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REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM. CASE NO. O-276** (NPS Docket No. XV-17-INV-12A-46) *Re: Violation of Section 22, in relation to Section 49(b) [now Section 56(b)] and 106(a), Sections 57(B), 79(A), 60, 24(B)(2), 253(D) and 256 of the 1997 NIRC*
-versus-	Members: ***BAUTISTA,*** Chairperson ***FABON-VICTORINO,*** and ***RINGPIS-LIBAN,*** JJ.
MERLINDA MARTIN, *Accused.*	Promulgated: AUG 16 2017 1:40 p.m.

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D E C I S I O N

BAUTISTA, J.:

The Case

Accused Merlinda Martin, in her capacity as General Manager of Navotas Packaging Company ("NPC"), is charged for failure and refusal to pay tax liabilities in the amounts of Php6,408,580.00, Php3,072,311.68, Php23,695.77, Php658,613.31 and Php69,222.54, representing alleged deficiency income tax, value-added tax ("VAT"), expanded withholding tax ("EWT"), withholding tax on compensation ("WTC") and final taxes, respectively, all for taxable year ("TY") 2003, despite receipt of assessment notice and demand to pay the said taxes from the Commissioner of Internal Revenue ("CIR").[1]

The Facts

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[1] *Records, CTA Crim. Case No. O-276, Vol. 1, Information,* pp. 6-7.

On April 15, 2004[2], NPC filed its Annual Income Tax Return[3] ("ITR") for the year ended 2003, with the alleged signature of accused above the hand-written name "Merlinda Martin,"[4] and with the hand-written position "Gen. Manager."[5]

Revenue Director Rene Q. Aguas of BIR Revenue District No. 26, Malabon City-Navotas, Metro Manila, issued Letter of Authority 2000 00085032[6] ("LOA") on February 22, 2005; and Revenue Officer Ma. Teresa P. Jovero ("RO Jovero") and Group Supervision Flordeliza S. Ortega ("GS Ortega") issued a First Request for Presentation of Records[7] on March 11, 2005. These were both received by a certain Herichel Alvarez, who placed her signature above her handwritten name,[8] allegedly on May 15, 2005[9].

On March 28, 2005, the BIR released a Second Request for Presentation of Records[10], which was sent to NPC *via* registered mail on even date[11]. Then, the BIR issued a Final Notice[12] for the presentation of books of accounts, records, and other pertinent data relative to the assessment on May 4, 2005; which was sent to NPC by registered mail on May 6, 2005.[13]

There being no action on its requests, the BIR issued an Audit Notice[14] dated May 4, 2005, which was sent to NPC on May 6, 2005[15] by registered mail. Thereafter, it released a Post Reporting Notice[16] dated October 5, 2006; which was personally served to NPC and received by a certain Ailene Onelongo[17], who wrote her name and signature on the same, indicating the date October 12, 2006.

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[2] *Records, Vol. 1, Exhibit "A-1," Income Tax Return,* p. 483.
[3] *Id.* at 483-484.
[4] *Id.* at 484.
[5] *Id.*
[6] *Id. Vol. 1, Exhibit "C," Letter of Authority,* p. 492.
[7] *Id., Exhibit "D," First Request for Presentation of Records,* pp. 493-494.
[8] *Records, Vol. 1, Exhibits "C-2" and "D-1," Signatures over printed name of Herichel Alvarez,* pp. 492, 494.
[9] *Id., Exhibits "C" and "D," Date of receipt,* pp. 492, 494.
[10] *Id., Exhibit "E," Second Request for Presentation of Records,* p. 495.
[11] *Id., Exhibit "E-1," Registry Receipt,* p. 495.
[12] *Id., Exhibit "F," Final Notice,* p. 496.
[13] *Id., Exhibit "F-1," Registry Receipt,* p. 496.
[14] *Records, Vol. 1, Exhibit "G," Audit Notice,* p. 497.
[15] *Id., Exhibit "G-1," Registry Receipt,* p. 497.
[16] *Id., Exhibit "H," Post Reporting Notice,* pp. 498-504.
[17] *Id., Exhibit "H-1," Name and signature of recipient, and date of receipt,* p. 498.

RO Jovero wrote a Memorandum[18] to the Revenue District Officer ("RDO"), recommending that the case be forwarded to the Assessment Division for the issuance of a Preliminary Assessment Notice ("PAN"). Then, in a Memorandum[19] dated November 7, 2006, Regional Director Anselmo G. Adriano wrote to the RDO, returning the dockets of the case to the original examiner, with a request for revisions.

On November 13, 2006, a Revised Post Reporting Notice[20] was issued, and was served personally to NPC and received by a certain Ailene Onelongo[21], who again wrote her name, signature, and contact number on the same, indicating the date November 14, 2006.

On December 12, 2006, the BIR issued PANs[22], with attached computations of deficiency taxes, received by a certain Danilo P. Lucañas[23] on December 18, 2006. Thereafter, the BIR issued the Final Assessment Notices[24] ("FANs") and the Formal Letters of Demand[25] ("FLDs"), with computations of deficiencies[26]; which were likewise received by a certain Danilo P. Lucañas[27] on January 15, 2007.

On March 19, 2007, a Preliminary Collection Letter[28] was issued by the Chief of the Collection Division; and a Warrant of Distraint and/or Levy[29] was received on January 24, 2008 by a certain Vernie Bautista[30] as NPC's representative.

On October 28, 2011, the Regional Director wrote a Letter[31] to the City Prosecutor of Valenzuela City recommending the criminal prosecution of accused. This was followed by an Investigation Data

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[18] *Records, Vol. 1, Exhibit "I," Memorandum from RO Jovero,* p. 505.
[19] *Id., Exhibit "J," Memorandum from RD Adriano,* p. 506.
[20] *Id., Exhibit "K," Revised Post Reporting Notice,* pp. 507-508.
[21] *Id., Exhibit "K-2," Name and signature of recipient, and date of receipt,* p. 507.
[22] *Id., Exhibits "L," "L-1," "L-2," "L-3," "L-4," "L-5," "L-6," and "L-7," Preliminary Assessment Notices with Details of Discrepancies,* pp. 513-520.
[23] *Id., Exhibit "M," Registry Return Notice,* p. 521.
[24] *Records, Vol. 1, Exhibits "N," "O," "P," "Q," and "R," Final Assessment Notices,* pp. 522, 525, 527, 530, 532.
[25] *Id., Exhibits "N-1," "O-1," "P-1," "Q-1," "R-1," and "T," Formal Letters of Demand,* pp. 523, 526, 528, 531, 533, 535.
[26] *Id., Exhibits "N-2," "P-2," and "S," Computations/Details of Deficiencies,* pp. 524, 529. 534.
[27] *Id., Exhibit "U," Registry Return Notice,* p. 536.
[28] *Id., Exhibit "W," Preliminary Collection Letter,* p. 538.
[29] *Id., Exhibit "Z," Warrant of Distraint and/or Levy,* p. 541.
[30] *Records, Vol. 1, Exhibit "Z-1," Signature of Recipient,* p. 541.
[31] *Id., Information, Annex: Letter Recommendation,* pp. 11-15.

Form[32] dated January 16, 2012; and a Resolution[33] by the Office of the City Prosecutor of Valenzuela dated April 11, 2012, recommending that an Information be filed against accused. Consequently, on April 11, 2012, the prosecution filed an Information[34] before the Court charging accused, as follows:

> The undersigned Asst. City Prosecutor accuses MERLINDA MARTIN, of the crime of "Violation of Section 22 in relation to Section 49(b) (now Sec. 56[)], 106(A), Section 57(B), 79(A), 24(B)(2), 253(D) and 256 of the [National Internal Revenue Code of 1997, as amended ("1997 NIRC")], committed as follows:
>
> That on or about February 12, 2007, in Valenzuela City and within the jurisdiction if this Honorable Court, the above-named accused, in her capacity as General Manager of [NPC], did then and there willfully unlawfully and feloniously fail and refuse to pay tax liabilities in the sums of P[hp]6,408,580.00, P[hp]3,072,311.68, P[hp]23,695.77, P[hp]658,613.31 and P[hp]69,222.54, as deficiency [i]ncome [tax], VAT, EWT, WTC and [f]inal [t]axes, all for the year 2003, despite receipt of assessment notice and demand to pay said deficiency taxes from the [CIR].
>
> CONTRARY TO LAW,

On June 7, 2012, finding the existence of probable cause to hold accused liable for the commission of the offense as charged, the Court promulgated a Resolution[35] ordering the issuance of a Warrant of Arrest. Accordingly, a Warrant of Arrest[36] was issued on June 11, 2012.

On June 29, 2012, accused executed an Undertaking, waiving her right to be present and to appear during trial, among others.[37] Accused voluntarily surrendered, and submitted herself, to the jurisdiction of the Court, having posted the required cash bail bond;[38] hence, the Warrant of Arrest against her was lifted and recalled.[39]

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[32] *Records, Vol. 1, Information, Annex: Investigation Data Form,* p. 10.
[33] *Id., Information, Annex: Resolution,* pp. 8-9.
[34] *Id., Information,* pp. 6-34, with annexes.
[35] *Id., Vol.1,* pp. 38-39.
[36] *Id.* at 40.
[37] *Id., Undertaking,* pp. 49-53.
[38] *Records, Vol. 1,* p. 55.
[39] *Id.*

During her arraignment on July 25, 2012, accused admitted that she is the same person charged in the Information and pleaded "not guilty"[40] to the crime charged.[41]

Pre-trial ensued, with both parties admitting *(1)* that NPC filed its Annual ITR for TY 2003, together with its Financial Statements ("FS") through Landbank Malabon Branch on April 15, 2004; *(2)* that the Bureau of Internal Revenue ("BIR") issued FANs and FLDs on the subject alleged deficiency taxes under Assessment Notice No. 14604 amounting to Php6,470,515.49, exclusive of interest and surcharge; *(3)* that the Court has jurisdiction over the case; and *(4)* the identity of the accused.[42]

The prosecution presented four (4) witnesses, namely: *(1)* RO Jovero; *(2)* Revenue Reviewer ("RR") Mr. Nancy C. Bulaon ("RR Bulaon"); *(3)* RO Mr. Renato P. Del Rosario ("RO Del Rosario"); and *(4)* Administrative Aide ("AA") Mr. Ricky Egang ("AA Egang").

On November 8, 2012, the prosecution submitted the Judicial Affidavit[43] of RO Jovero, who testified that she was the revenue officer assigned to the case, pursuant to the LOA, against NPC for the examination of the latter's books of accounts and other accounting records for all internal revenue taxes for the period starting from January 1, 2003 to December 31, 2003. She said that she verified the Annual ITR of NPC, signed by accused as General Manager, along with the attached FS; and that she requested NPC to present its records and documents for examination, through a First Request for Presentation of Records, which was received by a certain Herichel Alvarez. She narrated that receiving no response, she issued a Second Request for Presentation of Records, covered by Registry Receipt No. 2560 dated March 28, 2005, but to no avail; that she then issued a Final Notice with Registry Receipt No. 3747 dated May 6, 2005; that she sent through registered mail an Audit Notice, with Registry Receipt No. 3748 dated May 6, 2005; and that she personally served a Post Reporting Notice received by a certain Ailene Onelongo. She went on to recount that despite said services, NPC failed to submit the required documents or explanations and to pay the tax deficiencies, prompting her team to recommend the issuance of a PAN through a

[40] *Records, Vol. 1, Transcript of Stenographic Notes ("TSN") July 25, 2012 Hearing,* p. 72-g.
[41] *Id., Vol. 1,* p. 68.
[42] *Id., Vol. 1, Minutes of Pre-Trial Conference,* p. 95; *Records, Vol. 1, Pre-Trial Order,* pp. 104-105.
[43] *Id., Vol. 1, Exhibit "DD," Judicial Affidavit of Ma. Teresa Jovero (in lieu of direct testimony),* pp. 130-138.

Memorandum dated November 7, 2006; that they prepared a Revised Post Reporting Notice, which she personally served to the same Ailene Onelongo; and that she returned the entire dockets of the case to the Assessment Division for the issuance of the PAN.

During her cross-examination[44] on December 5, 2012, RO Jovero testified that serving notices is part of her duties and functions as RO; that referring to the LOA and the First Request for Presentation of Records, both were received by a certain Herichel Alvarez on March 15, 2005 and not May 15, 2005, as hand-written thereon by the recipient; that she did not notice that the recipient indicated the wrong date since she only checked the signature; and that service was made within thirty (30) days after the date indicated in the LOA issued on February 22, 2005, hence, the LOA is not void. She recounted that when she went to the address of NPC and introduced herself, stating her purpose to serve an LOA to their authorized representative, they presented Ms. Alvarez; that she asked Ms. Alvarez if any of the officers are there to receive the LOA but Ms. Alvarez responded that she is authorized to receive the same; and that Ms. Alvarez said that she will transmit the LOA and the First Request for Presentation of Records to the officers. RO Jovero further disclosed that the Second Request for Presentation of Records was sent *via* registered mail but she does not know who received the same; and that the Final Notice was likewise sent by registered mail. Further, she revealed that she requested for the issuance of a *subpoena duces tecum* from the Legal Division, which was granted and issued to NPC. However, since RO Jovero cannot produce the *subpoena duces tecum* at the moment, the Court ordered the prosecution to produce the same during the next hearing.

RO Jovero's cross-examination[45] was continued on January 16, 2013. She explained that she did not indicate in her Judicial Affidavit that she recommended the issuance of a *subpoena duces tecum;* that, in the completion of the Judicial Affidavit, the Legal Officer of the Regional Director interposed the questions, which she then answered, as transcribed by the office staff. Ms. Jovero narrated that she personally went to the office of NPC; that she identified herself and declared that she is there to serve the Post Reporting Notice to NPC and asked for an authorized officer or employee; and that they presented Ms. Ailene Onelongo, who received the same. She disclosed that after no response was received from NPC, she recommended that the case be forwarded to the Assessment Division for the issuance of a

[44] *Records, Vol. 1, TSN, December 5, 2012 Hearing,* pp. 231-260.
[45] *Id., TSN, January 16, 2013 Hearing,* pp. 271-286.

PAN. Thereafter, re-direct examination[46] was conducted wherein RO Jovero clarified that Ms. Alvarez wrote the wrong date of "5/15/2005" (May 15, 2005) instead of the correct date of March 15, 2005 falling on a Tuesday; and that it is highly impossible to serve the LOA on May 15, 2005 for that fell on a Sunday.

On December 5, 2012, the prosecution filed the Judicial Affidavit[47] of RR Bulaon, in which she testified that she was assigned as the Revenue Reviewer in the Assessment Division relative to the review of the findings of the Revenue Examiner in the audit or examination of NPC's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2003 to December 31, 2003; that upon review, she returned the dockets to the Revenue Examiner with instructions to inform the taxpayer of the findings thereon *per* Memorandum dated November 7, 2006 of the Regional Director; that the dockets were then transferred back to her office for the issuance of the PAN; and that a PAN was issued due to the failure of NPC to dispute the findings. She further recounted that a PAN was served through registered mail on December 14, 2006, as evidenced in a Registry Return Notice indicating that it was received by a certain Danilo Lucanas on December 18, 2006; and that since the PAN was undisputed and the tax unpaid, they recommended that a FAN and/or an FLD be issued. She went on to state that the FAN, Details of Discrepancies, and FLD were served through registered mail on January 12, 2007, with a Registry Return Notice indicating that it was received by Danilo Lucanas on January 15, 2007; and that due to the taxpayer's failure to protest within thirty (30) days from date of receipt, their Billing Section forwarded the dockets of the case to the Collection Division for collection of delinquent accounts.

On April 24, 2013, RR Bulaon was cross-examined[48]. She stated that in her Memorandum dated November 7, 2006, she instructed the Revenue Examiner to revise the assessment pursuant to *Revenue Memorandum Circular ("RMC") No. 23-2000*; that the Revenue Examiner based the disallowance on the cost of sales, hence she recommended that it be based on the purchases; and that the assessment was based on the best evidence obtainable rule. She disclosed she prepared the PAN, but it was the Billing Section which sent the same to NPC by registered mail; that she has no personal knowledge as to the mailing of the PAN and Details of Discrepancies,

[46] *Records, Vol. 1, TSN, January 16, 2013 Hearing,* pp. 287-288.
[47] *Id., Exhibit "FF," Judicial Affidavit of Nancy C. Bulaon (in lieu of direct testimony),* pp. 192-195.
[48] *Id., TSN, April 24, 2013 Hearing,* pp. 330-348.

other than the knowledge that the Registry Return Receipt was signed by a certain Danilo Lucanas; and that she has no personal knowledge if Danilo Lucanas is connected with NPC. There being no dispute on the PAN or no tax payment, she recommended the issuance of the FAN and the FLD, which were sent *via* registered mail, and received by Danilo Lucanas as shown in the Registry Return Receipt; and that the first time she saw the Registry Return Receipts for the PAN and the FAN/FLD was when she executed the Judicial Affidavit. The Court then determined that Ms. Bulaon is not the proper party to testify as regards the mailing of the PAN, the FANs, and the FLDs since she has no personal knowledge thereof.

During re-direct[49], RR Bulaon clarified that the Revenue Examiner disallowed fifty percent (50%) of the cost of sales and she returned the dockets to the Revenue Examiner, asking to disallow fifty percent (50%) of the purchases instead, in accordance with *RMC No. 23-2000*; that when NPC did not file its protest, her office issued the FAN; and that it is irrelevant whether or not the PAN was received because if no protest was filed within the time provided a FAN will be issued.

Upon re-cross[50], RR Bulaon reiterated that the FS was used by the Revenue Examiner for the assessment based on the best evidence rule.

As to RO Del Rosario, while a Judicial Affidavit was not filed beforehand, the Court allowed his direct examination in open court during the June 5, 2013 hearing.[51] RO Del Rosario testified that he was assigned at the Collection Division through a Memorandum of Assignment; that they prepared a Preliminary Collection Letter, which RO Del Rosario personally served to NPC through a certain Jocelyn F. Cabulao; that NPC did not respond to the PCL, hence, their office prepared the Warrant of Distraint and/or Levy and served the same to a certain Vernie Bautista, the clerk of NPC; and that thereafter, he prepared a Progress Report stating that he has served the Warrant of Distraint and/or Levy to NPC.[52]

[49] *Records, Vol. 1, TSN, April 24, 2013 Hearing,* pp. 351-356.
[50] *Id.* at 357.
[51] *Id., TSN, June 5, 2013 Hearing, pp.* 368-371.
[52] *Id.* at 374-389.

Cross-examination[53] proceeded, wherein RO Del Rosario explained that at the time of service, he was RO 2 or 3 and it was his duty to serve notice to the taxpayers; that he served the Preliminary Collection Letter at NPC's address in Tañong, Malabon, as received by a certain Jocelyn Cabulao; and that he was issued a Memorandum of Assignment to collect on the delinquent account of NPC. For clarification, the Court asked why the accused was dragged in the case, and counsel for the prosecution answered that this is because she's the President[54] [*sic*] of NPC.[55]

In AA Egang's Judicial Affidavit[56], he disclosed that he is a Mailing Clerk of the Administrative Division of Revenue Region No. 5, BIR, Caloocan City; that he sent the FAN and the FLD to NPC *via* registered mail, as evidenced by Registry Receipt No. 1383 dated January 12, 2007; and that the FAN and the FLD were received by NPC *via* its representative, as shown in Registry Return Notice dated January 15, 2007.

During cross-examination[57] on November 27, 2013, AA Egang explained that he receives PANs, FANs and FLDs from the Assessment Division, which he records in a logbook, then he stamps the same before he sends them to the post office for mailing; that he reads the taxpayer's name and address, as well as the subject and the nature of the document; and that he knows that the documents were received due to the Registry Return Card/Receipt.

On December 12, 2013, the Prosecution's Formal Offer of Documentary Evidence with Motion to Change Marking of Exhibits[58] was filed offering *Exhibits* "A," "A-1," "A-2," "B," "B-1," "C," "C-1," "C-2," "D," "D-1," "E," "E-1," "F," "F-1," "G," "G-1," "H," "H-1," "I," "I-1," "J," "J-1," "K," "K-1," "K-2," "L," "L-1," "L-2," "L-3," "L-4," "L-5," "L-6," "L-7," "M," "N," "N-1," "N-2," "N-3," "O," "O-1," "O-2," "P," "P-1," "P-2," "P-3," "Q," "Q-1," "Q-2," "R," "R-1," "R-2," "S," "T," "U," "V," "V-1," "W," "W-1," "X," "Y," "Z," "Z-1," "AA," "BB," "BB-1," "CC," "CC-1," "DD" (to change from *Exhibit* "L"), "DD-1" (to

[53] *Records, Vol. 1, TSN, June 5, 2013 Hearing,* pp. 392-401.
[54] Based on the testimony of accused, she is the General Manager of NPC and not the President, the President of NPC is Mr. George Lorenzana, her partner, see *Records, Vol. 2, Exhibit "9," Judicial Affidavit [of Merlinda Martin],* pp. 609-618; the fact that accused is the General Manager is manifest in the Annual ITR filed for TY 2003, see *Records, Vol. 1, Exhibit "A-1," Income Tax Return,* p. 483.
[55] *Records, Vol. 1,* pp. 402-403.
[56] *Id., Exhibit "BB," Judicial Affidavit of Ricky Egang,* pp. 429-431.
[57] *Id., November 27, 2013 Hearing,* pp. 448-s-448kk.
[58] *Id., Formal Offer of Documentary Evidence with Motion to Change Marking of Exhibits,* pp. 454-468.

change from *Exhibit* "L-1"), "FF," and "FF-1." This was followed by a Manifestation[59] by the prosecution on December 13, 2013, and accused's Comment[60] on January 2, 2014.

On January 14, 2014, the Court granted the prosecution's Motion to Change Marking of Exhibits, and set a commissioner's hearing for the re-marking of documentary evidence.[61]

On March 12, 2014, the Court admitted all of the prosecution's documentary evidence, subject to the Court's final evaluation and/or appreciation of their probative value to the issues; save for *Exhibits* "K," "K-1," "K-2," "X," and "Y," for failure to identify the documents.[62] However, the prosecution filed its Motion for Reconsideration (Of the Resolution dated March 12, 2014)[63] on April 3, 2014, with no comment[64] from the defense.

Thereafter, the defense file its Motion for Leave to File Demurrer to Evidence[65] on March 24, 2014, to which the prosecution filed its Comment/Opposition to the Motion for Leave to File Demurrer to Evidence[66] on April 15, 2014.

On June 20, 2014, the Court granted the prosecution's Motion for Reconsideration (Of the Resolution dated March 12, 2014), admitting *Exhibits* "K," "K-1," "K-2;" and denied the defense's Motion for Leave to File Demurrer to Evidence for being filed prematurely.[67]

On July 10, 2014, the defense filed its Manifestation and Reiterative Motion for Leave to File Demurrer to Evidence[68]; which was denied by the Court in a Resolution[69] dated July 24, 2014 and an Amended Resolution[70] dated October 9, 2014, for being filed out of time.

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[59] *Records, Vol. 1, Manifestation,* pp. 469-561, with annexes.
[60] *Id., Vol. 2, Comment,* pp. 562-565.
[61] *Id., Vol. 2,* p. 567.
[62] *Id.* at 573-574.
[63] *Id.* at 582-584.
[64] *Id.* at 593.
[65] *Records, Vol. 2,* pp. 575-577.
[66] *Id.* at 585-587.
[67] *Id.* at 595-596.
[68] *Id.* at 597-599.
[69] *Id.* at 601-602.
[70] *Id.* at 604-605.

The defense presented only two (2) witnesses: *(1)* accused, herself; and *(2)* Senior Document Examiner Jennifer B. Dominguez ("SDE Dominguez").

On January 23, 2015, the defense filed accused's Judicial Affidavit[71], stating that NPC is a registered partnership between accused and Mr. George Lorenzana; that NPC is engaged in the manufacture of plastic containers exclusively for Lorenzana Foods Corporation ("LFC"), which is the family corporation of the Lorenzanas; that NPC ceased to operate in 2004 because LFC stopped getting orders from NPC as a result of a family squabble; that accused was the General Manager of NPC, in charge of the production and delivery; that Mr. George Lorenzana was the President of NPC, in charge of financial matters, like sales and collection of receivables and payment of bills and taxes; that Mr. Lorenzana filed the Annual ITR of NPC for 2003 for it is within his responsibility; that the signature found in the ITR above accused's name is not her signature, and appears to be a forgery; that Herichel Alvarez and Ailene Onelongo were the Secretaries of Mr. Lorenzana; that she never had the opportunity to meet Danilo Lucanas and Jocelyn Cabaldo for they are not employed by NPC; and that she cannot recall if Vernie Bautista is an employee of NPC. Accused narrated that the first time she saw the ITR, FS, LOA, First Request for Presentation of Records, Second Request for Presentation of Records, Post Reporting Notice, Revised Post Reporting Notice, PAN (with Registry Return Notice), FAN/FLD/Details of Discrepancy (with Registry Return Notice), Preliminary Collection Letter, Final Notice Before Seizure (with Registry Return Notice) and Warrant of Distraint and/or Levy was during the marking of exhibits on August 28, 2012, since these were not referred to her beforehand; that her name does not appear in any of the documents, except for the ITR, with her forged signature; and that she does not know what Mr. Lorenzana did with the documents received by his staff from the BIR.

On February 23, 2016, the National Bureau of Investigation ("NBI") filed with the Court *a Questioned Documents Report No. 26-116*[72] submitted by SDE Dominguez regarding the comparison between the questioned signature of accused on the ITR and the standards of comparison presented, in order to determine whether the questioned and the standard/sample signatures of accused were written by one and the same person. SDE Dominguez concluded that the questioned

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[71] *Records, Vol. 2, Exhibit "9," Judicial Affidavit [of Merlinda Martin]*, pp. 609-618.
[72] *Id., Exhibit "A-2," Questioned Documents Report No. 26-116*, pp. 704-706.

and standard/sample signatures were not written by one and the same person. SDE Dominguez was presented in Court during the June 15, 2016 hearing, identifying her Report.[73]

On June 21, 2016, the defense filed its Formal Offer of Exhibits[74], offering *Exhibits* "A-1," "A-1-a," "A-2," "A-2-a," "A-2-b," "A-2-c," and "A-3;" which was followed by a Comment[75] filed by the prosecution on July 15, 2016. On August 9, 2016, the Court admitted all of the defense's exhibits, subject to its final evaluation and appreciation of their purpose, materiality, relevancy, and probative value to the issues.[76]

On October 17, 2016, the prosecution filed its Memorandum[77]; while the defense filed its Memorandum[78] on November 22, 2016.

In a Resolution[79] November 24, 2016, the case was deemed submitted for decision; hence, this Decision.

The Issues[80]

WHETHER THE ASSESSMENTS ON DEFICIENCY INCOME TAX, VAT, EWT, WTC AND FINAL TAX ISSUED BY THE BIR TO NPC HAVE BECOME FINAL AND UNAPPEALABLE; AND

WHETHER ACCUSED IS GUILTY OF THE CRIME CHARGED IN THE INFORMATION.

The Arguments of the Prosecution[81]

The prosecution claims that a protest should have been filed within thirty (30) days from NPC's receipt of the FAN and the FLD; that no valid protest was filed by accused as a responsible officer of NPC, despite receipt of the assessment notices by NPC's authorized

[73] *Records, Vol. 2, June 15, 2016 Minutes of Hearing,* p. 720.
[74] *Id., Formal Offer of Exhibits,* pp. 724-726.
[75] *Id., Vol. 2, pp.* 727-728.
[76] *Id.* at 730.
[77] *Id., Memorandum,* pp. 735-748.
[78] *Id.* at 753-759.
[79] *Records, Vol. 2,* p. 761.
[80] *Id., Vol. 1, Pre-Trial Order, Issues,* p. 105.
[81] *Id., Vol. 2, Memorandum, Discussion,* pp. 739-747.

representatives; and that, as a consequence, the assessments have become final, executory and demandable. It likewise raised the presumption that assessments are presumed correct and made in good faith.

The prosecution avers that accused is the responsible officer in this case, being one of the partners who established NPC; that accused is liable under *Sections 253(D) and 256 of the 1997 NIRC*; that accused was sued because her signature appeared on NPC's 2003 Annual ITR submitted to the BIR; and that accused did not show any evidence that would refute her responsibility towards NPC's transactions and dealings. The prosecution went on to state that accused merely made an alibi that she doesn't know the financial matters surrounding NPC, which is absurd for she is the General Manager or Managing Partner of NPC; that accused merely made a general averment during cross-examination that it was Mr. Lorenzana who handled financial matters, without showing proof thereof; and that an alibi is easy to fabricate but difficult to disprove.

As to the allegation of forgery, the prosecution insists that it was an afterthought of the defense, after realizing that they do not have sufficient evidence to dismantle the prosecution's evidence; that this issue was not among those raised during preliminary conference; and that the testimony and the Report of the witness from the NBI are inconclusive evidence.

The Arguments of the Defense[82]

The defense posits that accused's signature in the Annual ITR is indeed a forgery; that it presented an expert witness from the NBI to prove this allegation; that the witness from the NBI testified that the Questioned Documents Laboratory Division of the NBI concluded that the questioned and the standard/sample signatures of accused were not written by one and the same person; that to establish the standard signature samples, accused was required to submit documents as close to the date of the questioned documents, which she did; that the witness conducted comparative scientific examination of the signatures through the use of a magnifying lens, and a microscope with the aid of the comparison chart, to determine the line quality and the pen pressure; that after comparative analysis on the specimens, the witness noted that there are significant differences in writing

[82] *Records, Vol. 2, Memorandum, Arguments*, pp. 755-759.

characteristics and habits such as in the manner of execution of strokes, the movement of the strokes' directions and the transformation of the letters and elements in the signature; and that the witness prepared the Report. The defense concluded that having established that the alleged signature of accused in the Annual ITR of NPC for 2003 is a forgery, the same is not binding to her.

The defense continued to explain that NPC ceased to operate in 2004; that since it was the responsibility of Mr. Lorenzana to pay the taxes of NPC, an Annual ITR of NPC for 2003 was filed on April 15, 2004, together with the FS; and that accused testified that she does not know Pastor Laya Castro, the Certified Public Accountant who prepared the FS. Moreover, accused claims that she did not receive, or was she notified of the LOA or any of the FANs, FLDs, and other communications of the BIR sent to NPC; and that she only came to know of these documentary evidence during the marking of exhibits on August 28, 2012, when she also discovered that her name was hand-written in the Annual ITR, with her forged signature. The defense insists that accused had no intent to violate the offense imputed to her; and that she was charged only because her name appears in the questioned Annual ITR of NPC, which bears her forged signature.

The Evidence Presented

The Evidence for the Prosecution[83]

EXHIBIT	DESCRIPTION
A, A-1, A-2	Annual ITR of NPC for TY 2003
B, B-1	NPC's FS for December 31, 2003 and December 31, 2002
C, C-1, C-2	LOA No. 2000-00085032 dated February 22, 2005
D, D-1	First Request for Presentation of Records dated March 11, 2005
E, E-1	Second Request for Presentation of Records dated March 28, 2005
F, F-1	Final Notice dated May 4, 2005
G, G-1	Audit Notice dated May 4, 2005
H, H-1	Post Reporting Notice dated October 5, 2006 consisting of seven (7) pages
I, I-1	Memorandum of RO Jovero
J, J-1	Memorandum dated November 7, 2006 of Regional Director Anselmo G. Adriano
K, K-1, K-2	Revised Post Reporting Notice dated November 13, 2006 consisting of two (2) pages
L, L-1, L-2, L-3, L-4, L-5, L-6, L-7	PANs No. 0444, all dated December 12, 2006 on income tax, VAT, EWT, WTC and final tax, respectively
M	Registry Return Notice for Letter/Package No. 1291 received on December 18, 2006

[83] *Records, Vol. 1, Formal Offer of Documentary Evidence with Motion to Change Marking of Exhibits*, pp. 454-468.

N, N-3	FAN dated January 12, 2007 on income tax
N-1, N-2	FLD No. 29608 dated January 12, 2007 on income tax
O, O-2	FAN dated January 12, 2007 on VAT
O-1	FLD No. 29502 dated January 12, 2007 on VAT
P, P-3	FAN dated January 12, 2007 on EWT
P-1, P-2	FLD No. 29608 dated January 12, 2007 on EWT consisting of two (2) pages
Q, Q-2	FAN dated January 12, 2007 on WTC
Q-1	FLD No. 29608 dated January 12, 2007 on WTC
R, R-2	FAN dated January 12, 2007 on final tax
R-1	FLD No. 29608 dated January 12, 2007 on final tax
S	Annex "A" Details of Discrepancies Assessment No. 014604
T	FLD No. 17183 dated January 12, 2007
U	Registry Return Notice Letter/Package No. 1383 received on January 15, 2007
V, V-1	Memorandum of Assignment dated March 12, 2007
W, W-1	Preliminary Collection Letter dated March 19, 2007
Z, Z-1	Warrant of Distraint and/or Levy No. 26-009-07
AA	Memorandum dated January 25, 2008 of RO Del Rosario
BB, BB-1	Judicial Affidavit of AA Egang
CC, CC-1	Copy of Registry Receipt No. 1383 from the Mailing Logbook of the Administrative Division
DD, DD-1	Judicial Affidavit of RO Jovero
FF, FF-1	Judicial Affidavit of RR Bulaon

The Evidence for the Defense[84]

EXHIBIT	DESCRIPTION
A-1	Annual ITR of NPC for the year ended December 2003 (marked as *Exhibit* "A" for the prosecution)
A-1-a	Alleged signature of accused in the Annual ITR
A-2	Questioned Documents Report No. 26-116 of the Questioned Documents Laboratory Division of the NBI
A-2-a	Signature of witness SDE Dominguez in the Questioned Documents Report No. 26-116
A-2-b	Signature of Carolyn J. Moldez-Pitoy, Chief, Questioned Documents Laboratory Division, in the Questioned Documents Report No. 26-116
A-2-c	Signature of Rolando S. Argabioso, Deputy Director, Forensic Investigation Service, in the Questioned Documents Report No. 26-116
A-3	Cover Letter dated February 2, 2016, addressed to the Court of Tax Appeals, Third Division

The Ruling of the Court

The assessments on deficiency income tax, VAT, EWT, WTC and final tax have attained finality, and are already unappealable.

As to whether the assessments have attained finality, the Court rules in favor of the prosecution.

[84] *Records, Vol. 2, Formal Offer of Exhibits*, pp. 724-726.

Section 228 of the 1997 NIRC provides that a taxpayer may file a protest to the FAN by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt thereof; that, thereafter, the taxpayer has sixty (60) days to submit all relevant supporting documents; and that failure to comply will render the assessment final, *viz.*:

> SECTION 228. *Protesting of Assessment.* — xxx
>
> xxx xxx xxx
>
> 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.
>
> <u>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. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.</u>
>
> xxx xxx xxx[85]

Records reveal that NPC received the FANs and the FLDs with computations of deficiencies on January 15, 2007 through a certain Danilo P. Lucañas. Counting thirty (30) days therefrom, NPC had until February 14, 2007 to file its protest, which it failed to do. Therefore, the assessments have attained finality and are now unappealable.

<u>Accused is not guilty of the crime charged in the Information.</u>

The Court moves on to the second issue, that is, whether accused is guilty of the crime charged in the Information. This time, it rules in favor of accused.

[85] Underscoring ours.

In the Information[86], accused was charged of violating *Section 22* in relation to *Section 49(b) [now Section 56(B)], 106(A), 57(B), 79(A), 24(B)(2), 253(D) and 256 of the 1997 NIRC*. It is claimed that the crime was committed on or about February 12, 2007, in Valenzuela City, in her capacity as General Manager of NPC by willfully, unlawfully and feloniously failing and refusing to pay tax liabilities for deficiency income tax, VAT, EWT, WTC and final taxes, all for the TY 2003, despite receipt of assessment notice and demand to pay said deficiency taxes from the CIR.

The Court now refers to each provision accused was charged of violating in the order in which they appeared in the Information.

First up is *Section 22*[87] *of the 1997 NIRC*. This provision merely defines the terms used in *Title II, Tax on Income of the 1997 NIRC*. This

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[86] *Records, Vol. 1, Information*, pp. 6-34, with annexes.

[87] SECTION 22. *Definitions*. — When used in this Title:

(A) The term '*person*' means an individual, a trust, estate, or corporation.

(B) The term '*corporation*' shall include partnerships, no matter how created or organized, joint-stock companies, joint accounts (cuentas en participacion), associations, or insurance companies, but does not include general professional partnerships and a joint venture or consortium formed for the purpose of undertaking construction projects or engaging in petroleum, coal, geothermal and other energy operations pursuant to an operating or consortium agreement under a service contract with the Government. 'General professional partnerships' are partnerships formed by persons for the sole purpose of exercising their common profession, no part of the income of which is derived from engaging in any trade or business.

(C) The term '*domestic,*' when applied to a corporation, means created or organized in the Philippines or under its laws.

(D) The term '*foreign,*' when applied to a corporation, means a corporation which is not domestic.

(E) The term '*nonresident citizen*' means:

(1) A citizen of the Philippines who establishes to the satisfaction of the Commissioner the fact of his physical presence abroad with a definite intention to reside therein.

(2) A citizen of the Philippines who leaves the Philippines during the taxable year to reside abroad, either as an immigrant or for employment on a permanent basis.

(3) A citizen of the Philippines who works and derives income from abroad and whose employment thereat requires him to be physically present abroad most of the time during the taxable year.

(4) A citizen who has been previously considered as nonresident citizen and who arrives in the Philippines at any time during the taxable year to reside permanently in the Philippines shall likewise be treated as a nonresident citizen for the taxable year in which he arrives in the Philippines with respect to his income derived from sources abroad until the date of his arrival in the Philippines.

(5) The taxpayer shall submit proof to the Commissioner to show his intention of leaving the Philippines to reside permanently abroad or to return to and reside in the Philippines as the case may be for purposes of this Section.

(F) The term '*resident alien*' means an individual whose residence is within the Philippines and who is not a citizen thereof.

(G) The term '*nonresident alien*' means an individual whose residence is not within the Philippines and who is not a citizen thereof.

(H) The term '*resident foreign corporation*' applies to a foreign corporation engaged in trade or business within the Philippines.

(I) The term '*nonresident foreign corporation*' applies to a foreign corporation not engaged in trade or business within the Philippines.

(J) The term '*fiduciary*' means a guardian, trustee, executor, administrator, receiver, conservator or any person acting in any fiduciary capacity for any person.

(K) The term '*withholding agent*' means any person required to deduct and withhold any tax under the provisions of Section 57.

(L) The term '*shares of stock*' shall include shares of stock of a corporation, warrants and/or options to purchase shares of stock, as well as units of participation in a partnership (except general professional partnerships), joint stock companies, joint accounts, joint ventures taxable as corporations, associations, and recreation or amusement clubs (such as golf, polo or similar clubs), and mutual fund certificates.

(M) The term '*shareholder*' shall include holders of a share/s of stock, warrant/s and/or option/s to purchase shares of stock of a corporation, as well as a holder of a unit of participation in a partnership (except general professional partnerships) in a joint stock company, a joint account, a taxable joint venture, a member of an association, recreation or amusement club (such as golf, polo, or similar clubs) and a holder of a mutual fund certificate, a member in an association, joint-stock company, or insurance company.

(N) The term '*taxpayer*' means any person subject to tax imposed by this Title.

(O) The terms '*including*' and '*includes*', when used in a definition contained in this Title, shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(P) The term '*taxable year*' means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under this Title. '*Taxable year*' includes, in the case of a return made for a fractional part of a year under the provisions of this Title or under rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, the period for which such return is made.

(Q) The term '*fiscal year*' means an accounting period of twelve (12) months ending on the last day of any month other than December.

(R) The terms '*paid or incurred*' and '*paid or accrued*' shall be construed according to the method of accounting upon the basis of which the net income is computed under this Title.

(S) The term '*trade or business*' includes the performance of the functions of a public office.

(T) The term '*securities*' means shares of stock in a corporation and rights to subscribe for or to receive such shares. The term includes bonds, debentures, notes, or certificates, or other evidence of indebtedness, issued by any corporation, including those issued by a government or political subdivision thereof, with interest coupons or in registered form.

(U) The term '*dealer in securities*' means a merchant of stocks or securities, whether an individual, partnership or corporation, with an established place of business, regularly engaged in the purchase of securities and the resale thereof to customers; that is, one who, as a merchant, buys securities and re-sells them to customers with a view to the gains and profits that may be derived therefrom.

(V) The term '*bank*' means every banking institution, as defined in Section 2 of Republic Act No. 337, as amended, otherwise known as the General Banking Act. A bank may either be a commercial bank, a thrift bank, a development bank, a rural bank or a specialized government bank.

(W) The term '*non-bank financial intermediary*' means a financial intermediary, as defined in Section 2(D)(c) of Republic Act No. 337, as amended, otherwise known as the General Banking Act, authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities.

(X) The term '*quasi-banking activities*' means borrowing funds from twenty (20) or more personal or corporate lenders at any one time, through the issuance, endorsement, or acceptance of debt instruments of any kind other than deposits for the borrower's own account, or through the issuance of certificates of assignment or similar instruments, with recourse, or of repurchase agreements for purposes of relending or purchasing receivables and other similar obligations: Provided, however, That commercial, industrial and other non-financial companies, which borrow funds through any of these means for the limited purpose of financing their own needs or the needs of their agents or dealers, shall not be considered as performing quasi-banking functions.

(Y) The term '*deposit substitutes*' shall mean an alternative form of obtaining funds from the public (the term '*public*' means borrowing from twenty (20) or more individual or corporate lenders at any one time), other than deposits, through the issuance, endorsement, or acceptance of debt instruments for the borrower's own account, for the purpose of relending or purchasing of receivables and other obligations, or financing their own needs or the needs of their agent or dealer. These instruments may include, but need not be limited to bankers' acceptances, promissory notes, repurchase agreements, including reverse repurchase agreements entered into by and between the

Section was cited in relation to *Section 49(b) of the 1977 NIRC*, which is presently *Section 56(B) of the 1997 NIRC* dealing with deficiencies in relation to income tax, *viz.:*

> SECTION 56. *Payment and Assessment of Income Tax for Individuals and Corporations.* —
>
> 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

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Bangko Sentral ng Pilipinas (BSP) and any authorized agent bank, certificates of assignment or participation and similar instruments with recourse: Provided, however, That debt instruments issued for interbank call loans with maturity of not more than five (5) days to cover deficiency in reserves against deposit liabilities, including those between or among banks and quasi-banks, shall not be considered as deposit substitute debt instruments.

(Z) The term '*ordinary income*' includes any gain from the sale or exchange of property which is not a capital asset or property described in Section 39(A)(1). Any gain from the sale or exchange of property which is treated or considered, under other provisions of this Title, as 'ordinary income' shall be treated as gain from the sale or exchange of property which is not a capital asset as defined in Section 39(A)(1). The term '*ordinary loss*' includes any loss from the sale or exchange of property which is not a capital asset. Any loss from the sale or exchange of property which is treated or considered, under other provisions of this Title, as 'ordinary loss' shall be treated as loss from the sale or exchange of property which is not a capital asset.

(AA) The term '*rank and file employees*' shall mean all employees who are holding neither managerial nor supervisory position as defined under existing provisions of the Labor Code of the Philippines, as amended.

(BB) The term '*mutual fund company*' shall mean an open-end and close-end investment company as defined under the Investment Company Act.

(CC) The term '*trade, business or profession*' shall not include performance of services by the taxpayer as an employee.

(DD) The term '*regional or area headquarters*' shall mean a branch established in the Philippines by multinational companies and which headquarters do not earn or derive income from the Philippines and which act as supervisory, communications and coordinating center for their affiliates, subsidiaries, or branches in the Asia-Pacific Region and other foreign markets.

(EE) The term '*regional operating headquarters*' shall mean a branch established in the Philippines by multinational companies which are engaged in any of the following services: general administration and planning; business planning and coordination; sourcing and procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistic services; research and development services and product development; technical support and maintenance; data processing and communication; and business development.

(FF) The term '*long-term deposit or investment certificate*' shall refer to certificate of time deposit or investment in the form of savings, common or individual trust funds, deposit substitutes, investment management accounts and other investments with a maturity period of not less than five (5) years, the form of which shall be prescribed by the Bangko Sentral ng Pilipinas (BSP) and issued by banks only (not by nonbank financial intermediaries and finance companies) to individuals in denominations of Ten thousand pesos (P10,000) and other denominations as may be prescribed by the BSP.

(GG) The term '*statutory minimum wage*' shall refer to the rate fixed by the Regional Tripartite Wage and Productivity Board, as defined by the Bureau of Labor and Employment Statistics (BLES) of the Department of Labor and Employment (DOLE).

(HH) The term '*minimum wage earner*' shall refer to a worker in the private sector paid the statutory minimum wage, or to an employee in the public sector with compensation income of not more than the statutory minimum wage in the non-agricultural sector where he/she is assigned.

so discovered shall be paid upon notice and demand from the Commissioner.

As used in this Chapter, in respect of a tax imposed by this Title, the term 'deficiency' means:

(1) The amount by which the tax imposed by this Title exceeds the amount shown as the tax by the taxpayer upon his return; but the amount so shown on the return shall be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amount previously abated, credited, returned or otherwise repaid in respect of such tax; or

(2) If no amount is shown as the tax by the taxpayer upon his return, or if no return is made by the taxpayer, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed or collected without assessment shall first be decreased by the amounts previously abated, credited, returned or otherwise repaid in respect of such tax.[88]

The Information next referred to *Section 106(A) of the 1997 NIRC*, which deals with VAT, reproduced hereunder:

SECTION 106. *Value-added Tax on Sale 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 ten percent (10%) 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:

Provided, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:

(i) Value-added tax collection as a percentage of Gross Domestic Product (GDP) of the previous year exceeds two and four-fifth percent (2 4/5%); or

[88] Underscoring ours.

(ii) National government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1 1/2%).

(1) The term *'goods or properties'* shall mean all tangible and intangible objects which are capable of pecuniary estimation and shall include:

(a) Real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business;

(b) The right or the privilege to use patent, copyright, design or model, plan, secret formula or process, goodwill, trademark, trade brand or other like property or right;

(c) The right or the privilege to use in the Philippines of any industrial, commercial or scientific equipment;

(d) The right or the privilege to use motion picture films, films, tapes and discs; and

(e) Radio, television, satellite transmission and cable television time.

The term *'gross selling price'* means the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding the value-added tax. The excise tax, if any, on such goods or properties shall form part of the gross selling price.

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) *Export Sales.* — The term *'export sales'* means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) Sale of raw materials or packaging materials to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and

accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP):

(3) Sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed seventy percent (70%) of total annual production;

(4) Sale of gold to the Bangko Sentral ng Pilipinas (BSP);

(5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws; and

(6) The sale of goods, supplies, equipment and fuel to persons engaged in international shipping or international air transport operations.

(b) *Foreign Currency Denominated Sale.* — The phrase *'foreign currency denominated sale'* means sale to a nonresident of goods, except those mentioned in Sections 149 and 150, assembled or manufactured in the Philippines for delivery to a resident in the Philippines, paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

(c) Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate.

Thereafter, the Information mentioned *Section 57(B) of the 1997 NIRC*, which deals with EWT (or Creditable Withholding Tax), to wit:

SECTION 57. *Withholding of Tax at Source.* —

xxx xxx xxx

(B) *Withholding of Creditable Tax at Source.* — The Secretary of Finance may, upon the recommendation of the Commissioner, require the withholding of a tax on the items of income payable to natural or juridical persons, residing in the Philippines, by payor-corporation/persons as provided for by law, at the rate of not less than one percent (1%) but not more than thirty-two percent (32%) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year.

xxx xxx xxx

The Information, then, pointed to *Section 79(A) of the 1997 NIRC* dealing with CWT, as follows:

> SECTION 79. *Income Tax Collected at Source.* –
>
> (A) *Requirement of Withholding.* – Except in the case of a minimum wage earner as defined in Section 22(HH) of this Code, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner.
>
> xxx xxx xxx

The Information thereafter referred to *Section 24(B)(2) of the 1997 NIRC,* which deals with final tax on cash and/or property dividends:

> SECTION 24. *Income Tax Rates.* –
>
> xxx xxx xxx
>
> (B) *Rate of Tax on Certain Passive Income:* –
>
> xxx xxx xxx
>
> (2) *Cash and/or Property Dividends.* – A final tax at the following rates shall be imposed upon the cash and/or property dividends actually or constructively received by an individual from a domestic corporation or from a joint stock company, insurance or mutual fund companies and regional operating headquarters of multinational companies, or on the share of an individual in the distributable net income after tax of a partnership (except a general professional partnership) of which he is a partner, or on the share of an individual in the net income after tax of an association, a joint account, or a joint venture or consortium taxable as a corporation of which he is a member or co-venturer:
>
> Six percent (6%) beginning January 1, 1998;
> Eight percent (8%) beginning January 1, 1999;
> Ten percent (10%) beginning January 1, 2000.

Provided, however, That the tax on dividends shall apply only on income earned on or after January 1, 1998. Income forming part of retained earnings as of December 31, 1997 shall not, even if declared or distributed on or after January 1, 1998, be subject to this tax.

Lastly, the Information cited *Sections 253(D) and 256 of the 1997 NIRC*, which are penal provisions, reading as follows:

TITLE X
Statutory Offenses and Penalties

xxx xxx xxx

CHAPTER II
Crimes, Other Offenses and Forfeitures

xxx xxx xxx

SECTION 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 employees responsible for the violation.

xxx xxx xxx

SECTION 256. *Penal Liability of Corporations.* — Any corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees, shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000).[89]

The Information provides that accused, in her capacity as General Manager of NPC, did then and there willfully unlawfully and feloniously fail and refuse to pay tax liabilities despite receipt of assessment notice and demand to pay said deficiency taxes from the

[89] Underscoring ours.

CIR. These allegations refer to *Section 255 of the 1997 NIRC*, which reads as follows:

> SECTION 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* — Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply 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.
>
> xxx xxx xxx[90]

To relate *Section 255 of the 1997 NIRC* to accused, the prosecution cited *Sections 253(D) and 256 of the 1997 NIRC*. A reading of the latter Sections reveals that the following elements must be established by the prosecution, beyond reasonable doubt, in order to secure the conviction of accused in the instant criminal case:

1. That a corporate taxpayer is required under the *1997 NIRC* to pay any tax at the time or times required by law or rules and regulations;

2. That the corporate taxpayer failed to pay the required tax; and

3. That accused, as the person responsible for the violation, willfully failed to pay such tax at the time or times required by law or rules and regulations.

The first two (2) elements are present considering that the assessments have already attained finality. As to the third element, while there was failure to pay the taxes assessed, the presence of the element of willfulness must be established.

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[90] Underscoring ours.

In order for non-payment of tax be deemed a criminal act, it must be "willful," which is a voluntary, intentional violation of a known legal duty.[91] "Willfulness" connotes the existence of knowledge and voluntariness, that is, accused is aware or knows his/her tax liability but voluntarily and intentionally refuses to pay.[92] "Willfulness" is a state of mind that may be inferred from the circumstances of the case,[93] and proof thereof may be, and usually is, shown by circumstantial evidence alone.[94]

Moreover, "willfulness," as an element of an offense, must be proven beyond reasonable doubt. *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.[95]

Based on the case of *Monteverde v. People of the Philippines*[96], it is not required for the defense to prove the innocence of accused; 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.

The prosecution, in its attempt to prove that accused willfully failed to pay taxes, relied solely on the alleged signature of accused in the Annual ITR. However, the falsity of the said signature was sufficiently proven by accused.

In the *Questioned Documents Report No. 26-116* submitted by SDE Dominguez, the subject was the handwriting examination of the questioned signature of accused on the Annual ITR filed on April 15, 2004. Accused provided eight (8) sample signatures, as follows:

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[91] *Mertens Law of Federal Income Taxation, Volume 15, 1988 Ed., Chapter 55A,* p. 76.
[92] CTA Crim. Case No. O-114, May 16, 2012.
[93] *Black's Law Dictionary, 6th Edition,* p. 1599.
[94] *United States v. Grumka,* 728 F.2d 794, 796-97 (6th Cir. 1984); *United States v. Gleason,* 726 F.2d 385, 388 (8th Cir. 1984); *United States v. Marabelles,* 724 F.2d 1374, 1379 (9th Cir. 1984).
[95] Underscoring ours.
[96] *Aurea R. Monteverde v. People of the Philippines,* G.R. No. 139610, August 12, 2002, 387 SCRA 196.

S-MM-1	NPC Partnership Resolution No. 99-01 dated July 28, 1999
S-MM-2	Memorandum of Agreement dated January 23, 2002
S-MM-3	Export and Industry Bank letter to NPC dated March 16, 2004
S-MM-4	NPC letter to Export and Industry Bank dated March 18, 2004
S-MM-5	Letter to Atty. Butch Catubay dated September 27, 2005
S-MM-6	Agreement dated August 20, 2006
S-MM-7	Social Security System Employer Data Change Request dated February 17, 2009
S-MM-8	NPC Export and Industry Bank Loan Amortization Table, undated

The purpose of the examination was "[t]o determine whether or not the questioned and the standard/sample signatures of [']MELINDA MARTIN['] were written by one and the same person." The Report indicated the process of the comparative examination, that is, using stereoscopic microscope, magnifying lens, and with the aid of photographic enlargements (Comparison Chart). It was found that there exist significant differences in handwriting characteristics and habits between the questioned signature and the standard/sample signatures, such as in: *(1)* the manner of execution of strokes; *(2)* the movement or direction of strokes; and *(3)* the structural formation of letter or elements. It was concluded that the questioned signature and the standard/sample signatures were not written by one and the same person.

The prosecution claims that the results are inconclusive. The Court agrees with this. Expert opinions are not ordinarily conclusive in the sense that they must be accepted as true on the subject of their testimony.[97] However, the mere claim of inconclusiveness does not mean that the Courts cannot rely thereon. While expert opinions are generally regarded as purely advisory in character, the courts may place whatever weight they choose upon such testimony, if they find that it is consistent with the facts in the case or otherwise unreasonable.[98]

The conclusion that the signatures were not from the same person is consistent with the defense's claim that, as General Manager of NPC, accused is only in charge of production and delivery of plastic containers to LFC; that Mr. Lorenzana, as President of NPC, is in charge of the financial aspects of the business, including the payment

[97] *Punzalan v. Commission on Elections, et. al.,* G.R. Nos. 126669, 127900, 128800 and 132435, April 27, 1998, 289 SCRA 702, citing *Francisco on Evidence, Vol. VII, Part 1,* p. 662.
[98] *Id.*

of bills and taxes; that Mr. Lorenzana filed the Annual ITR of NPC for 2003 for this is within his responsibility; and that the first time accused saw the Annual ITR was during the marking of exhibits on August 28, 2012.

Moreover *Section 3(m), Rule 131 of the Revised Rules of Court* must be kept in mind, to wit:

> RULE 131
> *Burden of Proof and Presumptions*
>
> xxx xxx xxx
>
> SECTION 3. *Disputable presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
>
> xxx xxx xxx
>
> (m) That official duty has been regularly performed;
>
> xxx xxx xxx

In the case at bar, the *Questioned Documents Report No. 26-116* was submitted by SDE Dominguez (a Senior Document Examiner of the NBI), approved by the Chief of the Questioned Documents of the Laboratory Division, and noted by the Deputy Director of the Forensic Investigation Service, all of the NBI. Hence, there is a disputable presumption that official duty was regularly performed and the prosecution failed to provide rebuttal evidence thereto. Therefore, the Court has no reason to disregard the findings of accused's expert witness from the NBI.

More importantly, the testimonies and evidence of the prosecution all revolve around NPC. Aside from the forged signature of accused in the Annual ITR, no other evidence was presented by the prosecution to link accused to the crime charged. No clear and convincing evidence was presented by the prosecution to sustain the allegation that accused is guilty of willfully failing to pay taxes. There is nothing on record that even insinuates or suggests her participation or knowledge in the commission of the offense charged. In all criminal prosecutions, accused is presumed innocent until the contrary is proved beyond reasonable doubt. In the case of accused, the prosecution simply failed to overcome this constitutional presumption.

WHEREFORE, premises considered, accused Merlinda Martin is hereby **ACQUITTED** of the crime charged.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

A T T E S T A T I O N

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

C E R T I F I C A T I O N

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