REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

XEPESYS, INC., SEOKKYU JANG (President), and FE A. AJOC (Treasurer),
Accused.

CTA CRIM. CASE NO. O-766
For: Violation of Section 255, in relation to Sections 253 and 256 of the NIRC of 1997, as amended

Members:
RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:
AUG 13 2024
9:10 a.m.

x--x

DECISION

RINGPIS-LIBAN, J.

The Case

Accused Seokkyu Jang (Jang) and Fe. A Ajoc (Ajoc) were charged in their capacity as President and Treasurer, respectively of Xepesys, Inc. (Xepesys), for violation of Section 255, in relation to Sections 253 and 256 of the National Internal Revenue Code (NIRC) of 1997, as amended, for failure of Xepesys to pay its deficiency Value-Added Tax (VAT) for taxable year 2011.

Xepesys is a domestic corporation registered with the Securities and Exchange Commission (SEC) under SEC Registration No. CS 200614511 on 11 September 2006 and with the BIR Revenue District Office (RDO) No. 043-Pasig City with Tax Identification Number 006-345-130. It is engaged in the business of offering and implementing training for technical and vocational education. Its registered business address is at 20[th] Floor, Pacific Center Bldg., 33 San Miguel

Avenue, Ortigas Ctr., Pasig City, where it may be served with summons, notices, and other legal processes by the Court.[1]

The plaintiff, on the other hand, is represented by the Bureau of Internal Revenue (BIR), the government agency primarily tasked to collect internal revenue taxes for the support of the government, with office at the BIR, Legal Division, Revenue Region 7B, 25th Floor The Podium, West Tower, 12 ADB Avenue, Ortigas Center, Mandaluyong City.

The Information reads as follows:

> "That on or about August 2017, in Quezon City, and within the jurisdiction of this Honorable Court, accused, **XEPESYS INC.** a domestic corporation and **SEOKKYU JANG** being the President and **FE A. AJOC** being the Treasurer thereof, required by law to file income tax return and to pay the corresponding tax, did then and there willfully, unlawfully and feloniously fail to pay **Value-Added Tax (VAT)** for taxable year 2011 in the amount of Five Million Four Hundred Twenty Four Thousand Five Hundred Seven Pesos and Forty Three Centavos (P5,424,507.43), exclusive of surcharges and interests, corresponding to the four (4) quarters of taxable year 2011, despite receipt of final assessment notice, including prior and post notices and final demands to pay the last being in the form of demand before suit issued on August 29, 2017, to the damage and prejudice of the government.
>
> CONTRARY TO LAW."

On August 7, 2019, the Third Division of this Court issued a Resolution[2] ordering the issuance of Warrants of Arrest for Jang and Ajoc.

On August 9, 2019, the Court issued the Warrants of Arrest[3] for both Jang and Ajoc.

On September 18 and 24, 2019, the Warrant and Subpoena Section, Pasig City Police Station submitted the Returns of Warrant of Arrest for Jang and Ajoc stating that the said accused cannot be located during the time of service.[4]

On October 3, 2019, Special Investigator Baldomero T. Katigbak, Jr. of the National Bureau of Investigation (NBI) submitted the Returns of Warrants

---

[1] Joint Complaint Affidavit, Docket, CTA CRIM. CASE NO. O-766, p. 21.
[2] Docket, p. 60.
[3] Docket, pp. 61-64.
[4] Docket, pp. 74-75, 88-89.

of Arrest[5] for Jang and Ajoc. Attached to the said Returns is the Certification[6] issued by Ma. Beverly R. dela Cruz, Administrative Assistant of Pacific Center Condominium, stating that there "[There is] no tenant named Seokkyu Jang and Fe A. Ajoc in Pacific Center Condominium Inc."

On October 15, 2019, the Court issued a Resolution[7] noting the Returns of the Pasig City Police Station, and the NBI. In the same Resolution, the Court ordered the issuance of Alias Warrants of Arrest for both Jang and Ajoc.

On several dates,[8] the Court issued Alias Warrants of Arrest for Jang and Ajoc, in response to the Returns[9] of Alias Warrants of Arrest by the Warrant and Subpoena Section, Pasig City Police Station, and by the NBI. The case was also archived.

On November 26, 2021, the Court received the Formal Entry of Appearance with Motion for Reduction of Bail[10] filed by Ajoc, through her counsel, Atty. Yvonne Gaddi-Festejo, who entered her appearance as counsel for Ajoc, and stated that Ajoc intends to voluntarily surrender and post bail, but since she has no visible means of income, prayed that her bail be reduced by fifty percent (50%) of the recommended amount to be paid in cash.

On March 1, 2022, the Court issued a Minute Resolution noting the Entry of Appearance of Atty. Yvonne Gaddi-Festejo.[11] On even date, the Court issued a Minute Resolution ordering the instant case be removed from the archives and granting the Motion for Reduction of Bail filed by Ajoc.

On November 10, 2022, Ajoc voluntarily appeared before the Court and submitted herself to the jurisdiction of the Court by posting a cash bond in the amount of Php30,000.00, for her provisional liberty.

The Warrant of Arrest against Jang remained outstanding.

During the arraignment of Ajoc and Pre-Trial Conference on November 23, 2022, Ajoc with the assistance of her counsel de parte, pleaded "Not Guilty" to the crime charged. The Pre-Trial of the case immediately proceeded. Thereafter, the parties were ordered to submit their Joint Stipulation of Facts and Issues on or before December 23, 2022.[12]

[5] Docket, pp. 77 and 83.
[6] Docket, pp. 80 and 86.
[7] Docket, pp. 92-93.
[8] Alias Warrants of Arrest dated October 17, 2019, February 14, 2020, June 20, 2020, September 30, 2020, January 6, 2021, July 9, 2021, and October 4, 2021.
[9] Return of Alias Warrants of Arrest received by the Court on November 19, 2019, March 11, 2020, September 8, 2020, December 14, 2020, June 22, 2021, and October 8, 2021.
[10] Docket, pp. 200-201.
[11] Docket, p. 199.
[12] Docket, Order, pp. 240-241.

On January 17, 2023, the Court issued a Resolution stating that the parties shall be deemed to have waived the filing of their Joint Stipulation of Facts and Issues since they failed to file the same within the given period. Hence, the Court ordered the issuance of Pre-Trial Order on the basis of the matters agreed upon in the Pre-Trial Conference.[13]

On February 8, 2023, the Court issued a Pre-Trial Order.[14]

Trial for Ajoc ensued and, to prove its case, the plaintiff presented its lone witness, Revenue Officer Irene G. Estur (RO Estur).

The plaintiff's witness, ***RO Estur,***[15] testified on direct examination by way of her Judicial Affidavit.[16] She testified that it was her duty to investigate/audit the books of accounts and other accounting records of taxpayers, to ascertain their tax compliance and determine their tax liabilities, if any, and to assess and/or recommend collection thereafter and assist the public whenever she was assigned as Office of the Day or ONETT officer. For accused Xepesys, she was tasked to conduct examination of books of accounts and other accounting records for all internal revenue taxes for taxable year 2011.

On August 28, 2012, Letter of Authority (LOA) 043A-201200000635[17] was issued for the conduct of examination of Xepesys' accounts. On August 31, 2012, the LOA and First Notice for Presentation of Records[18] were served to Xepesys. On September 3, 2014, she prepared the Memorandum Report and recommended that the docket of the case be forwarded to the Assessment Division for issuance of Preliminary Assessment Notice (PAN).[19] The PAN was issued on December 2, 2014. On December 19, 2014, the Formal Letters of Demand (FLD)[20] with Details of Discrepancies and Assessment Notices for Income Tax,[21] VAT [22]and EWT[23] were issued. She personally served the said notices on January 22, 2015 by leaving them to a certain Jonathan Alvendia. Since there was no payment nor protest filed by Xepesys within thirty (30) days from receipt of the FLD, the tax deficiencies for taxable year 2011 of Xepesys became final and executory. Thus, she forwarded the docket of the case to the Collection Division for collection. The BIR issued and served to accused the Preliminary Collection Letter (PCL)[24] and Final Notice Before Seizure (FNBS).[25] The

---

[13] Docket, pp. 260-261.
[14] Docket., pp. 264-270.
[15] Testified on April 12, 2023.
[16] Docket, pp. 292-297.
[17] Exhibit "P-1".
[18] Exhibit "P-2".
[19] Exhibit "P-4".
[20] Exhibit "P-5".
[21] Exhibit "P-5-2".
[22] Exhibit "P-5-3".
[23] Exhibit "P-5-4".
[24] Exhibit "P-6".
[25] Exhibit "P-7".

Collection Division issued Warrant of Distraint and/or Levy[26] and Warrants of Garnishment[27] against the properties and bank accounts of Xepesys. Thereafter, the case was forwarded to the Legal Division for the issuance and service of Demand Before Suit (DBS)[28] to Jang (President), accused Ajoc (Treasurer), Jonathan C. Alvendia (Corporate Secretary) of Xepesys.

The BIR filed three (3) criminal complaints with the Department of Justice against Xepesys, Jang and Ajoc for violation of Section 255, in relation to Sections 253 and 256 of the NIRC of 1997, as amended, for non-payment of income tax, VAT and withholding tax. She identified the Investigation Data Form,[29] Referral Letter signed by Commissioner Caesar Dulay[30] and Joint Complaint Affidavit.[31]

On cross-examination, RO Estur testified that she signed the Joint Complaint Affidavit dated July 27, 2018. The Referral Letter signed by Commissioner Dulay was dated July 26, 2018. She has no knowledge whether there was already an existing case prior to the execution of the Referral Letter. She admitted that the Joint Complaint Affidavit was executed after the Referral Letter was given by Commissioner Dulay.

RO Estur further admitted that the LOA dated August 28, 2012 authorized RO Delfin Sunga and Group Supervisor Chito Cabal to examine the Books of Accounts and other accounting records of Xepesys and that her name does not appear in the LOA. She did not personally serve to Ajoc the LOA, hence, she cannot identify the signature appearing at the received portion of the LOA. She has no personal knowledge regarding the service of the First Request for Presentation of Records. On the Memorandum for Issuance of PAN dated September 8, 2014, the address of accused Xepesys was Unit 1006-1009 AIC Burgundy Empire Tower ADB Avenue, Ortigas, Pasig City.

She was issued a Memorandum of Assignment when she took over the examination of Xepesys in 2014. She prepared the PAN for the three (3) deficiency taxes, *ie.* Income tax, VAT and deficiency expanded withholding tax. She has no knowledge if Ajoc and Xepesys learned about the PAN. The Assessment Division sent by registered mail, the Formal Letter of Demand (FLD). She does not know if accused received the FLD and the Details of Discrepancies. She signed the Affidavit of Service attesting to the fact that that the FAN addressed to Xepesys was left to a certain "Jonathan Alvendia." She has no personal knowledge if Ajoc received the PCL and FNBS.

---

[26] Exhibit "P-8".
[27] Exhibit "P-9" to "P-20".
[28] Exhibit "P-21".
[29] Exhibit "P-22".
[30] Exhibit "P-23".
[31] Exhibit "P-24".

She filed her Complaint Affidavit before the National Prosecution's Service in Padre Faura on July 27, 2018, the same date when she prepared the Complaint Affidavit.

During the Pre-Trial Conference, the parties stipulated on the following matters: a) RO Estur was able to identify her judicial affidavit, her signature thereon and the documents stated in her judicial affidavit; b) The case filed for deficiency income tax was already decided by the First Division of this Court; c) Ajoc was acquitted in the said case; and d) The set of documentary exhibits used in the case before the First Division are the same set of documentary exhibits used for the instant case for non-payment of VAT.

On April 27, 2023, the plaintiff filed its Formal Offer of Evidence[32] then rested its case with the admission of its documentary evidence in the Resolution dated June 22, 2023.[33]

For the defense, accused presented herself to prove her innocence of the crime charged against her.

Accused ***Fe A. Ajoc,***[34] testified that the LOA dated August 28, 2012 was addressed to Xepesys Inc. at 20th Floor Pacific Center Building, San Miguel Avenue, Ortigas, Pasig City. She did not hold office at the 20th Floor Pacific Center Building, San Miguel Avenue Ortigas, Pasig City from the time of her employment from 2008 to 2012. As proof thereof, she presented her Identification Card at Xepesys Inc.[35] showing that the address of accused Xepesys is at Unit 1006-1009 AIC Burgundy Tower Building, ADB Avenue, Ortigas Center, Pasig City. She does not know who holds office at 20th Floor Pacific Center Building, San Miguel Avenue Ortigas, Pasig City. She denied as hers the signature on top of her name appearing on the bottom right side of the LOA. She presented her Identification Card at Xepesys Inc. and Social Security System (SSS) Identification Card to show her signature. She did not receive nor write her name on the First Request for Presentation of Records.

She further testified stated that she started as an Accounting Clerk of accused Xepesys. Her immediate superior then was Mr. Arsenio Cabiling, the Accounting Manager of Xepesys. She was in-charge of recording the transactions like disbursements and doing errands for Mr. Cabiling. She did not report directly to Mr. Jang. She never talked to Mr. Jang because she was just a clerk. Mr. Cabiling resigned sometime in 2011. When she needed to apply for a loan at PAG-IBIG, the Human Resource Manager Mr. Gregorio Ocampo told her that she will be given a Certificate of Employment with designation as Accounting Manager so that she could apply loan for a higher amount. As proof of her

[32] Docket, pp. 305-309.
[33] Docket, pp. 316-317.
[34] Testified on September 7, 2023; Judicial Affidavit (Exhibit "A-5"), pp. 271-282.
[35] Exhibit "A-1".

employment with accused Xepesys, she presented her pay slips from June 16-31, 2011, July 1-15, 2011, September 1-15 and 16-30, 2011 and December 16-31, 2011, and her Certificate of Employment dated July 28, 2011.[36] Despite her designation as Accounting Manager, she still did her work as a clerk. Xepesys hired the firm of Isidro Redoble and Associates, an accounting firm to do the accounting work of Xepesys. She came to know about it because she received their billings, and prepared the voucher and check payment. She did not know that she was appointed as Treasurer of Xepesys. Her Tax Identification Number appeared in the documents of the Securities and Exchange Commission (SEC) because it was needed by Xepesys for her salary and withholding of taxes. Her employment with Xepesys was terminated in 2012.

The testimony of Ajoc was completed and terminated without cross-examination.

The defense filed the Formal Offer of Evidence[37] on September 13, 2023. and rested her case with the admission of her documentary evidence in the Resolution dated January 10, 2024.[38]

In the Minute Resolution dated May 15, 2024,[39] the instant case was submitted for decision.

The Issues

This Court is confronted with these issues:[40]

1. Whether or not the accused is guilty beyond reasonable doubt of the offense charged.

2. Whether or not the VAT deficiency assessment issued against the accused for taxable year 2011 has become final, executory and demandable.

The Ruling of the Court

Referral Letter issued by the Commissioner of Internal Revenue (CIR)

---

[36] "Exhibits "A-4", "A-4-A", "A-4-B", "A-4-C", "A-4-D".
[37] Docket, pp. 326-328.
[38] Docket, pp. 337-338.
[39] Docket, p. 340.
[40] Docket, Pre-Trial Order, p. 264-270.

Section 2, Rule 9 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, states that:

> "All criminal actions before the Court in Division in the exercise of its original jurisdiction shall be instituted by the filing of an information in the name of the People of the Philippines. **In criminal actions involving violations of the National Internal Revenue Code and other laws enforced by the Bureau of Internal Revenue, the Commissioner of Internal Revenue must approve their filing.** In criminal actions involving violations of the Tariff and Customs Code and other laws enforced by the Bureau of Customs, the Commissioner of Customs must approve their filing.
>
> The institution of criminal action shall interrupt the running of the period of prescription." *(Emphasis supplied)*

The Referral Letter of the case signed by Commissioner Dulay dated July 26, 2018 reads as follows:

> "Sir:
>
> The Bureau of Internal Revenue ("BIR") respectfully refers to your kind office, for preliminary investigation and filing of an Information in court, if evidence so warrants, the herein attached Joint-Complaint-Affidavit, together with the Annexes, of **ATTY. CHERYL A. HERNANDEZ** and Revenue Officers **IRENE G. ESTUR** and **SOLITA C. MAURICIO** all employees of the BIR, recommending the criminal prosecution of **XEPESYS, INC. ("Respondent XEPESYS")** and its responsible corporate officers, **SEOKKYU JANG and MS. FE A. AJOC**, President and Treasurer, respectively, with registered business address at 20th Floor, Pacific Center Building, 33 San Miguel Avenue, Ortigas Center, Pasig City, for its Willful Failure to Pay Taxes for taxable year 2011 in violation of **Section 255** in relation to **Section 256** of the National Internal Revenue Code of 1997 (NIRC of 1997), as amended.
>
> xxx xxx xxx
>
> Our investigation showed that **Respondent XEPESYS** willfully failed to pay its deficiency income tax, value-added tax and expanded withholding tax for taxable year 2011 in the aggregate amount of Php10,308,857,58, inclusive of surcharge and interest.
>
> **XEPESYS, INC.** and its responsible corporate officers, **SEOKKYU JANG and MS. FE A. AJOC**, President and Treasurer, respectively, are also being sued for tax deficiencies

amounting to Ten Million Three Hundred Eight Thousand Eight Hundred Fifty Seven and 58/100 (Php10,308,857.58) inclusive of surcharges and interests, as civil liabilities for taxable year 2011.

ATTYS. OSCAR A. AGUILAR, PHILIP A. MAYO and CHERYL A. HERNANDEZ of the Legal Division, Revenue Region No. 7-Quezon City with office address at the 5th Floor, Roof Deck, Fisher Mall, Quezon Avenue cor. Roosevelt Avenue, Quezon City, are hereby designated to represent this Bureau in the preliminary investigation and prosecution of the case, who may be furnished with all the notices of the proceedings to be taken thereon at the above-mentioned address.

This constitutes as authority and approval for the filing and institution of the foregoing criminal complaint and the corresponding filing of the information before the appropriate court pursuant to the provisions of Section 220 of the (NIRC of 1997), as amended." *(Emphasis supplied)*

The above-quoted Referral Letter[41] addressed to Department of Justice (DOJ) Secretary Menardo I. Guevarra was dated July 26, 2018. The last paragraph thereof states that the said letter "constitutes as authority and approval for the filing and institution of the **foregoing** criminal complaint and the corresponding filing of the information before the appropriate court..." the word "foregoing" presupposes that there was already a complaint executed prior to the issuance of the said Referral Letter authorizing the filing of the case against Jang, Ajoc and Xepesys. However, a perusal of the record shows that the "Joint Complaint Affidavit" executed by Cheryl A. Hernandez, Irene G. Estur and Solita C. Mauricio[42] consisting of six (6) pages was executed, subscribed and sworn to before Senior State Prosecutor Edwin S. Dayog on July 27, 2018. Therefore, the Referral Letter in this case is defective. It was executed prior to the execution of the Joint Complaint Affidavit of the revenue officers. The instant case was filed without the requisite authority from the CIR. Hence, it violates Section 2, Rule 9 of the 2005 Revised Rules of the Court of Tax Appeals, as amended.

Assuming there was a simple mistake in the date of the Referral Letter, accused is still not criminally liable.

The plaintiff failed to prove that Ajoc is criminally and civilly liable.

The relevant provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, are as follows:

[41] Exhibit "P-23."
[42] Exhibit "P-24."

"**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 any 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 laws 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 (P10,000.00) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

x x x

Sec. 253. General Provisions. – x x x

(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."

Sec. 256. Penal Liability of Corporation. – 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 (P50,000.00) but not more than One hundred thousand pesos (P100,000.00)."

The plaintiff must prove beyond reasonable doubt the following three (3) essential elements before a taxpayer can be held liable under Section 255 of the NIRC:

1. The accused is the person required under the Tax Code or by rules and regulations to file a return, to pay the tax and supply correct and accurate information;
2. The accused failed to file a return, to pay the tax and supply correct and accurate information at the time required by law; and
3. Such failure was willful.

It is thus necessary for the plaintiff to prove that (a) Xepesys was a registered taxpayer in 2011, (b) Ajoc is a responsible officer of the corporation, (c) the BIR issued the subject assessment notices pursuant to Section 228 of the NIRC, (d) Xepesys, through its responsible officer or authorized representatives received the same, and (e) the non-payment of taxes was willful.

A. Xepesys is a juridical person required to pay its taxes

Section 22 (B) of the NIRC, of 1997, as amended defines a corporation as follows:

> "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 of business."

Section 23(E) of NIRC of 1997, as amended to wit:

> "SEC. 23. **General Principles of Income Taxation in the Philippines.** - Except when otherwise provided in this Code: x x x (E) A domestic corporation is taxable on all income derived from sources within and without the Philippines; x x x"

To prove that Xepesys is a juridical person required to pay its taxes under Section 23(E) of NIRC of 1997, as amended, the plaintiff must present evidence that Xepesys is a registered taxpayer of Revenue Region No. 7, Revenue District Office 43A. A perusal of the evidence adduced by plaintiff shows that there is no document exhibiting that Xepesys was a registered taxpayer in 2011. Thus, there is nothing which could prove that the ROs have authority and jurisdiction to conduct the examination of Xepesys' records.

Under Sec. 256 of the NIRC of 1997, as amended which we previously quoted, penal liability for violations of Sec. 255 is pinned upon the responsible officer of the corporation. Hence, before a person can be charged as a responsible officer of a corporation, it must be shown that said person is an officer of the corporation during the taxable year subject of the case.

The Articles of Incorporation and the General Information Sheet of Xepesys were not presented in Court. The plaintiff did not present evidence that will disclose the names of the responsible officers of Xepesys at the time the crime was allegedly committed. None of the plaintiff's documentary evidence proved that Ajoc was the Treasurer of Xepesys Inc. during the subject taxable year. Furthermore, the RO Estur failed to pinpoint Ajoc as a responsible officer of the Xepesys. RO Estur merely testified about the circumstances of the issuance of the PAN and FAN.

The documentary exhibits presented by plaintiff show that the official notices, more importantly the PAN and the FLD/FANs of this case were addressed to Xepesys without including the name of Ajoc as its responsible officer.

Therefore, plaintiff was not able to establish that Ajoc is one of the responsible officers of Xepesys.

B. The assessment notices issued by the BIR is not in conformity with the rules.

RO Estur admitted that she conducted the examination of Xepesys' account without the requisite LOA. Her name does not appear in the LOA. She was authorized by way of a Memorandum of Assignment.

RO Estur testified[43] as follows:

ATTY. FESTEJO

Q May I direct your attention to the Letter of Authority marked as Exhibit P-1, can you tell the Court what is the significance of the Letter of Authority?

MS. ESTUR

A The Letter of Authority will authorize us to investigate the taxpayer.

ATTY. FESTEJO

Q When you say investigate, it authorizes to examine the Books of Accounts and other accounting records, correct?

MS. ESTUR

A Yes, Ma'am.

[43] TSN dated April 12, 2023, pp. 32-39.

ATTY. FESTEJO

Q Of specific taxpayer, correct?

MS. ESTUR

A Yes, Ma'am.

ATTY. FESTEJO

Q In this Exhibit P-1 specifically for Xepesys Incorporated, correct?

MS. ESTUR

A Yes, Ma'am.

ATTY. FESTEJO

Q You will agree with me that your name does not appear in the Letter of Authority, correct?

MS. ESTUR

A Yes, Ma'am.

ATTY. FESTEJO

Q In fact, it authorizes RO D. Sunga and GS Chito Cabal, correct?

MS. ESTUR

A Yes, Ma'am.

ATTY. FESTEJO
Q What is GS?

MS. ESTUR

A Group Supervisor.

ATTY. FESTEJO

Q So, when you conducted the examination earlier you said it was you who examined the Books of Accounts and other Accounting Records of Xepesys, when you made the examination you had no Letter of Authority coming from the RDO Quezon City, correct?

MS. ESTUR

A Yes, ma'am.

ATTY. FESTEJO

Q This August 28, 2012 and according to you, you were not authorized to examine as borne out with this Letter of Authority?

ATTY. LOPEZ

Objection, Your Honors.

ATTY. FESTEJO
Q Her name does not appear.

JUSTICE LIBAN

The name is not in the Letter of Authority?

ATTY. FESTEJO

Yes, Your Honors.

MS. ESTUR

Yes po, Your Honor.

JUSTICE LIBAN
More accurate.

ATTY. FESTEJO

Q And the date is August 28, 2012, Ms. Witness, correct?

MS. ESTUR

A Yes, Ma'am.

ATTY. FESTEJO

Q During this date you were assigned to another taxpayer, correct?
MS. ESTUR
A Yes, Ma'am.

ATTY. FESTEJO

Q So, you will agree with me that it was not you who personally served this Letter Authority to the taxpayer, correct?
MS. ESTUR

A Yes, Ma'am.

ATTY. FESTEJO

Q So, you cannot identify the signature appearing on the *received by* portion, correct?

MS. ESTUR

A Yes, Ma'am.

ATTY. FESTEJO

Q Now, I will go on to another document which you indicated in your Judicial Affidavit which was marked as Exhibit P-2, this is denominated as a first request for presentation of records. You also do not have personal knowledge regarding the service of this Exhibit P-2, correct?

MS. ESTUR

A Yes, Ma'am.

ATTY. FESTEJO

Q Because it was served in 2012 during the time where you were assigned to another taxpayer, correct?
MS. ESTUR

A Yes, ma'am.

ATTY. FESTEJO

Q So, again you cannot identify the handwritten entries on the bottom portion of the same page, correct?

MS. ESTUR

A Yes, Ma'am.

ATTY. FESTEJO

Q And you cannot testify before this Court if indeed the taxpayer received a copy of the first request for presentation of records, correct?

MS. ESTUR

A Yes, Ma'am.
ATTY. FESTEJO

Q In the same manner that you cannot also testify before this Court that the Letter of Authority was received by the taxpayer, correct?

MS. ESTUR

A Yes, Ma'am.

ATTY. FESTEJO

Q I will move on to Exhibit P-3 which is the Memorandum for the Issuance of Preliminary Assessment Notice. What is the date of this document, Ms. Witness?

MS. ESTUR

A I think this is dated September 8.

ATTY. FESTEJO

Q What year, Ms. Witness, because the date was covered by the marking as Annex C?

MS. ESTUR

A I think the date is September 8, 2014.

ATTY, FESTEJO

Q In 2014 when you took over the examination of Xepesys Incorporated, correct?

MS. ESTUR
A Yes, Ma'am.

ATTY. FESTEJO

Q You did not receive a Letter of Authority to document you took over, correct?

MS. ESTUR

May I object to that?

ATTY. FESTEJO

You are not allowed to object, you are only allowed to answer with a yes or no, Ms. Witness.

MS. ESTUR.

I'm sorry po.

JUSTICE LIBAN

You do not have a Letter of Authority in your name to examine this?

MS. ESTUR

Yes po, Your Honor, but I have a Memorandum of Assignment.

ATTY. FESTEJO
May I proceed, Your Honors.

JUSTICE LIBAN

Yes.

ATTY. FESTEJO

Q Let us go to the document marked as Exhibit P-4 which is a preliminary assessment notice dated December 2, 2014. Who prepared this Preliminary Assessment Notice?

MS. ESTUR

A Ako po."

The instant case arose from an assessment made by the BIR to collect deficiency taxes, thus, the assessment process must start with the issuance of a LOA.

Under Section 6(A) of the NIRC of 1997, as amended, the power to authorize examination of a taxpayer and issue assessments is primarily lodged with CIR, thus:

> **SECTION 6.** *Power of Make Assessments and Requirements for Tax Enforcement.* –
>
> *(A) Examination of Returns and Determination of Tax Due.* – After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer. x x x.

A RO must be armed with an authority before he could conduct an examination of a taxpayer's accounts. This is specifically stated in Section 13 of the NIRC of 1997, as amended.

> **SEC. 13.** *Authority of a Revenue Officer.* – Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the

correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.

Having admitted that she was not armed with a LOA, RO Estur's examination and assessment of Xepesys' accounts is thus void.

In the case of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*,[44] the Supreme Court held that there must be a grant of authority before any revenue officer can conduct an examination or assessment and that the said authorized revenue officer must not go beyond the authority granted. In the absence of such an authority, the assessment or examination is a complete nullity.

C. and D. There was no proof that the subject assessment notices were issued and received by the responsible officers of Xepesys pursuant to Section 228 of the NIRC of 1997 as amended.

Section 228 of the NIRC of 1997, as amended, provides:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a pre-assessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30)

---

[44] G.R. No. 178697, November 17, 2010.

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.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Relative thereto are Sections 3.1.4 and 3.1.5 of Revenue Regulations (RR) No. 12-99 implementing the aforesaid provision, to wit:

"3.1.4 *Formal Letter of Demand and Assessment Notice.* – The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void* (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.

3.1.5 *Disputed Assessment.* – The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. xxx

xxx xxx xxx

In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable; Provided, however, that if the taxpayer elevates his protest to the Commissioner within (30)

> days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.
>
> If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable."

To prove that the assessment notices were issued and sent to Xepesys, the plaintiff presented and offered in evidence the registry receipts[45] showing that the PAN, FAN, PCL, FNBS and DBS were sent by registered mail to accused Xepesys at 20th Floor, Pacific Center Building, 33 San Miguel Avenue. Ortigas Center, Pasig, Metro Manila, and at unit 1006-1009 AIC Burgundy Empire Tower, ADB Avenue, San Antonio Ortigas Center, Pasig, Metro Manila. However, there was no proof that Xepesys received the assessment notices through its responsible officers or authorized representative. Plaintiff did not present the return cards showing the names of the persons who actually received the notices sent. Aside from the registry receipts and Affidavit of Service of Final Assessment Notice,[46] no other evidence was presented to show that the assessment notices issued by the BIR were validly served to Xepesys or to Ajoc.

In the case of *Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue*,[47] the Supreme Court held that it is a requirement of due process that the taxpayer must actually receive the assessment.

> "Respondent argues that an assessment is deemed made for the purpose of giving effect to such assessment when the notice is released, mailed or sent to the taxpayer to effectuate the assessment, and there is no legal requirement that the taxpayer receive said notice xxx Although there is no specific requirement that the taxpayer should receive the notice within said period, due process requires at the very least that such notice actually be received. "In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*, we had occasion to say:
>
> > An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when

---

[45] Exhibits "P-4-1", "P-5-4", "P-6-1", "P-7-1", and "P-21-1".
[46] Exhibit "P-5-5."
[47] G.R. No. 155541, January 27, 2004.

> penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer.
>
> xxx.
>
> It appearing that the person liable for the payment of the tax did not receive the assessment, the assessment could not become final and executory."

Thus, the failure of the BIR to prove receipt of the assessment notices by Xepesys leads to the conclusion that no assessment was validly issued.

An assessment that was issued in violation of the provisions of the NIRC of 1997, as amended is void. A void assessment bears no valid fruit.[48] Considering that the assessment issued by the CIR against petitioner is void, there is no more amount to collect since a void assessment cannot be a basis for collection of deficiency tax assessment.

E. Accused did not willfully fail to pay the assessed deficiency VAT.

An act or omission is "willfully" done, if done voluntarily and intentionally and with specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to obey or to disregard the law.[49]

To attribute to accused a "willful failure to pay" the tax, it must be shown that such failure or omission by accused was done knowingly, intentionally and with the specific intent not pay the tax. In other words, it must be shown that accused was aware of his obligation to pay the tax, but he nevertheless voluntarily, knowingly and intentionally failed to pay it.

A scrutiny of the pieces of evidence before this Court clearly shows that there is not enough competent evidence to support the verdict of guilt of Ajoc. Plaintiff failed to prove all the elements of the crimes charged against Ajoc. The mere presentation of the documents covering the alleged tax liabilities of Xepesys is not substantial proof that there are violations of the NIRC for which Xepesys and Ajoc should be held criminally liable. Moreover, the plaintiff failed to establish that there was due process in the issuance of the subject assessment notices, which are the bases of the criminal complaint and Information for willful failure to pay the VAT. The plaintiff failed to prove Ajoc's authorship of the crime charged.

---

[48] *Commissioner of Internal Revenue vs. Azucena T. Reyes, etseq.*, G.R. Nos. 159694 and 163581, January 27, 2006.
[49] Black's Law Dictionary, 6th Edition, p. 1599.

In criminal cases, the burden is on the prosecution to prove, beyond reasonable doubt, the essential elements of the offense with which the accused is charged; and if the proof fails to establish any of the essential elements necessary to constitute a crime, the accused is entitled to acquittal. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding the possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. At best, the evidence proffered by the prosecution only goes so far to create a suspicion that accused probably perpetrated the crime charged. But suspicion alone is insufficient, the required quantum of evidence being proof beyond reasonable doubt. When the People's evidence fail to indubitably prove the accused's authorship of the crime of which he stands accused; then it is the Court's duty, and the right of the accused, to proclaim his innocence.[50]

Civil liability of accused Ajoc

The civil liability of Xepesys and Ajoc is deemed instituted herewith pursuant to R.A. No. 1125, as amended by Section 7(b) 1 of R.A. No. 9282, which provides that "the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized."

As previously discussed, the assessment notices were issued by RO Estur who had no authority to conduct the audit examination. Consequently, the PAN, FAN and FLD are all void. Therefore, the fact from which the civil liability might arise does not exist.

Considering that the criminal liability of Ajoc was not established by the plaintiff, it follows that the criminal liability of the corporation, Xepesys Inc. is also extinguished. This conclusion necessarily includes the civil liability as it derives its existence from the crime allegedly committed.

Accordingly, the Court finds no reason to ascribe any civil liability to Xepesys and Ajoc.

WHEREFORE, premises considered, this case is **DISMISSED for failure of the plaintiff to prove beyond reasonable doubt the guilt of accused FE A. AJOC and to establish the validity of the assessments as basis for the civil liability.** Therefore, accused **FE A. AJOC** is hereby **ACQUITTED** of the crime charged against her.

---

[50] *Darwin vs. Court of Appeals, et al.*, G.R. No. 125044, July 13, 1998.

As regards **accused SEOKKYU JANG**, the case against him shall be **ARCHIVED** for the meantime pending his apprehension. Accordingly, let an Alias Warrant of Arrest be issued against him.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

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

MA. BELEN M. RINGPIS-LIBAN
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 case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice