the DOJ.

She stated that she only knew of the case after a policeman informed her that there was a warrant for her arrest. Thereafter, she immediately went to the CTA and posted bail. However, she never received any notice from the DOJ or City Prosecutor of Manila.[34]

As mentioned earlier, in order to dispense with the oral testimonies of accused's last three (3) intended witnesses,[35] namely: a representative of Barangay 306, Zone 30, District III of the City of

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[32] Judicial Affidavit of Sixta Lee-Go dated July 11, 2018, Exhibit "A-6," Docket (CTA Crim. Case No. O-659), pp. 328 to 336.
[33] TSN dated May 22, 2019, pp. 22 to 27.
[34] TSN dated May 22, 2019, pp. 27 to 32.
[35] Docket (CTA Crim. Case No. O-659), pp. 422 to 423.

Manila, a representative of CKE International Holdings Corporation,[36] and a representative of the City Treasurer's Office of Manila, the parties submitted their *Joint Stipulations and Manifestation,*[37] stating that:

> "1. The accused submitted on 11 June 2019 the certified true copy of the Barangay Certification issued on 16 July 2012 and requested to transfer the marking of Exhibit "A-1" of this document and the transfer also of the marking of "A-1-1," the second paragraph of the Barangay Certification to the original of the same document;
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> 2. The accused submitted on 11 June 2019 the original copy of the Certification issued by the CKE International Holdings Corporation dated 16 July 2012 and requested to transfer the marking of Exhibit "A-2" of this document and the transfer also of the marking of "A-2-1," the first paragraph of the Certification to the original of the same document;
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> 3. When a representative of Barangay 306, Zone 30, District III of the City of Manila will be called to testify, the witness will identify the Barangay Certification issued on 16 July 2012, marked as Exhibit "A-1," and that this document was officially issued by Barangay 306, Zone 30, District III of the City of Manila, and that the signature appearing on top of the name, Joey Uy Jamisola is the signature of Joey Uy Jamisola, the Punong Barangay of Barangay 306, Zone 30, District III of the City of Manila at the date and time that this document was issued.
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> 4. When a representative of CKE International Holdings Corporation will be called to testify, the witness will identify the Certification issued on dated 16 July 2012 marked as Exhibit "A-2"; and that this document was officially issued by CKE International Holdings Corporation; and that CKE International Holdings Corporation is the owner of Manila City Plaza Shopping Mall; and that the signature appearing on top of the name, Julie Sta. Maria is the signature of Julie Sta. Maria, the Building Administrator of City Plaza Shopping Mall of CKE International Holdings Corporation at the date and time that this document was issued;

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[36] Docket (CTA Crim. Case No. O-659), p. 365.
[37] Docket (CTA Crim. Case No. O-659), pp. 427 to 429.

5. When a representative of the City Treasurer's Office of Manila will be called to testify, the witness will identify the Certification dated 30 September 2013 marked as, Exhibit "A-4," and that this document is an official document issued by the City Treasurer's Office of Manila; and that the signature appearing on top of the name, Oscar John L. Sangalang is the signature of Oscar John L. Sangalang, the Chief of the License Division of the City of Manila."

Thereafter, defense counsel filed a *Formal Offer of Documentary Exhibits (Of Accused Sixta Lee-Go)*[38] on June 19, 2019, to which the prosecution filed its Comment (To Accused Formal Offer of Documentary Exhibits)[39] on June 26, 2019. In the Resolution dated July 4, 2019,[40] the Court resolved the said Formal Offer of Documentary Evidence and ordered the parties to submit their respective memoranda within thirty (30) days from notice.

On August 2, 2019, the prosecution filed its *Plaintiff's Memorandum,*[41] while accused filed her *Memorandum (Of Accused Sixta Lee-Go)*[42] on August 28, 2019. Thereafter, this case was submitted for decision on September 2, 2019.[43]

Hence, this Decision.

THE ISSUES

As stated in the *Pre-Trial Order* dated August 1, 2018,[44] the parties raised the following issues for resolution, to wit:

"B. Issues:

1. Whether the accused Sixta Lee Go is criminally liable for violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 8424; and

2. Whether or not accused is civilly liable to pay Deficiency Income Tax in the amount of One Million Two

[38] Docket (CTA Crim. Case No. O-659), pp. 433 to 445.
[39] Docket (CTA Crim. Case No. O-659), pp. 451 to 452.
[40] Docket (CTA Crim. Case No. O-659), pp. 454 to 455.
[41] Docket (CTA Crim. Case No. O-659), pp. 456 to 464.
[42] Docket (CTA Crim. Case No. O-659), pp. 466 to 478.
[43] Docket (CTA Crim. Case No. O-659), p. 480.
[44] Docket (CTA Crim. Case No. O-659), pp. 357 to 366.

Hundred Fifty-Nine Thousand Four Hundred Forty-Three Pesos and 98/100 centavos (Php1,259,443.98) and Deficiency Value Added Tax in the amount of One Million Twenty-One Thousand Seven Hundred Nineteen Pesos and 06/100 centavos (Php1,021,719.06), or in the total amount of Two Million Two Hundred Eighty-One Thousand One Hundred Sixty-Three Pesos and 04/100 centavos (Php2,281,163.04) for taxable year 2009."[45]

Prosecution's Arguments

The prosecution contends that accused Sixta Lee Go is required to pay income tax and value-added tax on her sale of goods to customers, pursuant to Sections 24 and 106 of the NIRC of 1997, as amended.

Allegedly, accused failed to pay said taxes at the time required by law. To support its claim, the prosecution presented Registry Receipt No. 909108 dated October 3, 2012, and Registry Receipt No. 913426 dated November 8, 2012, to prove that the Preliminary Assessment Notice with Details of Discrepancies October 3, 2012, Assessment Notice Nos. 32-09-IT-3790 and 32-09-VT-3791, and the corresponding Formal Letter of Demand with Details of Discrepancies dated November 8, 2012, were issued and served to accused at her registered business address at G40 City Plaza Mall, Quiapo, Manila, through registered mail.

The failure of accused to file a valid protest notwithstanding receipt of the Assessment Notices and the corresponding Formal Letter of Demand with Details of Discrepancies dated November 8, 2012, allegedly rendered the assessment final, executory, demandable, and unappealable.

The prosecution cannot be faulted for the alleged non-receipt of the PAN, Assessment Notices, and FLD, considering that accused ceased her registration with the BIR without providing the BIR any forwarding address as shown in the Application for Registration Information Update (BIR Form No. 1905).

Further, the failure of accused to pay the necessary taxes was allegedly willful. As the owner/proprietress of Hug Quiapo Trading, she was in charge of the over-all management of her business and also responsible for setting policies, guidelines and direction of her

[45] Docket (CTA Crim. Case No. O-659), p. 358.

business. She was also aware of the LOA, notice letters and *subpoena duces tecum* issued by the BIR to examine her books of account and other accounting records for taxable year 2009. In fact, accused submitted her books of account and other accounting records for taxable year 2009, in compliance with the *subpoena duces tecum,* causing the dismissal of the criminal case for violation of Section 266 of the NIRC of 1997, as amended.

Allegedly, accused likewise admitted in her Judicial Affidavit that she was waiting for the reply/answer of the BIR regarding the documents she submitted. However, notwithstanding such admission, she deliberately and intentionally failed to provide any forwarding address in her Application for Registration Information Update (BIR Form 1905) filed with the BIR.

The cessation of registration made by accused without providing the BIR any forwarding address was a scheme deliberately and intentionally employed to evade receipt of the PAN, Assessment Notices and FLD.

Accused's counter-arguments

In her Memorandum, accused counters that there was no willful failure on her part to pay the alleged taxes because there was allegedly no valid assessment, and no evidence to show that she received a copy of the assessment of her alleged tax deficiencies.

Accused claims that she could not be held civilly liable, because there is no evidence on record to prove her alleged tax deficiencies.

Additionally, the BIR cannot proceed to make an assessment based on alleged best available records, as accused has religiously complied with the submission of her required financial records. The BIR should have gone through the normal auditing process, considering that there is nothing on record to show that accused signed any waiver of whatever nature concerning the examination of her books for taxable year 2009.

Finally, accused contends that she cannot be held liable for the alleged tax deficiency because she was conclusively denied her right to due process, without a valid tax assessment.

THE COURT'S RULING

In the instant case, accused Sixta Lee Go, being then the owner/proprietress and, therefore, the responsible officer, of HUG QUIAPO TRADING, is charged for her alleged failure to pay deficiency internal revenue tax liabilities for taxable year 2009, exclusive of charges and penalties, as follows:

Kind of Tax	Assessment/ Demand No.	Year	Date	Amount
Deficiency **Income Tax**	32-09-IT-03790	2009	11/08/2012	1,259,443.98
Deficiency Value Added Tax	32-09-VT-3791	2009	11/08/2012	1,021,719.06
			TOTAL	2,281,163.04

The prosecution submits that accused failed to pay the said deficiency taxes despite notice and service of assessment and Warrant of Distraint and/or Levy dated November 8, 2012; repeated demands to do so; and without formally protesting against or appealing the same, in violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Section 255 of the NIRC of 1997, as amended, states:

> **"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. x x x x." *(Emphasis supplied.)*

Based on the foregoing provision, the elements for violation of Section 255 of the NIRC of 1997, arising from willful failure to pay tax are the following:

1. A tax is imposed under the NIRC of 1997, as amended;
2. A person, natural or juridical, is liable to pay that tax; and
3. Such person willfully fails to pay such tax.

To secure the conviction of accused Sixta Lee Go in the instant case under Section 255 of the NIRC of 1997, as amended, all of the foregoing essential elements must be present.

Anent the first element pertaining to a tax imposed under the NIRC of 1997, as amended, We take note that it was stipulated by the parties, that accused, Sixta Lee Go, was then doing business under the name and style of Hug Quiapo Trading, which is a single proprietorship type of business.[46] In the course of the operation of her business, accused may be held liable to pay income tax on her taxable income, and value added tax on taxable transactions, if any. Said taxes are imposed under Section 24(A)(1)(a) and Section 106 of the NIRC of 1997, as amended. Said Sections pertinently read as follows:

> "**SEC. 24.** ***Income Tax Rates***. -
>
> (A) *Rates of Income Tax on Individual Citizen and Individual Resident Alien of the Philippines.-*
>
> (1) An income tax is hereby imposed:
>
> (a) On the taxable income defined in Section 31 of this Code, other than income subject to tax under Subsections (B), (C) and (D) of this Section, derived for each taxable year from all sources within and without the Philippines be every individual citizen of the Philippines residing therein; x x x."
>
> "**SEC. 106.** ***Value-added Tax on Sales of Goods or Properties***. –
>
> (A) *Rate and Base of Tax*. – There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to twelve percent (12%) of the gross selling price or gross value in money of the goods or properties sold, bartered, or exchanged, such tax to be paid by the seller or transferor xxx xxx xxx."

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[46] Docket (CTA Crim. Case No. O-659), p. 358.

As regards to the existence of the second element requiring that it be shown that accused is liable to pay income tax and value added tax, We are guided by the provisions of Section 56 of the NIRC of 1997, as amended. Said provision reads:

> "**SEC. 56. *Payment and Assessment of Income Tax for Individuals and Corporations*.** –
>
> (A) *Payment of Tax*. -
>
> (1) In General. – The total amount of tax imposed by this Title shall be paid by the person subject thereto <u>at the time the return is filed</u>. xxx xxx xxx.
>
> xxx xxx xxx.
>
> (B) *Assessment and Payment of Deficiency Tax*. – After the return is filed, the Commissioner shall examine it and assess the correct amount of the tax. The tax or deficiency income tax so discovered shall be paid **<u>upon notice and demand</u>** from the Commissioner." *(Underscoring supplied.)*

Based on the foregoing provisions, the legal obligation to pay tax under the NIRC of 1997, as amended, arises from two (2) specific instances: *first,* at the time required by the law to pay a particular tax; or *second*, upon being informed of a tax assessment issued by the BIR, requiring the taxpayer to pay the assessed tax or deficiency tax within a specific period, as set forth in the assessment.

The first instance, involves a self-assessment of tax obligations as outlined by the Supreme Court in the case of "*Commissioner of Internal "Revenue vs. Fitness by Design, Inc.*",[47] to wit:

> "The assessment process starts with the filing of the tax return and payment of tax by the taxpayer. The initial assessment evidenced by the tax return is a self-assessment of the taxpayer. The tax is primarily computed and voluntarily paid by the taxpayer without need of any demand from government. If tax obligations are properly paid, the Bureau of Internal Revenue may dispense with its own assessment."

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[47] G.R. No. 215957, November 9, 2016.

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

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

In this case, the alleged legal obligation of accused to pay taxes under the NIRC of 1997, as amended, pertains to the second instance of being required to pay deficiency income tax and value added tax, which the prosecution must prove to be based upon a valid assessment, notice and demand from the BIR. Thus, it becomes necessary to examine the validity of the subject assessments for deficiency income tax and value-added tax.

Section 228 of the NIRC of 1997, as amended, specifies the procedure for the issuance of deficiency tax assessments. The law requires that taxpayers be informed, in writing, of the law and the facts upon which the assessment is made, otherwise, the assessment shall be void. Section 228 pertinently reads as follows:

> "**SEC. 228. *Protesting of Assessment*.** – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* that a pre-assessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. xxx xxx xxx."

Corollary thereto, Section 3 of RR No. 12-99,[48] outlines the due process requirement to be observed in issuing deficiency tax assessments, to wit:

"**SEC. 3.** ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —***

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

xxx xxx xxx

3.1.2 Preliminary Assessment Notice (PAN). — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

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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

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[48] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

> 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."

In "*Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*"[49] the Supreme Court interpreted the foregoing provisions, and emphasized the mandatory nature of the requirements laid down therein, to wit:

> "Indeed, **Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN**. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations - that taxpayers should be able to present their case and adduce supporting evidence.
>
> xxx xxx xxx
>
> From the provision quoted above, it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the 'due process requirement in the issuance of a deficiency tax assessment,' the absence of which renders nugatory any assessment made by the tax authorities. The use of the word "*shall*" in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its

[49] G.R. No. 185371, December 8, 2010.

own rules is a denial of Metro Star's right to due process. Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void." *(Emphasis supplied.)*

From the foregoing provisions, it is clear that when there exists sufficient basis to assess the taxpayer, the CIR or his authorized representative is mandated to issue a PAN. Thereafter, a formal letter of demand and an assessment notice shall be issued by the CIR or his duly authorized representative.

The mandatory nature of the said requirements are clear by the use of the word "shall" in the subject legal provisions. In fact, the failure to strictly comply with the notice requirements under Section 228 of the NIRC of 1997, as amended, and RR No. 12-99 is considered equivalent to a denial of due process.

Thus, in the instant case, the prosecution must prove and establish that the requisite assessment notices were duly served to accused-taxpayer within the prescriptive period.

As earlier mentioned, the prosecution contends that accused was required to pay her deficiency internal revenue tax liabilities for 2009, under Assessment/Demand No. 32-09-IT-03790 and 32-09-VT-3791, and that she did not formally protest against or appeal the same, despite due notice, service, and demand to do so.

As proof thereof, the prosecution presented the following documents that were allegedly served, and/or referred to accused's address at <u>G40 City Plaza Mall, Quiapo, Manila</u>, to wit: First Request for Presentation of Records;[50] Second Request for Presentation of Books, and Other Accounting Records;[51] Final Request for Presentation of Records Before the issuance of Subpoena Duces Tecum;[52] Post Reporting Notice;[53] PAN;[54] Mailing Letter dated October 3, 2012;[55] Assessment Notice No. 32-09-IT-3790;[56] Assessment Notice No. 32-09-VT-3791;[57] Formal Letter of Demand

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[50] Exhibit "P-4," Docket (CTA Crim. Case No. O-659), pp. 281 to 282.
[51] Exhibit "P-5," Docket (CTA Crim. Case No. O-659), pp. 283.
[52] Exhibit "P-6," Docket (CTA Crim. Case No. O-659), p. 284.
[53] Exhibit "P-7," Docket (CTA Crim. Case No. O-659), pp. 285 to 286.
[54] Exhibit "P-15," Docket (CTA Crim. Case No. O-659), pp. 294 to 296.
[55] Exhibit "P-16," Docket (CTA Crim. Case No. O-659), p. 297.
[56] Exhibit "P-18," Docket (CTA Crim. Case No. O-659), p. 298.
[57] Exhibit "P-19," Docket (CTA Crim. Case No. O-659), p. 299.

dated November 8, 2012;[58] Transmittal Form;[59] Final Notice Before Seizure dated May 20, 2013;[60] Warrant of Distraint and/or Levy;[61] and Warrants of Garnishment.[62]

Accused, however, categorically denies having received any of the subject notices, and claims that she learned about the assessment only when she was served with a Warrant of Arrest.[63] In fact, accused contends that the CIR should not have sent the notices to her business address, having been informed, through BIR Form No. 1905, or the Application for Registration Information Update,[64] that she closed her business at the said address as of November 2010. Instead, the BIR should have sent the requisite notices to her residential address at 4 Kingfisher St., Kaligayahan, Novaliches, Quezon City, which she furnished and submitted to the BIR.

Relative to the foregoing argument of the accused, the issues to be resolved are: (1) whether the subject assessment notices were sent to the proper address; and (2) whether the prosecution was able to prove proper service of the subject assessment notices.

Anent the issue on whether the proper address of accused was used by BIR in sending the subject assessment notices, We look at the guidelines set forth under Section 11 of RR No. 12-85,[65] to wit:

> "**SEC. 11. *Change of Address.*** — In case of change of address, the taxpayer must give written notice thereof to the Revenue District Officer or the district having jurisdiction over his former legal residence and/or place of business, copy furnished the Revenue District Officer having jurisdiction over his new legal residence or place of business, the Revenue Computer Center and the Receivable Accounts Division, BIR, National Office, Quezon City, and in case of failure to do so, any communication referred to in these regulations previously sent to his former legal residence or business address as appearing in his tax return for the period involved shall be considered valid and binding for purposes of the period within which to reply."

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[58] Exhibit "P-20," Docket (CTA Crim. Case No. O-659), pp. 300 to 302.
[59] Exhibit "P-21," Docket (CTA Crim. Case No. O-659), p. 303.
[60] Exhibit "P-26," Docket (CTA Crim. Case No. O-659), p. 306.
[61] Exhibit "P-29," Docket (CTA Crim. Case No. O-659), p. 308.
[62] Exhibits "P-30" to "P40," Docket (CTA Crim. Case No. O-659), pp. 309 to 319.
[63] TSN dated May 22, 2019, p. 31.
[64] Exhibit "A-3," Docket (CTA Crim. Case No. O-659), p. 352.
[65] SUBJECT: Procedure Covering Administrative Protests on Assessments of the Bureau of Internal Revenue.

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Based on the foregoing provision, any communication sent to the taxpayer's former legal residence or business address as appearing in her tax return is considered valid and binding unless the taxpayer gives written notice thereof to the BIR.

In this case, accused only presented BIR Form No. 1905, or Application for Registration Information Update,[66] informing the BIR of the cessation of her business as of November 2010.

To the mind of this Court, the foregoing constitutes written notice to the BIR that accused ceased operations at her business address.

Moreover, it should be noted that the BIR had information on record regarding accused's residential address at "No. 4 Kingfisher Street, Zabarte Subdivision, Barangay Kaligayahan, Novaliches, Quezon City," as provided to the BIR, in her application form when she opened her business.[67]

In fact, the LOA-032-2011-00000064[68] dated January 31, 2011, presented by the prosecution, identifies accused's address as 4 Kingfisher St., Kaligayahan, Novaliches, Quezon City.

Moreover, prosecution witness Amalia S. Canlas testified that the Letter of Authority was served to the residence of accused Lee Go, instead of her business address, because by that time, *she knew for a fact* that accused was no longer holding office at Quiapo, Manila.[69]

Finally, it was noted during trial that accused's residential address was indicated in the subpoena, as well as the referral letter of Regional Director Arnel Guballa to the DOJ, which meant that the BIR already had the subject data in their file.[70]

Clearly from the foregoing, the subject assessment notices should have been sent to accused's residential address, instead of her business address.

[66] Exhibit "A-3," Docket (CTA Crim. Case No. O-659), p. 352.
[67] TSN dated May 22, 2019, pp. 28 to 29.
[68] Exhibit "P-3," Docket (CTA Crim. Case No. O-659), p. 280.
[69] TSN dated August 1, 2018, p. 24.
[70] TSN dated May 22, 2019, pp. 30 to 31.

Assuming *arguendo,* that the use of accused's business address was proper due to her failure to provide a forwarding address in her BIR Form No. 1905, nevertheless, this Court finds that the prosecution has the burden to establish or sufficiently prove that accused indeed received the subject assessment notices.

It must be remembered that the Supreme Court, in the case of "*Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc (or GJM case),*"[71] held that, in case of denial by the taxpayer that she received the assessment, the *onus probandi* is shifted to the BIR to prove that the taxpayer received the same in the due course of mail, to wit:

> "If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The *onus probandi* has shifted to the BIR to show by contrary evidence that GJM indeed received the assessment in the due course of mail. It has been settled that while a mailed letter is deemed received by the addressee in the course of mail, **this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee**.
>
> **To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts <u>or the Registry return card which would have been signed by the taxpayer or its authorized representative</u>**. And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention. The Court does not put much credence to the self-serving documentations made by the BIR personnel, especially if they are unsupported by substantial evidence establishing the fact of mailing. While it is true that an assessment is made when the notice is sent within the prescribed period, **<u>the release, mailing, or sending of the same must still be clearly and satisfactorily proved</u>**. **<u>Mere notations made without the taxpayer's intervention, notice or control, and without adequate supporting evidence cannot suffice</u>**. Otherwise, the defenseless taxpayer would be

[71] G.R. No. 202695, February 29, 2016.

unreasonably placed at the mercy of the revenue offices." *(Emphasis and underscoring supplied.)*

On the basis of the foregoing, it is clear that when a taxpayer denies having received the assessment notices, it becomes incumbent upon the prosecution to prove, by competent evidence, that the subject assessment notices were *actually* received by the taxpayer.

In this case, the prosecution failed to present proof that the subject assessment notices were actually received by accused Lee Go. While the prosecution presented Registry Receipt No. 909108,[72] the same was not identified with particularity as the specific Registry Receipt issued for the mailing of the PAN[73] to accused Lee Go, as there were other folded and illegible registry receipts present in the subject document.

Finally, even if We consider the same as sufficient proof of mailing of the PAN, and give credence to the fact of mailing of Formal Letter of Demand dated November 8, 2012[74] by virtue of Registry Receipt No. 913426,[75] it is still necessary for the prosecution to further prove that the subject documents were in fact received by accused Lee Go, considering that she directly denied having received said mail matters. As held in the *GJM* case, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention.

Additionally, even the testimonies of the prosecution witnesses failed to convince this Court that the subject assessment notices were actually received by accused, as follows:

Celestino F. Centino II testified that he has no personal knowledge if the subject assessment notices were actually mailed by the Administrative Division.[76]

Ma. Paz Arcilla, on the other hand, admitted that there is nothing on record to show that the PAN, Assessment Notices and

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[72] Exhibit "P-16," Docket (CTA Crim. Case No. O-659), p. 297.
[73] Exhibit "P-15," Docket (CTA Crim. Case No. O-659), pp. 294 to 296.
[74] Exhibit "P-20," Docket (CTA Crim. Case No. O-659), pp. 300 to 302.
[75] Exhibit "P-21," Docket (CTA Crim. Case No. O-659), p. 303.
[76] TSN dated August 1, 2018, pp. 38 to 39.

Formal Letter of Demand to show that it was served to and/or received by accused Lee Go.[77]

Benhur C. Nacorda testified that there is no showing in the PAN that it was received by accused Lee Go. He also testified that Exhibit "P-16" merely shows the supposed registry receipts of the persons to whom the documents were allegedly sent, without any return card attached. There was also nothing in the Assessment Notices and Formal Letter of Demand, and the Transmittal Letter, to show that they were received by accused.[78] In fact, Benhur C. Nacorda even admitted that he has no personal knowledge, as he was not the one who sent the subject documents by registered mail. In fact, it was Mr. Macatangay, a retired employee who did so, and he was merely testifying based on the records.[79]

Clearly, the prosecution witnesses did not confirm the recipient of the subject assessment notices, if any, nor did they provide additional proof that the same, were in fact mailed *and* received by accused Lee Go, or by her authorized representative.

All told, the evidence presented by the prosecution failed to establish that the subject assessment notices were properly served, and actually received by accused Lee Go. Hence, the subject deficiency tax assessments for 2009 are declared void, for having been issued in violation of the due process requirements under the law and RR No. 12-99. In addition, considering that there are no valid assessments to begin with, the Warrant of Distraint and/or Levy and Warrants of Garnishment issued by the CIR to accused are likewise void.

Correspondingly, as the subject deficiency tax assessments in this case are declared void, it therefore follows that there is no legal obligation on the part of the accused to pay the subject deficiency tax assessments.

Thus, although the second element of the crime charged, that the accused failed to pay the "**required tax**", is largely uncontested, as accused neither denied having failed to pay, nor showed any fact of payment of the deficiency tax assessments, the Court finds that there is no required tax to be paid by accused because the subject assessments are declared void for non-compliance with legal requirements. In other words, there is no **"required tax"** to be paid by accused.

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[77] TSN dated September 12, 2018, pp. 12 to 14.
[78] TSN dated February 6, 2019, pp. 8 to 12.
[79] TSN dated February 6, 2019, pp. 20 to 21.

Lastly, the third element of the crime charged, that accused **willfully** failed to pay the subject deficiency tax assessments, is likewise sorely lacking in this case. To warrant a conviction, it must be proven that the failure to pay the subject assessment was done *willfully,* with knowledge and voluntariness, and with *intentional* violation of a known legal duty.

"Willfulness' in tax crimes has been simply defined as:

> "Willful in the tax crime statutes means a voluntary, intentional violation of a known legal duty and bad faith or bad purpose need not be shown."[80]

In this case, the prosecution has not proffered any evidence to prove that the failure of accused to pay the subject deficiency tax assessments was willful or intentional. On the contrary, accused denies having received any of the subject notices, and claims to have learned about the assessment, only when she was served with a Warrant of Arrest.[81] Hence, it cannot be concluded that accused voluntarily, intentionally violated her known legal duty to pay the assessed taxes, without need of showing bad faith or bad purpose in doing so.

In the case of *Nilo Macayan, Jr. y Malana vs. People of the Philippines,*[82] the Supreme Court held that:

> "What is crucial, however, this being a criminal case, is for the prosecution to establish the guilt of an accused on the strength of its own evidence. Its case must rise on its own merits. The prosecution carries the burden of establishing guilt beyond reasonable doubt; it cannot merely rest on the relative likelihood of its claims. Any *lacunae* in its case gives rise to doubt as regards the 'facts necessary to constitute the crime with which an accused is charged."

With the failure of the prosecution to present any evidence to prove that the accused *willfully* failed to pay the subject deficiency tax assessment, accused is entitled to an acquittal.

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[80] [Mertens (Law of Federal Income Taxation) Chapter 47.04, 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 (CA 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], also cited in *People of the Philippines vs. Estelita Delos Angeles*, CTA Crim. Case No. O-027, November 25, 2009.
[81] TSN dated May 22, 2019, p. 31.
[82] G.R. No. 175842, March 18, 2015.

"It must be stressed that in our criminal justice system, the overriding consideration is not whether the court doubts the innocence of the accused, but whether it entertains a reasonable doubt as to their guilt. Where there is no moral certainty as to their guilt, they must be acquitted even though their innocence may be questionable. The constitutional right to be presumed innocent until proven guilty can be overthrown only by proof beyond reasonable doubt."[83]

WHEREFORE, in light of the foregoing considerations, accused **SIXTA LEE GO** is hereby **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt.

Further, the accused is likewise declared not civilly liable to pay the assessed deficiency income tax and value added tax. Accordingly, Assessment Notice Nos. 32-09-IT-3790 and 32-09-VT-3791, Final Notice Before Seizure dated May 20, 2013, Warrant of Distraint and/or Levy and Warrants of Garnishment, are declared **VOID.**

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[83] *People of the Philippines vs. Asis,* 439 Phil. 707, 727-728 (2002), as cited in *Nilo Macayan, Jr. y Malana vs. People of the Philippines, infra.*

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
Associate Justice
Chairperson, 3rd Division

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