REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

GENEROSA P. ORTEGA,
LALAINE P. ORTEGA,
LA CHILO CHINESE CUISINE, INC.,
Accused.

CTA CRIM. CASE NO. O-606
For: *Violation of Section 255 of NIRC of 1997*

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PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

GENEROSA P. ORTEGA,
LALAINE P. ORTEGA,
LA CHILO CHINESE CUISINE, INC.,
Accused.

CTA CRIM. CASE NO. O-607
For: *Violation of Section 255 of NIRC of 1997*

Members:

CASTAÑEDA, JR., *Chairperson*,
and
GRULLA, *JJ.*

Promulgated:
FEB 2 [2019 9:25 am

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DECISION

CASTAÑEDA, JR., *J.*:

STATEMENT OF THE CASE

For CTA Crim. Case No. O-606:

Both accused, Generosa P. Ortega and Lalaine P. Ortega, President and Treasurer, respectively, of La Chilo Chinese Cuisine, Inc. are charged in an Information dated August 23, 2013 for violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, or for willful failure to pay the correct income tax for taxable year 2007 in the amount of ₱13,739,735.50, exclusive of interests and surcharges.[1]

For CTA Crim. Case No. O-607:

Both accused, Generosa P. Ortega and Lalaine P. Ortega, President and Treasurer, respectively, of La Chilo Chinese Cuisine, Inc. are charged in an Information dated August 23, 2013 for violation of Section 255 of the NIRC of 1997, as amended, or for willful failure to pay the value-added tax for taxable year 2007 in the amount of ₱4,548,698.69, exclusive of interests and surcharges.[2]

STATEMENT OF FACTS

These consolidated cases involve two (2) separate Informations filed against herein accused for allegedly violating Section 255 of the National Internal Revenue Code of 1997, as amended, by failing to pay correct taxes for taxable year 2007. The accusatory portions of the said Informations read as follows:

Crim. Case No. O-606[3]

"That on or about January 2011 and thereafter, in Mandaluyong City, Metro Manila, and within the jurisdiction of this Honorable Court, accused Generosa P. Ortega and Lalaine P. Ortega, engaged in the restaurant and food business under the trade name and style 'La Chilo Chinese Cuisine, Inc.', did then and there willfully, feloniously and unlawfully fail to pay, in violation of Section 255 of the National Internal Revenue Code of 1997, as amended, the correct taxes for taxable year 2007 in the amount of ₱13,739,735.50, exclusive of interests and surcharges despite final assessment, including prior and past notices, and demand to pay issued by the BIR in January 2011, to the damage and prejudice of the Government.

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[1] Statement of the Case, Pre-Trial Order, Docket, CTA Crim. Case No. O-606 (Vol. I), p. 508.
[2] *Ibid*, pp. 508-509.
[3] Docket, CTA Crim. Case No. O-606 (Vol. I), p. 6.

CONTRARY TO LAW."

Crim. Case No. O-607[4]

"That on or about January 2011 and thereafter, in Mandaluyong City, Metro Manila, and within the jurisdiction of this Honorable Court, accused Generosa P. Ortega and Lalaine P. Ortega, engaged in the restaurant and food business under the trade name and style 'La Chilo Chinese Cuisine, Inc.', a registered VAT tax payer of BIR RDO 41-Mandaluyong City, under Tax Identification No. 005-284-414-000, with obligation under the law to file Value-Added Tax Return for 2007, did then and there willfully, feloniously and unlawfully fail to pay, in violation of Section 255 of the National Internal Revenue Code of 1997, as amended, value-added tax for taxable year 2007 in the amount of FOUR MILLION FIVE HUNDRED FOURTY EIGHT THOUSAND SIX HUNDRED NINETY EIGHT PESOS AND SIXTY NINE CENTAVOS (₱4,548,698.69), exclusive of interests and surcharges despite final assessment, including prior and past notices, and demand to pay issued by the BIR in January 2011, to the damage and prejudice of the Government.

CONTRARY TO LAW."

Finding probable cause, this Court issued warrants of arrest against Generosa P. Ortega and Lalaine P. Ortega on September 23, 2016 for CTA Crim. Case No. O-606[5], and on September 19, 2016 for CTA Crim. Case No. O-607[6], respectively. This Court also set the bail for their provisional liberty at twenty thousand pesos (₱20,000.00) each.

Then, on October 20, 2016, Return of Warrants of Arrest dated September 18, 2016 for CTA Crim. Case No. O-606[7] and CTA Crim. Case No. O-607[8] were sent by SPO4 Romeo Rico, Warrant Officer of

[4] Docket, CTA Crim. Case No. O-607, p. 6.
[5] Docket, CTA Crim. Case No. O-606 (Vol. I), pp. 53-54.
[6] Docket, CTA Crim. Case No. O-607, pp. 56-57.
[7] Docket, CTA Crim. Case No. O-606 (Vol. I), p. 59
[8] Docket, CTA Crim. Case No. O-607, p. 59.

the Mandaluyong City Police Station, stating that the accused could not be found at the given address. Acting thereon, this Court, in the Resolutions dated November 16, 2016 and April 25, 2017, respectively, ordered the issuance of Alias Warrants of Arrest against the accused for CTA Crim. Case No. O-606[9] and CTA Crim. Case No. O-607[10].

On December 8, 2016, a Notice of Entry of Appearance[11] was filed by Atty. Gilberto C. Alfafara, formally entering his appearance as the counsel for the accused. As such, he requested that he be furnished with all pleadings, resolutions, decisions and other documents.

In the Minute Resolution[12] dated December 9, 2016, this Court noted the said Notice of Entry of Appearance.

On December 22, 2016, accused Generosa P. Ortega and Lalaine P. Ortega voluntarily appeared for CTA Crim. Case No. O-606 and submitted themselves to this Court's jurisdiction by each posting cash bond in the amount of Twenty Thousand Pesos (₱20,000.00) for their provisional liberty. Later that day, an Order[13] was issued by this Court accepting and approving their respective cash bonds, thereby, lifting the previously issued Warrants of Arrest for Crim. Case No. O-606.

On January 25, 2017, during the arraignment of Crim. Case No. O-606, both accused, with the assistance of counsel *de parte*, entered a plea of "Not Guilty" to the crime charged.[14] Accordingly, the preliminary conference was set on February 8, 2017.

Meanwhile, on May 16, 2017, accused Generosa P. Ortega and Lalaine P. Ortega, again, voluntarily appeared to this Court for CTA Crim. Case No. O-607 and each posted cash bond in the amount of Twenty Thousand Pesos (₱20,000.00) for their provisional liberty. After which, in the Resolution[15] of even date, this Court approved

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[9] Docket, CTA Crim. Case No. O-606 (Vol. I), pp. 66-67
[10] Docket, CTA Crim. Case No. O-607, pp. 66-67
[11] Docket, CTA Crim. Case No. O-606 (Vol. I), p. 71.
[12] *Ibid*, p. 74.
[13] *Id.*, pp. 104-105.
[14] Certificates of Arraignment, *id.*, pp. 115-116 and pp. 119-120, respectively.
[15] Docket, CTA Crim. Case No. O-607, p. 69.

their respective cash bonds, thereby, also lifting the previously issued Warrants of Arrest for Crim. Case No. O-607.

Thereafter, on May 18, 2017, a Motion to Consolidate[16] was filed by the accused praying for the consolidation of Crim. Case No. O-607 and Crim. Case No. O-606. The accused claims that since both cases have stemmed from the same Department of Justice (DOJ) Resolution in NPS Docket XVI-INV-13A-00018, it is appropriate to try the cases jointly so as to enhance the speedy and expeditious disposition of both cases.

In the Resolution[17] dated May 30, 2017, this Court granted the Motion to Consolidate, and ordered that Crim. Case No. O-607 be consolidated with Crim. Case No. O-606, the case bearing the lower docket number.

On June 28, 2017, during the arraignment of Crim. Case No. O-607, both accused, with the assistance of counsel *de parte*, also entered a plea of "Not Guilty" to the crime charged.[18]

Subsequently, on August 11, 2017, the prosecution filed its Pre-Trial Brief[19].

On the same day, August 11, 2017, the accused filed an Urgent Motion to Suspend Collection of Tax Liability with Prayer for Exemption to File Cash/Surety Bond[20]. The accused claims that despite the pendency of the instant consolidated cases, the Collection Division of Revenue Region No. 7 of the Bureau of Internal Revenue (BIR) has sent collection notices in the amount of ₱29,388,224.17, including tax lien and levy on certain properties of the accused. The accused continues that, having called several accredited bonding companies, the annual premium alone already ranges from ₱1,000,000.00 up to ₱1,400,000.00, which is added on top of the premium. Thus, the accused prays for the suspension of the collection of the said amount and, also, to dispense with the cash or surety bond to prevent irreparable damage to its normal business

[16] Docket, CTA Crim. Case No. O-606 (Vol. I), pp. 153-154.
[17] *Ibid*, p. 158.
[18] Certificate of Arraignment, *id.*, pp. 174-175.
[19] Docket, CTA Crim. Case No. O-606 (Vol. I), pp. 356-363.
[20] *Ibid*, pp. 364-367.

operation. The accused also cites the case of *Tridharma Marketing Corporation vs. Court of Tax Appeals, et al.*[21] to bolster its claim.

On August 18, 2017, the accused filed a Formal Offer of Evidence with Arguments in Support of the Urgent Motion to Suspend Collection of Tax Liability with Prayer for Exemption from the Filing of Cash/Surety Bond[22]. The accused formally offered the following documents in support of its Urgent Motion, viz.:

ANNEX	DESCRIPTION	PURPOSE
A	Audited Financial Statement for 2016 of La Chilo	To prove La Chilo only has ₱8,000,000.00 in Total Assets and will suffer irreparable damage if the collection of over ₱29,000,000.00 is not suspended; To prove the cash on hand and lack of liquidity of La Chilo;
B	Audited Financial Statement for 2015 of La Chilo	To prove that La Chilo has negative net income for fiscal years 2015 and 2014; To prove "Sales" suffered a major decline due to the Maysilo Flood Control Project;
C to G	Five (5) Collection Notices and their respective registry return cards	To prove the irregularities in posting by the BIR;
H	Notice of Levy on Real Property	To prove that BIR illegally included in its Notice of Levy a property that does not belong to LA Chilo; To prove also that the Registry Receipt was not signed as required;
I	Certification from the City Assessor of Mandaluyong City	To prove that La Chilo only has six (6) real properties listed;
J	Tax Declaration No. D-022-09366 under the name of Lachilo Realty Corp and not La Chilo Chinese Cuisine, Inc.	To prove that BIR had knowledge that said property was owned by Lachilo Realty Corp and not by accused La Chilo.

[21] G.R. No. 215950, June 20, 2016.
[22] Docket, CTA Crim. Case No. O-606 (Vol. I), pp. 424-430.

In the meantime, on August 29, 2017, the parties filed their Joint Stipulation of Facts and Issues[23], which this Court approved via Resolution[24] dated September 14, 2017. Thereafter, a Pre-Trial Order[25] was issued on November 22, 2017, adopting the following stipulated facts:

> "1. Accused La Chilo Chinese Cuisine, Inc., is a domestic corporation registered with the Securities and Exchange Commission (SEC) on 01 January 1997 under SEC Registration No. A199700063 and with the BIR Revenue District Office (RDO) No. 41 – Mandaluyong City with TIN No. 005-284-414-000. Its primary purpose is to establish and maintain restaurants, coffee shops, refreshments and other food or commodities commonly served in such establishment, and to offer such other services to the public in connection with the operation of restaurant and catering enterprises and to perform such other acts necessary or incidental to the accomplishment of the foregoing corporate business and objects insofar as may be allowed by applicable laws, rules and regulations. Its registered address is at No. 599 Boni Avenue corner Sto. Rosario, Plainview, Mandaluyong City, where it may be served with summons, notices, and other legal processes of this Honorable Office;
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> 2. Accused La Chilo is being sued for its Income Tax deficiencies for taxable year 2007 in the amount of Php13,739,735.50 and Value Added Tax deficiencies for taxable year 2007 in the amount of Php4,548,698.69, exclusive of interests and surcharges, as its civil liability, which is deemed instituted in this criminal case;

Kind of Tax	Basic
Income	Php13,739,735.50
VAT	4,548,698.69
Total	Php18,288,434.19

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[23] *Ibid*, pp. 468-471.
[24] *Id.*, pp. 475-476.
[25] *Id.*, pp. 508-520.

3. As earlier stated, accused Ms. Generosa P. Ortega and Ms. Lalaine P. Ortega are being sued in their capacity as President and Treasurer respectively, of accused La Chilo. They may be served with summons, notices, and other legal processes of this Honorable Office at No. 599 Boni Avenue corner Sto. Rosario, Plainview, Mandaluyong City;

4. Pursuant to Letter of Authority No. 00009397 dated 11 November 2008, accused La Chilo/Generosa P. Ortega and Lalaine P. Ortega was assessed a deficiency income tax, VAT, expanded withholding tax and final withholding tax in the aggregate amount of Php29,388,224.17 broken down as follows:

La Chilo Chinese Cuisine, Inc.
No. 599 Boni Ave. cor. Rosario,
Plainview, Mandaluyong City
Year 2007

Kind of Tax	Tax Due	Surcharge	Interest	Compromise Penalty	Total
IT	13,739,735.50		7,739,423.61		21,479,159.11
VAT	4,548,698.69		2,764,113.34		7,312,812.03
EWT	328,546.72		201,448.64		529,995.36
FWT	31,000.00	7,500.00	19,007.67		57,757.67
CP				8,500.00	
Total					29,388,224.17

5. On 14 December 2011 *(sic)*, a Preliminary Assessment Notice was sent through registered mail under Registry No. 3411 on 15 December 2010 to accused La Chilo/Generosa P. Ortega and Lalaine P. Ortega;

6. On 07 January 2011, Formal Letters of Demand under Demand No. 41-B0119-07 were sent through registered mail under Registry Receipt No. 378 dated 07 January 2011 to accused La Chilo/Generosa P. Ortega and Lalaine P. Ortega, requesting them to pay the aforesaid deficiency assessment;

7. A complaint for violation of Section 255 of the NIRC was filed by BIR with the Department of Justice;

8. Thereat, accused Generosa Ortega in her counter-affidavit denies having received the LA, PAN and FAN;

9. In reply thereto, the BIR raised the disputed presumption found in Rule 131 Sec. (v) of Rules of Court:

xxx xxx xxx

10. There appears 'XX' on the signature part of accused Lalaine Ortega in the 'Joint Counter-Affidavit.'"

During the initial presentation of evidence, the prosecution presented Revenue Officer **Almario F. Acosta**, as first witness, who testified on direct examination by way of Judicial Affidavit[26]. The prosecution manifests that the purposes of Revenue Officer (RO) Acosta's testimony are the following:

1. To prove that the Letter of Authority was issued within the period prescribed by law and regulations;

2. To prove that the Letter of Authority was personally served to the accused and/or any of his authorized representatives;

3. To prove that the Letter of Authority was valid;

4. To prove that the witness is authorized to conduct the audit for taxable year 2007;

5. To prove that the accused failed to submit documents, Books of Accounts as during the audit;

6. To prove that the accused's duly authorized representative wrote a letter informing the BIR to proceed with the audit without the required documents and just use what was available at that time;

[26] Judicial Affidavit (JA) dated August 15, 2017, *id.*, pp. 389-400.

7. To prove that the accused executed a Waiver of Statute of Limitations;

8. To prove that the PAN and FAN were issued and received by the accused or any of his authorized representative;

9. To prove that the accused failed to protest on the PAN and FAN;

10. To prove that the assessment becomes final, demandable and executory for failure of the accused to protest on the said PAN and FAN.[27]

Then, for its second witness, the prosecution presented RO **Mary Grace J. Soriano**, who testified on direct examination, also by way of Judicial Affidavit[28], as to the preparation, issuance and service of the Warrant of Distraint and/or Levy. During the presentation of RO Soriano, counsel for the accused manifested that he is admitting all the facts and allegations stated in RO Soriano's judicial affidavit; and that, also, all documents that will be submitted by the prosecution in relation thereto are deemed faithful reproduction of the original documents. As such, to expedite the proceedings, the counsel for the prosecution manifested that there is no more need to present RO Soriano.[29]

Meanwhile, in the Resolution[30] dated November 21, 2017, this Court admitted Annexes "A" to "J" of the accused's Formal Offer of Evidence with Arguments in Support of their Urgent Motion, pursuant to Section 4[31], Rule 10 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA). Having admitted the exhibits, this Court further deemed the Urgent Motion to Suspend Collection of Tax Liability with Prayer for Exemption to File Cash/Surety Bond submitted for resolution. *gr*

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[27] Pages 6-7 of the Transcript of Stenographic Notes (TSN) taken on the November 22, 2017 hearing.
[28] JA dated August 14, 2017, Docket, CTA Crim. Case No. O-606 (Vol. I), pp. 401-410.
[29] Order dated November 22, 2017, *ibid*, pp. 499-500.
[30] Docket, CTA Crim. Case No. O-606 (Vol. I), pp. 504-505.
[31] SEC. 4. *Contents and attachments of the motion.* – The motion for the suspension of the collection of the tax shall be verified and shall state clearly and distinctly the facts and the grounds relied upon in support of the motion. Affidavits and other documentary evidence in support thereof shall be attached thereto, which, if uncontroverted, would be admissible in evidence as proof of the facts alleged in the motion.

In the Resolution[32] dated January 10, 2018, this Court found merit in the accused's arguments and essentially ruled that, based on the attached annexes submitted by the accused, the BIR failed to prove, at least preliminarily, the actual receipt by the accused of the Collection Notices and the Notice of Levy. Citing the pronouncement in the case of *Spouses Emmanuel D. Pacquiao and Jinkee J. Pacquiao vs. The Court of Tax Appeals – First Division and the Commissioner of Internal Revenue*[33], the government's right to order accused to post bond for the suspension of collection of tax liability has no basis to stand on. Hence, the accused's Urgent Motion was granted, and the collection of the accused's alleged tax liability is suspended pending final judgment of the case and the filing of cash or surety bond in accordance with the suspension of the collection of tax liability was dispensed with.

After finishing the presentation of its witnesses, the prosecution filed the Formal Offer of Evidence[34] on December 12, 2017, formally offering Exhibits "P-1" to "P-55-A", inclusive of sub-markings. In response, the accused filed their Comment on the Formal Offer of Evidence With Motion for Leave of Court to File Demurrer to Evidence[35] on December 15, 2017, praying that the court would note and record the comments made in the pleading; grant the motion with leave of court to file demurrer to evidence; admit the demurrer to evidence integrated in the pleading; and, after deliberation, find merit in the said demurrer to evidence of the accused.

Accordingly, in the Resolution[36] dated January 31, 2018, this Court admitted all exhibits offered by the prosecution, and also ordered the latter to comment on the accused's Demurrer to Evidence. After which, the same shall be considered submitted for resolution. However, as per Records Verification Report[37] dated March 5, 2018, the prosecution failed to file comment thereto.

In the Resolution[38] dated May 9, 2018, this Court granted the accused's Motion for Leave of Court to File Demurrer to Evidence

[32] Docket, CTA Crim. Case No. O-606 (Vol. II), pp. 560-571.
[33] G.R. No. 213394, April 6, 2016.
[34] Docket, CTA Crim. Case No. O-606 (Vol. II), pp. 523-543.
[35] *Ibid*, pp. 546-557.
[36] *Id.*, pp. 598-600.
[37] *Id.*, p. 601.
[38] *Id.*, pp. 607-621.

thereby admitting the attached Demurrer to Evidence. In resolving the Demurrer to Evidence, this Court, after careful evaluation of the evidence presented by the prosecution, found sufficient evidence to establish a *prima facie* case against the accused. Hence, this Court denied the accused's Demurer to Evidence and deemed it best to have a full blown trial to give the accused the opportunity to prove the factual circumstances they claim.

On June 13, 2018, during the initial presentation of evidence for the defense, the accused presented Mr. **Roy L. Larga**, Postmaster for Mandaluyong City, as their first (1st) witness. Mr. Larga identified in open court the Letter[39] dated August 9, 2017 he issued to the accused's counsel, which will tend to prove that there is no record that the Preliminary Assessment Notice (PAN) and Final Assessment Notice (FAN), which were sent by the BIR through registered mail, were actually received by the accused. Mr. Larga testified that any document pertaining thereto has already been disposed as evidenced by a Certificate of Disposal of Records from the National Archives of the Philippines[40], which stated that for the period 2010 to 2014 (covering the period where the PAN and FAN were issued) *records of registered matter/parcel received and delivered by letter carriers* have already been approved for disposal. Thereafter, for the cross-examination, the prosecution only asked a couple of questions for clarification, and followed by re-direct examination by the accused, and, then, a few clarificatory questions by this Court. After which, the witness was deemed to have completed his testimony and was excused.

During the continuation of the accused's presentation of evidence on July 4, 2018, counsel for the accused presented the accused themselves, Ms. **Generosa P. Ortega** and Ms. **Lalaine P. Ortega**. Both accused testified in open court to prove that the subject PAN[41] dated December 14, 2010, FAN[42] and FLD[43] dated January 7, 2011, which were sent through registered mail, were not received by the said witnesses. *ju*

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[39] Exhibit "A-10".
[40] Exhibit "A-11".
[41] Exhibit "P-14".
[42] Exhibits "P-16" to P"-20".
[43] Exhibit "P-15".

After confirming that the accused has no more witness to present, this Court, in an Order[44] dated July 4, 2018, gave the accused a period of ten (10) days, or until July 16, 2018, within which to submit their written Formal Offer of Evidence.

On July 11, 2018, the accused then filed, via a licensed private courier, their Formal Offer of Evidence[45], offering the following exhibits as their documentary evidence:

EXHIBIT	DESCRIPTION	PURPOSE
A-2	Letter of Authority No. 2008 00009397 dated 11 November 2008	To prove that the LOA is void and seriously flawed since nowhere within its four corners does it show that it was received within the mandatory 30 day period from its issuance, xxx
A-3	Revalidation Notice of LOA	To prove that said Revalidation Notice, while conveniently dated 27 February 2009 to appear to be within the 120 day period from 11 November 2017, was not received by accused as can be seen from the blank signature portion, thus rendering it irregular and VOID.
A-9	Letter-Request for Certification of Delivery dated 3 August 2017 sent by counsel Atty. Gilberto C. Alfafara, to the postmaster of Mandaluyong City, Roy L. Larga, on certain registered mail matters covering the Preliminary Assessment Notice (PAN) and Final Assessment Notices (FAN)	To prove that such request was formally made in line with jurisprudence laid down by the Supreme Court in *Sps. Aguilar et al. vs. CA* that the best evidence to determine if a mail matter has been received by the addressee is a certification from the postmaster, who should certify not only that the notice was issued or sent but also as to how, when and to whom the delivery was made.
A-10	Letter-Reply of Postmaster Roy Larga dated 9 August 2017	To prove that the best evidence required by the Supreme Court, which is a certification from the Postmaster, shows no record or proof that the PAN and the FAN

[44] Docket, CTA Crim. Case No. O-606 (Vol. II), pp. 641-643.
[45] *Ibid*, pp. 645-651.

		sent by the BIR through registered mail were received by the accused.
A-11	Certificate of Disposal of Records issued by the National Archives of the Philippines	To prove that under item RDS104, the logbooks and "Records of Registered Matter/Parcel received and Delivered by Letter Carriers/Window Tellers" for the period 2010-2014 (covering the period when the PAN and FAN were sent) have already been approved for disposal, and such Certificate was approved by the Commission on Audit.
A-12	Oral Testimony of Postmaster Roy L. Larga	To prove that in his official capacity as current Postmaster of Mandaluyong City, he personally signed and issued a Letter-Reply to Atty. Alfafara and explained to this Honorable Court why a positive certification on the mail matters in question cannot be issued.
A-13	Oral Testimony of accused Generosa P. Ortega, in her capacity as President of La Chilo Chinese Cuisine, Inc. for taxable year 2007	To prove that accused La Chilo Chinese Cuisine, Inc. and Generosa P. Ortega did not receive the PAN and the FAN as required by law and jurisprudence, thus rendering the questioned assessments void. To prove that she did not violate Sec. 255 of the NIRC as she did not willfully fail to pay the taxes in question. xxx
A-14	Oral Testimony of accused Lalaine P. Ortega, in her capacity as Treasurer of La Chilo Chinese Cuisine, Inc. for taxable year 2007	To prove that accused La Chilo Chinese Cuisine, Inc. and Lalaine P. Ortega did not receive the PAN and FAN as required by law, thus rendering the assessments void. To prove that she did not violate Sec. 255 of the NIRC as she did not willfully fail to pay the taxes in question. xxx

On September 12, 2018, this Court promulgated a Resolution[46] admitting all of the exhibits formally offered by the accused as their as documentary evidence, save for the offer of testimonial evidence which this Court simply noted in accordance with Section 35[47], Rule 132 of the Revised Rules of Court. Therefore, with the admission of the accused's documentary evidence, the accused are deemed to have rested their case. As such, the parties were given a period of thirty (30) days within which to file their respective memoranda, after which the case shall be deemed submitted for decision.

Meanwhile, in an Order[48] dated September 27, 2018, this Court informed the parties that pursuant to CTA Administrative Circular No. 02-2018, "Reorganizing the Three (3) Divisions of the Court" dated September 18, 2018, the present case was transferred to the CTA Second Division.

On October 8, 2018, the accused filed their Memorandum of the Accused[49], while the prosecution filed its Memorandum[50] on November 20, 2018. Hence, in the Resolution[51] dated November 27, 2018, the Court declared the instant case deemed submitted for decision.

Meanwhile, on January 21, 2019, Atty, Joana Q. Bilongilot filed a Withdrawal of Appearance for the purpose of withdrawing her appearance "as prosecutor for Complainant BIR in the above-captioned case". The same is hereby noted by the Court.

STATEMENT OF ISSUES

The following issues[52] were presented by the parties for this Court's resolution: ge

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[46] *Id.*, pp. 668-669.

[47] SEC. 35. *When to make offer.* - As regards the testimony of a witness, the offer must be made at the time the witness is called to testify.
Documentary and object evidence shall be offered after the presentation of a party's testimonial evidence. Such offer shall be done orally unless allowed by the court to be done in writing.

[48] Docket, CTA Crim. Case No. O-606 (Vol. II), p. 670.

[49] *Ibid*, pp. 671-684.

[50] *Id.*, pp. 692-700.

[51] *Id.*, p. 702.

[52] Issues, Pre-Trial Order, Docket (Vol. I), pp. 510-511.

For CTA Crim. Case No. O-606:

Whether accused is guilty beyond reasonable doubt of having willfully, feloniously and unlawfully failed to pay the correct taxes for taxable year 2007 in the amount of ₱13,739,735.50 in violation of Section 255 of the NIRC; and

For CTA Crim. Case No. O-607:

Whether accused is guilty beyond reasonable doubt of having willfully, feloniously and unlawfully failed to pay the VAT for taxable year 2007 in the amount of ₱4,548,698.69 in violation of Section 255 of the NIRC.

Common Issues:

1. Whether the Letter of Authority is void;

2. Whether the BIR complied with the mandatory requirements of due process set forth in Section 3 of Revenue Regulations No. 12-99;

3. Whether the PAN is void considering that the details of discrepancies did not fully state the law and facts in violation of Section 228 of the NIRC as well as Section 3.1.4 of Revenue Regulations No. 12-99; and

4. Whether the accused received the LOA, PAN, and FAN.

COURT'S RULING

Amidst all the arguments raised by the parties, the core issue of the present controversy lies on whether the accused are liable, beyond reasonable doubt, of willfully failing to pay the correct taxes for taxable year 2007.

Section 255 of the NIRC of 1997, as amended, mandates that:

"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 correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (₱10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

xxx xxx xxx"

From the foregoing, in order to sustain a conviction for willfully failing to pay the correct tax under Section 255 of the NIRC of 1997, as amended, the following elements must be established beyond reasonable doubt:

1. Accused is required under the NIRC or its rules and regulations to pay any tax or make a return, or to supply correct and accurate information in the return;

2. Accused failed to pay the required tax, or make a return, or supply correct and accurate information at the time required by law or rules and regulations; and

3. Accused's failure to pay the required tax or to make a return, or to supply correct and accurate information at the time required by law or rules and regulations is willful.

Accused is required under the NIRC or its rules and regulations to pay tax or supply correct and accurate information in the return.

Relevant to the first element are Sections 253(d) and 256 of the NIRC of 1997, as amended, which respectively provides that:

> "SEC. 253. *General Provisions.* –
>
> xxx xxx xxx
>
> (d) In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, **president**, general manager, branch manager, **treasurer**, officer-in-charge, and the employees responsible for the violation.
>
> xxx xxx xxx
>
> SEC. 256. *Penal Liability of Corporations.* – Any corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, **in addition to the penalties imposed herein upon the responsible corporate officers**, partners, or employees shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (₱50,000) but not more than One hundred thousand pesos (₱100,000)." *(Emphases supplied)*

In the instant case, it is undisputed that the accused, Generosa P. Ortega and Lalaine P. Ortega, are being sued in their capacity as President and Treasurer, respectively, of accused La Chilo Chinese Cuisine, Inc.[53] To ascertain the accused's association with accused La Chilo Chinese Cuisine, Inc., the prosecution presented the Securities and Exchange Commission's General Information Sheet[54] as proof that the accused are the same persons named as officers of La Chilo Chinese Cuisine, Inc.

Furthermore, during the course of the proceedings, accused Generosa P. Ortega admitted in open court that she is the incumbent

[53] Par. 3, Facts, Pre-Trial Order, Docket (Vol. I), p. 509.
[54] Exhibit "P-38".

President of the corporation.[55] Accused Lalaine P. Ortega, on the other hand, also admitted that she is the current Treasurer therein.[56] As such, there is no doubt that the accused are the responsible officers of La Chilo Chinese Cuisine, Inc.

Having established that fact, Section 52(A) of the NIRC of 1997, as amended, mandates that the obligation to file a true and accurate tax return shall fall upon the responsible officers of the company such as its president, vice-president or other principal officer of the company, viz.:

> "SEC. 52. *Corporation Returns.* –
>
> (A) *Requirements.* – Every corporation subject to the tax herein imposed, except foreign corporations not engaged in trade or business in the Philippines, shall render, in duplicate, a true and accurate quarterly income tax return and final or adjustment return in accordance with the provisions of Chapter XII of this Title. **The return shall be filed by the president, vice-president or other principal officer, and shall be sworn to by such officer and by the treasurer or assistant treasurer**." *(Emphasis supplied)*

Records show that accused Generosa P. Ortega signed the Annual Income Tax Return[57] (ITR) of La Chilo Chinese Cuisine, Inc. for calendar year 2007.

Accordingly, with the foregoing documentary and testimonial evidence, the prosecution satisfactorily established the first element that the accused Generosa P. Ortega and Lalaine P. Ortega are among the officers required by law to pay tax or make a return, or to supply correct and accurate information in the return.

Accused failed to pay the required tax, or supply correct and accurate information at the

[55] Page 9, TSN taken on the July 4, 2018 hearing.
[56] Page 49, *ibid.*
[57] Exhibit "P-12".

time required by law or rules and regulations.

As to the second element, since the accused are being sued, in their capacity as officers, for La Chilo Chinese Cuisine, Inc.'s income tax deficiencies in the amount of ₱13,739,735.50 and value-added tax deficiencies in the amount of ₱4,548,698.69, exclusive of interests and surcharges, for taxable year 2007, the relevant provisions on the subject matter are Sections 52(B) and 77(A), (B) and (C) of the NIRC of 1997, as amended, which provide the time for filing and payment of corporate income tax return; and, Section 114 of the same Code which provides for the return and payment for VAT, thus:

> "SEC. 52. *Corporation Returns.* –
>
> (A) xxx
>
> (B) *Taxable Year of Corporation.* – A corporation may employ either calendar year or fiscal year as a basis for filing its annual income tax return: *Provided*, That the corporation shall not change the accounting period employed without prior approval from the Commissioner in accordance with the provisions of Section 47 of this Code."
>
> "SEC. 77. *Place and Time of Filing and Payment of Quarterly Corporate Income Tax.* –
>
> (A) *Place of Filing.* – Except as the Commissioner otherwise permits, the quarterly income tax declaration required in Section 75 and the final adjustment return required in Section 76 shall be filed with the authorized agent banks or Revenue District Officer or Collection Agent or duly authorized Treasurer of the city or municipality having jurisdiction over the location of the principal office of the corporation filing the return or place where its main books of accounts and other data from which the return is prepared are kept. *gr*

(B) *Time of Filing the Income Tax Return.* – The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.

(C) *Time of Payment of the Income Tax.* – The income tax due on the corporate quarterly returns and the final adjustment income tax returns computed in accordance with Sections 75 and 76 shall be paid at the time the declaration or return is filed in a manner prescribed by the Commissioner."

"SEC. 114. *Return and Payment of Value-added Tax.* –

(A) *In General.* – Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis."

In the instant case, La Chilo Chinese Cuisine, Inc. is registered with the BIR Revenue District Office (RDO) No. 41 – Mandaluyong City with TIN No. 005-284-414-000.[58] More so, the accused filed La Chilo Chinese Cuisine, Inc.'s Annual ITR (BIR Form 1702) for 2007 on April 15, 2008 and Quarterly VAT Returns (BIR Form 2550Q) on April 25, 2007 for the 1st quarter; July 25, 2007 for the 2nd quarter; October 25, 2007 for the 3rd quarter; and, January 25, 2008 for the 4th quarter.[59] Generally, these pieces of evidence would show that the accused filed and paid the taxes of La Chilo Chinese Cuisine, Inc. within the time required by law or rules and regulations, thereby, negating violation of the second element.

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[58] Par. 1, Facts, Pre-Trial Order, Docket (Vol. I), p. 509.
[59] Documentary Exhibits for the Accused, *ibid*, pp. 517-518; Exhibit "P-21".

However, to prove that the accused failed to pay the correct amount of tax by supplying incorrect and inaccurate information, the prosecution presented the following notices of deficiency assessments as its documentary evidence: LOA No. 00009397[60] dated November 11, 2008 which is claimed to have been personally served by RO Almario Acosta;[61] PAN[62] with Details of Discrepancies dated December 14, 2010, which was sent to the accused through registered mail under Registry No. 3411 dated December 15, 2010;[63] and Formal Letter of Demand (FLD) Demand No. 41-B0119-07[64] dated January 7, 2011 with Details of Discrepancies, which was sent to the accused also through registered mail under Registry Receipt No. 378 dated January 7, 2011.[65]

To corroborate the foregoing, the prosecution's witness, RO Acosta, in his judicial affidavit testified as to how he arrived at the computation of the income tax and VAT deficiency assessments, viz.:

"**INCOME TAX:**

Q34. Can you please tell this honorable Court how you arrived at the deficiency income tax assessment on income expenses not subjected to withholding tax?

A: In the course of the examination, it was found out that the [accused] was included in the list of top 10,000 corporation which requires to deduct expanded withholding tax on income payments. Income payments composed of different accounts totalled to ₱31,986,100.60 was not subjected to expanded withholding tax as required under Revenue Regulation No. 2-98, as amended and disallowed pursuant to Section 34(K) of the Tax Code, as amended.

Q35. Can you please tell this honorable Court how you arrived at the deficiency income tax assessment on unaccounted sources of cash?

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[60] Exhibit "P-1"; Exhibit "A-2".
[61] Par. 4, Facts, Pre-Trial Order, Docket (Vol. I), pp. 509-510.
[62] Exhibits "P-14" and "P-14-A".
[63] Par. 5, Facts, Pre-Trial Order, Docket (Vol. I), p. 510.
[64] Exhibits "P-15" and "P-15-A".
[65] Par. 6, Facts, Pre-Trial Order, Docket (Vol. I), p. 510.

A: Income payments per Alphalist submitted were compared to the amounts reported in the ITR & AFS in order to check if it meets the requirement for deductibility of expenses. The salaries and other related expense per alphalist of 6,192,026.37 was more than amount per financial statement of 3,178,672.86 or the difference of 3,013,353.51, same with the rental expense of 2,323,200.00 and royalty fee of 1,933,732.00 were also in the alphalist but not reflected on the financial statement which was considered as unaccounted source of cash which led to the inference that part of the income that have not been declared as enunciated in the case of Perez vs. CTA and CIR L-10507 dated May 30, 1958.

xxx xxx xxx

VALUE-ADDED TAX:

Q40. Can you please tell this honorable Court how the deficiency VAT assessment on additional taxable sales not subjected to VAT arrived at?

A: The sales per FS/ITR was 39,007,667.06 but the sales per VAT return was only 38,174,333.70 or an under-declaration in the amount of 833,333.36, said discrepancy should be subjected to output vat of 12% in accordance with the provision of Section 106 and 108 of the tax code, as amended.

Q41. Ca you please tell this honorable Court how you arrived at the deficiency VAT assessment on unaccounted sources of cash?

A: Rescinding from the fact that unreflected sources of funds amounting to ₱7,270,285.51 were not accounted for in the [accused]'s ITR led to the interference that part of the income has not been reported, the said amount is considered part of the Gross Revenue which was not yet subjected to VAT, output vat of 12% should be applied pursuant to Section 106 and 108 of the tax code, as amended.

Q42. Can you please tell this honorable Court how you arrived at the deficiency VAT assessment on disallowed input taxes?

A: Failure of the [accused] to substantiate the claimed input tax with valid documentary evidence e.g. sales invoice or official receipts, is a ground for disallowance pursuant to Section 110 of the tax code, as amended."[66]

On their part, the accused did not anymore assail or challenge how the deficiency tax assessments were computed since they claim that most of their books of accounts and other pertinent documents have gone missing. Thus, in their Letter Re: Letter of Authority for Taxable Year 2007[67], the accused, through the Administrative Officer James G. Devanadera, informed the BIR to just go over with the assessment based on the submitted available documents in their possession. More so, in the Letter-response[68] dated December 19, 2008 by Flora P. Perez, Store Accountant of the accused, the only documents they were able to provide are the tax returns (Annual ITR, Quarterly VAT Returns, etc.) and summary of ending inventory. Noticeably, also in their Formal Offer of Evidence filed with this Court on July 11, 2018, the accused did not present any documentary evidence to refute the findings made by the BIR with regard to their deficiency taxes.

Accordingly, with the foregoing documentary and testimonial evidence, the prosecution satisfactorily established the second element that the accused, Generosa P. Ortega and Lalaine P. Ortega, failed to supply correct and accurate information in the tax returns.

Accused's failure to pay the required tax or to supply correct and accurate information at the time required by law or rules and regulations is NOT considered willful. *ge*

[66] JA dated August 15, 2017, CTA Crim. Case No. O-606 (Vol. I), pp. 394-396.
[67] Exhibit "P-8".
[68] Exhibit "P-21".

Anent the third and final element of the crime, the act of failing to pay tax or supplying correct and accurate information in the tax return must be "willful". Settled is the rule that "willfulness" connotes the existence of "knowledge" and "voluntariness", with the specific intent to do something the law forbids, or with the specific intent to fail to do something that the law requires to be done; that is to say, with bad purpose to either disobey or disregard the law. The element of willful failure to supply correct and accurate information must be fully established as a positive act or state of mind; it cannot be presumed nor attributed to mere inadvertent or negligent acts.[69]

In the case *People of the Philippines vs. Luz A. Santos and Ricardo A. Santos*[70], this Court had the occasion to rule that willfulness must be proven beyond reasonable doubt, *viz.*:

> "xxx Section 2, Rule 133 of the Rules of Evidence explains, *viz.*:
>
> > 'SECTION 2. *Proof beyond reasonable doubt.* — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. (2a)'
>
> The case of *Monteverde v. People of the Philippines* expounded on the nature of 'proof beyond reasonable doubt':
>
> > '... **In all criminal cases, mere speculations cannot substitute for proof in establishing the guilt of the accused.** Indeed, suspicion no matter how strong must never sway judgment. **Where there is reasonable doubt, the accused must be**

[69] *People of the Philippines vs. Judy Anne Santos y Lumagui*, CTA Crim. Case No. O-012, January 16, 2013.
[70] CTA Crim. Case No. O-246, May 20, 2015.

> **acquitted even though their innocence may not have been established**. The Constitution presumes a person innocent until proven guilty by proof beyond reasonable doubt. When guilt is not proven with moral certainty, it has been our policy of long standing that the presumption of innocence must be favored, and exoneration granted as a matter of right. **Although the evidence for the defense may be frail, criminal conviction must come, not from its weakness, but from the strength of that for the prosecution**.' [Emphasis ours]

> Based on the above, it is not required for the defense to prove their innocence. What is required is for the prosecution to prove, through its own evidence, that the accused is guilty of the criminal charges, with moral certainty." *(Citations omitted)*

Based on earlier discussions, there is no dispute that the LOA, the PAN, and the FLD were issued by the BIR. The debate lies as to whether the accused received the said notices and, if so, when the accused actually received them.

The issue is of paramount importance since one of the most basic and fundamental precepts of law enshrined in the Constitution is that no person shall be deprived of his property without due process of law.[71] Included in this due process, is a set of procedure laid down by law to be properly observed for an effective delivery of justice, including the manner and period of appeal which are not only mandatory but also jurisdictional.

To prove proper service to the accused of the assessment notices, the prosecution presented Certifications dated January 14, 2013 from the Philippine Postal Corporation stating that the PAN with Details of Discrepancies dated December 14, 2010 was dispatched to BIR PO – Mandaluyong Post Office on December 16, 2010 via registered mail under Registry No. 3411 dated December 15, 2010;[72] and, the Formal Letter of Demand (FLD) Demand No. 41-B0119-07

[71] Section 1, Article III of the 1987 Philippine Constitution.
[72] Exhibit "P-22".

dated January 7, 2011 with Details of Discrepancies, was also dispatched to BIR PO – Mandaluyong Post Office on January 10, 2011 via registered mail under Registry Receipt No. 378 dated January 7, 2011.[73] These Certifications further show the registered address of the accused at 599 Boni Avenue corner Sto. Rosario, Plainview, Mandaluyong City.

With regard to LOA No. 00009397 dated November 11, 2008, RO Acosta testified during his Re-Direct Examination that he personally served the same on November 18, 2008 and was received by a certain Mr. John Paul San Juan, as evidenced by his signature thereon, thus:

"ATTY. BILONGILOT:

Q. Mr. Witness, I would like to show you again the Letter of Authority. When was it issued?

REVENUE OFFICER ACOSTA:

A. The Letter of Authority was issued on November 11, 2008.

ATTY. BILONGILOT:

Q. And did you personally serve the said Letter of Authority?
REVENUE OFFICER ACOSTA:

A. I personally served the Letter of Authority.

ATTY. BILONGILOT:

Q. Who received that Letter of Authority?

REVENUE OFFICER ACOSTA:

A. It was received by Mr. John Paul San Juan.

ATTY. BILONGILOT:

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[73] Exhibit "P-23"

Q. When did you serve the said Letter of Authority?

REVENUE OFFICER ACOSTA:

A. I served it on November 18, 2008.

ATTY. BILONGILOT:

Q. Do you have any documents to prove that you served that particular Letter of Authority on the said date?

REVENUE OFFICER ACOSTA:

A. When we served the second request for presentation of finance document, it was indicated in the notice that the Letter of Authority was served on November 18.

ATTY. BILONGILOT:

Q. That second request for presentation of books and other accounting records, who received that particular books?

REVENUE OFFICER ACOSTA:

A. The same person who received the Letter of Authority."[74]

In the same manner, the prosecution insists on the presumption, set forth under Section 3(v) of Rule 131 of the Rules of Court, that when a mail matter is sent by registered mail, it was received in the regular course of the mail. As such, the facts needed to be proved to raise this presumption are (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mails.[75]

[74] Pages 39-40, TSN taken on the November 22, 2017 hearing.
[75] *Protector's Services, Inc. vs. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 118176, April 12, 2000.

After due consideration, this Court, however, is not convinced that the accused willfully failed to pay their correct taxes for taxable year 2007.

Indeed, Section 3(v) of Rule 131 of the Rules of Court provides for a presumption that:

> "SEC. 3. *Disputable presumptions.* – The following presumptions **are satisfactory if uncontradicted**, but may be contradicted and overcome by other evidence:
>
> xxx xxx xxx
>
> (v) That a letter duly directed and mailed was received in the regular course of the mail;" *(Emphasis supplied)*

Verily, while it is true that the law presumes that a letter duly directed and mailed was received in the regular course of the mail, such, nevertheless, is only a presumption – and, a disputable one. The above provision qualifies that a disputable presumption **is satisfactory if uncontradicted**. In fact, this Court had held on numerous occasions that disputable presumption will not work in favor of the claimant if the same was directly controverted or disputed.[76] Jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The *onus probandi* was shifted to respondent to prove by contrary evidence that petitioner received the assessment in the due course of mail.[77]

In the instant case, when presented to testify, accused Generosa P. Ortega explicitly denied having received the said assessment notices, to wit:

"COURT STENOGRAPHER:

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[76] *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 157064, August 7, 2006.
[77] *Ibid.*

Now, as President of La Chilo, did you come to know if there were tax problems for the fiscal year of 2007 as regards the account with BIR of LA Chilo?

xxx xxx xxx

MS. ORTEGA *[GENEROSA]*

A. I have known that when the Manager of the bank called me up and inform me that the account of La Chilo Chinese Cuisine was garnished by the BIR.

ATTY. ALFAFARA:

Okay.

Q. When you learned and when you were informed by your bank that La Chilo's account was garnished, please tell the Honorable Court what you did, as a reaction to such information?

MS. ORTEGA *[GENEROSA]*

A. You Honors, I went to BIR in Mandaluyong, I asked them why the account was garnished. They told me if I received any of the Letters and I said I didn't, I said no. And then they said, that's final that's why *akala ko po tapos na po 'yun*.

xxx xxx xxx

ATTY. ALFAFARA:

Q. I will now show to you Exhibit 'P-14' which is the Preliminary Assessment Notice consisting of 3 pages, and allegedly sent by Registered Mail by BIR to you. Please go over this Exhibit 'P-14', and tell the Honorable Court if you have received this document?

MS. ORTEGA *[GENEROSA]*

A. No, Your Honors.

ATTY. ALFAFARA:

Q. I am likewise showing to you the Formal Letter of Demand by BIR marked as Exhibit 'P-15', together with the Final Assessment Notice marked 'P-16', another one 'P-17', still another one 'P-18' up to 'P-20'. Please go over these Final Assessment Notices one by one including the Formal Letter of Demand and tell the Honorable Court if you have also received these by Registered Mail as claimed by the BIR?

MS. ORTEGA *[GENEROSA]*

A. All of these, no, I didn't receive these, Your Honors."[78]

The same goes for accused Lalaine P. Ortega, when called to testify in open court. She likewise denied receiving the subject PAN, FAN and FLD from the BIR, *viz.*:

"ATTY. SIA:

Okay.

Q. I'm showing you Exhibit 'P-14' of the prosecution which is the Preliminary Assessment Notice, it's 3 pages, kindly look at it carefully and tell this Honorable Court if you received this Preliminary Assessment Notice that was sent by Registered Mail?

MS. ORTEGA *[LALAINE]*

A. No, Your Honors.

ATTY. SIA:

No. *gr*

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[78] Pages 11-14, TSN taken on the July 4, 2018 hearing.

Okay.

Q. I'm also showing you Exhibit 'P-15' which is the Formal Letter of Demand and together with the Formal Letter of Demand the Final Assessment Notices which were marked 'P-16' to 'P-20', which are also sent by Registered Mail to the accused. Can you tell this Honorable Court if you have received these documents?

MS. ORTEGA *[LALAINE]*

A. No, Your Honors."[79]

By directly denying receipt thereof, the burden is shifted to the prosecution to show that there was actual receipt by the accused. Proper receipt of tax assessment notices is of primordial importance since, to reiterate, it is a requirement of due process that the taxpayer must actually receive the assessment.[80]

Pertinently, in civil cases, if the service is by ordinary mail, proof of service shall consist of an affidavit of the person mailing of facts showing compliance with Section 7 of Rule 13 of the Revised Rules of Court. On the other hand, if service is made through registered mail, proof of service is the registry receipt issued by the mailing office and an affidavit of the person mailing of facts showing compliance with the same Section 7 of the same rules. There is no reason not to apply the same stringent rules in criminal action, if not, with more force in view of the fact that the accused's life, liberty and property are at stake.[81]

Applying the foregoing, the prosecution failed to confirm the actual service of the PAN, the FAN, and the FLD. The testimony of RO Acosta further reveals the following:

"ATTY. BILONGILOT: *Jr*

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[79] Pages 50-51, *ibid.*
[80] *Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue*, G.R. No. 155541, January 27, 2004.
[81] *People of the Philippines vs. Joseph Typingco, Fiesta Pack, Inc.*, CTA Crim. Case No. O-114, May 16, 2012.

Q. Mr. Witness, again, the Preliminary Assessment Notice, can you look at the Preliminary Assessment Notice? Were you able to personally serve the Preliminary Assessment Notice to the taxpayer or any of his representative?

REVENUE OFFICER ACOSTA:

A. Preliminary Assessment, First Request for Presentation of Books?

ATTY. BILONGILOT:

Q. No, the Preliminary Assessment Notice, the PAN, were you able to serve it personally?

REVENUE OFFICER ACOSTA:

A. I do not recall already if I served the Preliminary Assessment, but it was the Assessment Division that was sending by registered mail, the copy of the Preliminary Assessment Notice, together, after, the Final Assessment.

ATTY. BILONGILOT:

Q. How about the Final Assessment Notice? Were you able to personally serve the Final Assessment Notice?

xxx xxx xxx

ATTY. SIA:

Q. Do you have anything on your Judicial Affidavit that shows that you have anything to do with the service or the dispatch of the Preliminary Assessment?

REVENUE OFFICER ACOSTA:

A. No, because it was prepared by the Assessment Division."[82]

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[82] Pages 41-45, TSN taken on the November 22, 2017 hearing.

As already mentioned, the Rules of Court requires the presentation of the registry receipt and affidavit of the person mailing as proof of service. However, the prosecution made no effort to present the testimony or even an affidavit of the person who allegedly mailed them.

The prosecution heavily relied on the Certifications[83] dated January 14, 2013 issued by the Philippine Postal Corporation to prove the fact of mailing. However, perusal of the said Certifications merely shows that Registered Letter Nos. 3411 and 378 were respectively dispatched to BIR PO-Mandaluyong City on December 16, 2010 and on January 10, 2011. The said Certifications do not conclusively show who received them, when and how it was received by the addressee.

Further, as to the claim of RO Acosta that he personally served the subject LOA on November 18, 2008, and was duly received by a certain Mr. John Paul San Juan, as evidenced by his signature thereon. This Court cannot avoid but cast doubt as to its actual service since the subject LOA has no date when it was purportedly received by Mr. San Juan. When asked clarificatory questions by Honorable Justice Cielito N. Mindaro-Grulla regarding the issue, RO Acosta answered as follows:

> "JUSTICE GRULLA:
>
> All right. Mr. Witness, just one question. You have a while ago the Letter of Authority. The original Letter of Authority was shown under the document reader. Now, I am just wondering why you mentioned that you served personally this Letter of Authority, and in fact, you mentioned a date, November 18, 2008. Now, how come that there was no date indicated in the Letter of Authority when it was received, and who received it?
>
> REVENUE OFFICER ACOSTA
>
> A. The taxpayer's representative failed to indicate the date.
>
> JUSTICE GRULLA:

[83] Exhibits "P-22" and "P-23".

Why did you not ask the taxpayer to indicate the name? Usually, it is a standard procedure, especially on the part, being a Revenue Officer, that when you submit a document or you ask a document to be received, then, it must be signed. The name must be indicated. So, how come that there was a serious lapse in this particular case?

REVENUE OFFICER ACOSTA

A. I failed to notice that the taxpayer failed to indicate the date of receipt.

JUSTICE GRULLA:

Do you remember the time when you served the Letter of Authority?

REVENUE OFFICER ACOSTA

A. I think it is office hour, ma'am, within the office hour.

JUSTICE GRULLA:

Within the office hours. In the afternoon? In the morning?

REVENUE OFFICER ACOSTA

A. I believe it is in the afternoon.

xxx xxx xxx

JUSTICE GRULLA:

Now, who is this particular taxpayer that you are referring to?

REVENUE OFFICER ACOSTA

A. La Chilo.

JUSTICE GRULLA:

But, you said, the taxpayer. Did you meet with the taxpayer?

REVENUE OFFICER ACOSTA

A. The taxpayer's representative, the officer of the *ano*, madam, the accountant.

JUSTICE GRULLA:

If it was just a representative, why did you not ask the representative to affix his name and sign it?

REVENUE OFFICER ACOSTA

A. I did not notice that the date was not indicated."[84]

Based on the above testimony, it is hard to believe that a Revenue Officer who has been in service with the BIR for more than thirty-six (36) years;[85] whose functions, duties and responsibilities include, among others, being assigned to Letters of Authority, Tax Verification Notices and Mission Orders for the conduct of audit and investigation of taxpayers;[86] and, who is familiar with the taxpayer's Bill of Rights,[87] somehow, conveniently, failed to notice that the date of receipt by the addressee was not indicated in the assessment notice allegedly served.

More so, when asked in his Re-Direct Examination, about November 18, 2008, the date when the subject LOA was allegedly served, RO Acosta merely referred to the second request for presentation of documents as his basis, thus:

[84] Pages 47-50, TSN taken on the November 22, 2017 hearing.
[85] Pages 18-19, *ibid.*
[86] Q3, JA of RO Acosta dated August 15, 2017, CTA Crim. Case No. O-606 (Vol. I), p. 389.
[87] Page 21, *ibid.*

"ATTY. BILONGILOT:

Q. When did you serve the said Letter of Authority?

REVENUE OFFICER ACOSTA:

A. I served it on November 18, 2008.

ATTY. BILONGILOT:

Q. Do you have any documents to prove that you served that particular Letter of Authority on the said date?
REVENUE OFFICER ACOSTA:

A. When we served the second request for presentation of finance document, it was indicated in the notice that the Letter of Authority was served on November 18."

However, careful scrutiny of the said Second Request for Presentation of Records[88] dated December 5, 2008 reveals that the mentioned date of November 18, 2008 only refers to the First Request for Presentation of Records[89] dated November 13, 2008 and not the LOA.

From the foregoing, it is apparent that there is no competent or sufficient evidence which would show that the failure of the accused to pay their correct taxes for taxable year 2007 was willful. Well-entrenched in jurisprudence is that the burden lies on the prosecution to overcome the accused's presumption of innocence by presenting the quantum of evidence required. In so doing, the prosecution must rest on its own merits and must not rely on the weakness of the defense. And if the prosecution fails to meet the required amount of evidence, the defense may logically not even present evidence on its own behalf. Settled is the rule that the evidence for the prosecution must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense.[90]

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[88] Exhibit "P-3".
[89] Exhibit "P-2".
[90] *People of the Philippines vs. Neil S. Bautista and Cecilia V. Aquino, in their capacities as partners of Ceniel Sunstar Trading Co.*, CTA Crim. Case No. O-394, June 28, 2017.

Ostensibly, it is elementary that in all criminal cases, mere speculations cannot substitute for proof in establishing the guilt of the accused. Indeed, suspicion no matter how strong must never sway judgment. Where there is reasonable doubt, the accused must be acquitted even though their innocence may not have been established. The Constitution presumes a person innocent until proven guilty by proof beyond reasonable doubt. When guilt is not proven with moral certainty, it has been our policy of long standing that the presumption of innocence must be favored, and exoneration granted as a matter of right.[91]

Accordingly, with the foregoing documentary and testimonial evidence, the prosecution failed to satisfactorily establish the final element that the accused, Generosa P. Ortega and Lalaine P. Ortega, willfully failed to supply correct and accurate information in the tax returns.

WHEREFORE, premises considered, accused Generosa P. Ortega and Lalaine P. Ortega are **ACQUITTED** of the offense charged under Section 255 of the National Internal Revenue Code of 1997, as amended, for failure of the prosecution to prove their guilt beyond reasonable doubt. No civil liability.

SO ORDERED.

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

I CONCUR:

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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[91] *People of the Philippines vs. Richard C. Santos Instantaneous Fast Construction Services (Fast Construct)*, CTA Crim. Case No. O-171, June 10, 2015.

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice