REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA CRIM. CASE NO. O-617
For: Violation of Section 255, in relation to Sections 253 (d) and 256, of the NIRC of 1997, as amended.

- versus -

BONNER PURPURA ARMADA,
Accused.

x--------------------------------------x

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA CRIM. CASE NO. O-618
For: Violation of Section 255, in relation to Sections 253 (d) and 256, of the NIRC of 1997, as amended.

- versus -

Members:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, *and*
BACORRO-VILLENA, *JJ.*

BONNER PURPURA ARMADA,
Accused.

Promulgated:
JUN 0 8 2020
9:15 a.m.

x - x

DECISION

BACORRO-VILLENA, J.:

At bar are two (2) consolidated criminal cases filed against accused Bonner Purpura Armada (**accused**) for violation of Sections 255[1], in relation to Sections 253(d)[2] and 256[3] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, for taxable year (**TY**) 2007.

The Department of Justice (**DOJ**) filed the corresponding Amended Informations[4], docketed as Criminal Case Nos. O-617 and O-618, are as follows:

> Crim. Case No. O-617
>
> ...
>
> That on or before September 2014 and thereafter, in Manila, and within the jurisdiction of this Honorable Court, accused **Mr. Bonner Purpura Armada** as owner of Jovick Trading, did then and there willfully, unlawfully, and feloniously fail to pay the basic deficiency value-added tax for taxable year 2007, in the amount of Ten Million Two Hundred Fifty Four Thousand Sixty Two Pesos and Seventy Eight Centavos (Php10,254,062.78) exclusive of penalties, surcharges and interest, despite final assessment notice, including prior and post notices and formal demands to pay, the latest of which was issued by the BIR on September 2014, to the damage and prejudice of the government.
>
> CONTRARY TO LAW.
>
> ...

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1 **SEC. 255**. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.*

2 Crimes, Other Offenses and Forfeitures, Chapter II, National Internal Revenue Code, as amended. SEC. 253. General Provisions,

...

(d) In the case of associations, partnerships or corporations, the penalty shall be imposed in the partner, president, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation.

3 **SEC. 256**. *Penal Liability of Corporations.*

4 Amended 31 May 2017.

Crim. Case No. O-618

...

That on or before September 2014 and thereafter, in Manila, and within the jurisdiction of this Honorable Court, accused **Mr. Bonner Purpura Armada** as owner of Jovick Trading, did then and there willfully, unlawfully, and feloniously fail to pay the basic deficiency income tax for the taxable year 2007, in the amount of Twenty Seven Million Three Hundred Fifty Four Thousand Seven Hundred Forty One Pesos and Forty One Centavos (Php27,354,741.41) exclusive of penalties, surcharges and interest, despite final assessment notice, including prior and post notices and formal demands to pay, the latest of which was issued by the BIR on September 2014, to the damage and prejudice of the government.

CONTRARY TO LAW.

...

FACTS OF THE CASES

Accused is a Filipino Citizen and a registered taxpayer of the Bureau of Internal Revenue (**BIR**), Revenue District Office No. 32 (**RDO 32**)-Manila, with Taxpayer's Identification Number (**TIN**) 215-814-168-000. He is the sole proprietor of Jovick Trading, a business primarily engaged in the retail of general merchandise with buying and selling of prepaid telephone cards. The registered business address is at U-1 G/F CMFFI Building, S.H. Loyola Street corner R. Papa Street, Sampaloc, Manila.

In Letter Notice (**LN**) No. 032-RLF-07-00005 dated 14 July 2009[5] with Details of Taxpayer's Suppliers Record, the BIR informed accused of the discrepancy resulting from the Reconciliation of Listing for Enforcement (**RELIEF**) and Third-Party Matching-Bureau of Customs (**TPM-BOC**) Data Program declared in his filed tax return for TY 2007. Subsequently, the BIR also released a Follow-Up Letter dated 12 August 2009[6]. Christine B. Clemente (**Clemente**), a sales attendant in the store of accused, received both the LN and the Follow-Up Letter.

[5] Exhibit "P-9", Division Docket (CTA Crim. Case No. O-617), Volume I, p. 180.
[6] Exhibit "P-10", id., p. 181.

On 07 January 2010, the BIR issued Letter of Authority (**LOA**) No. LOA-2008-00046687[7] authorizing Revenue Officers (**ROs**) Ronan P. Martinez (**Martinez**) and Cesar S. Sarmiento (**Sarmiento**) to examine the books of accounts and other accounting records of Jovick Trading for TY 2007. Clemente also received this LOA.

On 27 April 2010, the BIR issued a Notice of Informal Conference (**NIC**)[8] informing accused of the result of the investigation. Again, Clemente received the NIC.

Later, ROs Martinez and Sarmiento prepared a memorandum recommending the issuance of the Preliminary Assessment Notice (**PAN**), which was eventually issued on 27 May 2011.[9] On 02 November 2011, a Final Assessment Notice (**FAN**)[10] with attached Details of Discrepancies[11] and Assessment Notices[12] followed.

Accused did not file a protest to the FAN hence, the BIR issued the First Notice on 23 October 2012[13], giving him ten (10) days from (receipt of the) notice to pay the deficiency taxes due.

Still later, accused's case docket was transferred to the Collection Division of Revenue Region (**RR**) No. 6-Manila. Through a Memorandum of Assignment for the enforcement of collection, the case was assigned to RO Maricol O. Domingo (**Domingo**). When the records showed that accused did not pay the deficiency taxes, she thereafter issued the two (2) Final Notices Before Seizure (**FNBS**).

Accused's case was likewise later on assigned to RO Leo Castillo (**Castillo**) for the continuation of collection and enforcement strategies. As part of the collection measure, a Warrant of Distraint and/or Levy (**WDL**) and Warrants of Garnishment (**WOG**) were issued. However, all collection efforts failed. As a result, RO Castillo

7 Exhibit "P-2", id., p. 170.
8 Exhibit "P-29", id., p. 228.
9 Exhibit "P-14", id., p. 186.
10 Exhibit "P-16" and Exhibit "A-3", id., p. 190.
11 Exhibit "P-16-2"and Exhibit "A-4", id., p. 192.
12 Exhibits "P-18" and "P-19"; Exhibits "A-5" and "A-6", id., pp. 194-195.
13 Exhibit "P-20", id., p. 196.

recommended the filing of legal or court action against accused for him to answer his and/or Jovick Trading's tax liabilities.[14]

On 18 September 2014, a Demand Letter[15] was sent to accused reiterating the demand for payment of deficiency taxes due; with a warning that his failure to pay the same will result in the filing of the criminal action against him. Accused again failed to respond thus the BIR filed with the DOJ a criminal complaint against him (being the owner of Jovick Trading) for his willful failure to pay the income tax (IT) and value-added tax (VAT) deficiencies against him for TY 2007.

After the preliminary investigation, the DOJ found probable cause to indict accused. Two (2) Informations were then filed against accused for violation of Section 255 of the NIRC of 1997, as amended on 30 September 2016.

PROCEEDINGS BEFORE THE COURT

Prior to the amendment of the two (2) Informations, accused's name varied in the DOJ's documents; some with "Armada Bonnier Purdura" and others with "Armada Bonner Purdura". Hence, in the 14 October 2016 Resolution[16] of this Court, it directed the plaintiff to make the necessary clarifications and formal corrections in the Informations.

In compliance with the above Resolution, plaintiff clarified that the accused's name is "Armada Bonner Purdura". Based on the said compliance, the Warrant of Arrest was issued against Armada Bonner Purdura.[17] However, in accused's Personal Information Sheet[18] filed with this Court, the complete name of accused (starting with his given name) was "Bonner Purpura Armada". Later, the Court accepted and approved accused's cash bond for his provisional liberty.[19]

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[14] See Memorandum, Exhibit "P-25", id., p. 204.
[15] Exhibit "P-26", id., p. 205.
[16] Division Docket (CTA Crim. Case No. O-617), Volume I, pp. 75-79.
[17] Resolution dated 04 November 2016, id., pp. 97-98.
[18] Id., p. 103.
[19] Resolution dated 25 November 2016, pp. 112-113.

Before arraignment and upon accused's motion, CTA Crim. Case No. O-618 was consolidated with CTA Crim. Case No. O-617, the latter bearing the lower docket number[20].

During the first scheduled arraignment on 08 February 2017, accused stated his real name to be "Bonner Purpura Armada", as shown in his voter's ID. With the prosecutor's absence, the Court reset the arraignment to 15 March 2017[21] but it was on 31 May 2017 that it actually proceeded. At the time, the prosecutor moved for the correction of the Amended Information of the two (2) cases; particularly, to change the name of accused to "Bonner Purpura Armada". Thereafter, accused pleaded not guilty to the charges against him.

After a series of preliminary conferences for the marking and comparison of exhibits of both parties[22] and after the filing of pre-trial briefs[23], the parties agreed to file a Joint Stipulation of Facts and Issues (**JSFI**).[24] The JSFI was then filed on 24 August 2017, which the Court approved and adopted in the Pre-Trial Order dated 17 November 2017.[25] In the JSFI, the parties stipulated on the following facts:

> ...
> 1. Accused Bonner Purpura Armada is being charged for violation of Section 255 of the NIRC;
> 2. Accused is the same person named and charged in the two (2) Information(s) subject of these consolidated cases;
> 3. Accused Bonner Purpura Armada is the same person named as Armada Bonner Purdura upon whom the Bureau of Internal Revenue (BIR) issued Letter Notice No. O-32-RLF-07-00005 dated 14 July 2009;
> 4. Accused is registered with the BIR under Tax Identification Number 215-814-168-000;
> 5. Accused is a resident of 1240 Castanos St., Sampaloc, Manila;
> 6. Accused holds his place of business at Unit 1 G/F CMFFI Building, S.H. Loyola St., corner R. Papa St., Sampaloc Manila;
> 7. Accused is a single proprietor engaged in the retail of general merchandise, including cellular/mobile cards;

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20 Resolution dated 11 January 2017, id., p. 115.
21 Arraignment was reset anew to 31 May 2017, per Order dated 27 April 2017.
22 Dated 21 June 2017 and 28 June 2017, respectively.
23 Accused filed his Pre-Trial Brief on 03 August 2017 while plaintiff filed its Pre-Trial Brief on 08 August 2017.
24 Division Docket (CTA Crim. Case No. O-617), Volume I, pp. 338-349.
25 Id., pp. 357-369.

8. Accused, through his office staff, received a copy of the Final Assessment Notice (FAN) issued by the BIR on 02 November 2011;
9. After the accused's office staff received a copy of the FAN, his wife Jobillee Armada, went to the BIR Manila but was referred to BIR, National Office and was able to speak to Mr. Ronan P. Martinez, Then, Mr. Ronan told her to wait for his call;
10. The taxable year involved is 2007;
11. Accused filed his 2007 Income Tax Return (BIR Form 1701) on 11 April 2008 together with the Balance Sheet and Income Statement both as of 31 December 2007;
12. Accused paid his income tax for the taxable year 2007;
13. Accused filed the following returns:
    a. Quarterly VAT Return for the first quarter of taxable year 2007 on 13 April 2007;
    b. Quarterly VAT Return for the second quarter of taxable year 2007 on 26 July 2007,
    c. Quarterly VAT Return for the third quarter of taxable year 2007 on 09 October 2007;
    d. Quarterly VAT return for the fourth quarter of taxable year 2007 on 23 January 2008;
14. Accused paid the corresponding amounts indicated in the VAT Returns covering the 4th quarters of 2007.

...

Trial ensued thereafter where plaintiff presented five (5) witnesses, all of whom executed a Judicial Affidavit in *lieu* of their direct testimonies in open court. Plaintiff's witnesses were: (1) RO Martinez; (2) RO Castillo; (3) RO Domingo; (4) Atty. Amelita A. Escober (**Atty. Escober**); and, (5) Armando S. Tubig (**Tubig**).

TESTIMONY OF REVENUE OFFICER
RONAN P. MARTINEZ

RO Martinez is a Group Supervisor (**GS**) of the Assessment Section of RDO 30 and has been employed as such since 2010. Among his other duties, he was tasked to serve the LN (with its attached details of discrepancies) issued against accused.[26]

On the witness stand, RO Martinez testified that he personally served the said LN at the registered address of accused's business and Clemente, a sales assistant therein, received it. After the service of the

[26] Judicial Affidavit, Exhibit "P-30".

LN, he gave the accused thirty (30) days to present documentary evidence. Upon the lapse of the period given, a follow-up letter was issued and personally served upon accused at the same address and Clemente again received it. When accused failed to respond within fifteen (15) days as provided for in the follow-up letter, Deputy Commissioner-Operations Group Nelson Aspe (**Dep. Comm. Aspe**) issued a LOA (which Clemente also received) authorizing him and RO Sarmiento to examine accused's books of accounts. The LOA gave the accused another thirty (30) days within which to refute the discrepancy and submit documents supporting its stand. After the lapse of the given period, an NIC was issued and served to accused, again through Clemente (on 27 April 2010), giving him the opportunity to attend a conference at the BIR. Accused, however, did not attend the informal conference. An investigation report was then submitted recommending the issuance of the PAN and FAN against him.

RO Martinez added that a Memorandum addressed to Dep. Comm. Aspe was prepared stating the investigation on accused's IT and VAT liabilities for TY 2007 (pursuant to the LN and accused's failure to refute the findings despite the opportunity given to him). Consequently, Dep. Comm. Aspe issued a PAN with details of discrepancy and this was sent to accused by registered mail. The PAN was based on the discrepancy between the IT and VAT returns filed for TY 2007 and the computerized matching that the BIR conducted on information/data from third-party sources. Soon after, the FAN was issued. According to RO Martinez, he learned of the issuance of the FAN when accused's wife, Jobillee E. Armada (**Mrs. Armada**), went to him. After she had informed him that their staff received the FAN, he advised Mrs. Armada that she and his husband should settle the assessed tax deficiency or refute such findings (and present countervailing proof and documents). He had not heard from accused or his wife since. Subsequently, for accused's failure to heed all of BIR's directives, a complaint was filed against him.

During cross-examination, RO Martinez confirmed that the deficiency tax found was based on the under-declaration of purchases; the resultant findings after third-party information and the amount declared in the returns were compared. When asked if he knew when the IT and VAT returns for TY 2007 were filed, he answered that it was sometime in 2008 for IT return, 2007 for the first to third quarters of VAT returns and 2008 for the fourth quarter.[27]

In the same cross examination, RO Martinez also confirmed that FAN was issued only sometime in 2011 or more than three (3) years from the filing of the subject returns. As to whether there was allegation of substantial under-declaration of sales in the FAN, he answered in the negative and explained that it was rather a substantial under-declaration of purchases.

During the re-direct examination, RO Martinez explained that, although he was part of the investigation team that recommended the issuance of the PAN, he had no participation in the actual issuance of the FAN. He only found out about it when Mrs. Armada went to his office.

After the re-direct examination, in response to clarificatory questions, RO Martinez stated that there was an indication of fraud hence the issuance of the assessment beyond the three-year period. According to him, accused appeared to have under-declared Jovick Trading's purchases by more than thirty percent (30%) and the under-declaration was the basis for the assessment.

TESTIMONY OF REVENUE OFFICER
LEO S. CASTILLO

As declared in Court and in his Judicial affidavit[28], RO Castillo holds the position of Revenue Officer II in the Collection Division, Arrears Management Section, RR 6; likewise, the designated Seizure Agent and GS. According to him, he became familiar with the case when he received a Memorandum of Assignment designating him as Seizure Agent for the collection of the delinquent IT and VAT of accused. As such, his task was to collect and enforce strategies (for collection) including the determination of all possible assets for the satisfaction of accused's delinquency taxes, issuance of warrants of distraint and/or levy and garnishment, act as temporary guardian of

[27] TSN dated 24 January 2018.
[28] Exhibit "P-31".

the seized properties and to prepare and submit a report in connection with his mandated tasks.

RO Castillo further testified that, after going through the case docket of accused, he found that RO Domingo issued a First Notice and two FNBS to accused but without response from the latter. He then prepared the WDL which his officials approved later on. When the WDL was returned to him, he personally served the same to accused on 16 December 2013. Charlyn Kristel Fernandez (**Fernandez**), accused's liaison officer, received the same. RO Castillo stated that, he waited a week from service of WDL for accused to respond but none came. Even his several attempts to get hold of accused through phone calls proved futile.

Following accused's failure to respond, RO Castillo thereafter prepared the WOG against his bank accounts. When the officials also approved the issuance of the WOG, he served copies thereof on the different banks where accused maintained an account. According to him, he accessed the Integrated Tax System of the BIR to know accused's banks for purposes of the WOG. The system showed the banks accused used as drawee banks for his checks issued to other companies. Other major banks were likewise considered as potential banks, although they were not used as drawee banks. Surprisingly, the banks (where the WOG was sent) responded that accused had no accounts with them.

As attempts to garnish accused's bank accounts failed, RO Castillo went to the Assessor's Office of Manila, Makati and Caloocan to check on accused's registered properties. This measure again yielded negative result as there were no properties registered under his name.

Subsequently, RO Castillo prepared a Memorandum stating the measures he undertook to carry out the collection and enforcement of delinquent accounts, and despite notices, accused failed to respond or take action. Consequently, he recommended the referral of accused's delinquent account case to the Legal Division for appropriate court or legal action.

Later, the Legal Division of RR 6, BIR Manila sent another letter to accused, reiterating the demand for payment; again, with warning that his failure to do so would result in the filing of a criminal action against him. Again, accused failed to respond.

As part of the investigation team, RO Castillo was one of the affiants in the Joint Complaint-Affidavit[29] filed against accused before the DOJ.

During cross-examination, RO Castillo did not deny that he did not have personal knowledge as to when the quarterly VAT returns were actually filed or that the FAN was issued beyond three-years from the filing of the returns. As to the two FNBS he had issued, he likewise had no personal knowledge of the issuance beyond what was in the BIR records. He confirmed that he instructed Fernandez to give the WDL to accused. On re-direct examination, he stated that he introduced himself as an officer of the BIR.[30]

TESTIMONY OF REVENUE OFFICER
MARICOL O. DOMINGO

Plaintiff's next witness, RO Domingo likewise holds the position of Revenue Officer II of the Arrears Management Section, Collection Division of RR 6 and designated as a Seizure Agent as well. On the witness stand, she testified that she learned of the case only when she received the Memorandum of Assignment directing her to be the Seizure Agent in collecting accused's delinquent IT and VAT.

According to RO Domingo, at the time she evaluated accused's case records, the First Notice was already issued to and served on accused. Upon further verification that the latter did not respond to the notice, she then prepared two FNBS for accused. One FNBS was addressed to the registered business address while the other was addressed to accused's registered residence. Same FNBS were served on accused *via* registered mail but still, accused did not take action; prompting her to send final notices to accused. Even with the final notices, there were no responses hence she recommended the

29 Exhibit "P-1".
30 TSN dated 28 February 2018.

collection of the deficiency taxes to proceed with the issuance of a WDL and WOG.

During her cross-examination, RO Domingo admitted that she had no personal knowledge of the actual receipt of the two FNBS as these were served through registered mail, a BIR-sanctioned mode of service.

TESTIMONY OF ATTY. AMELITA A. ESCOBER

Atty. Escober, the Assistant Division Chief of the VAT Credit Audit Division, was also presented to the witness stand. Prior to her current position, she was a Technical Assistant at the Office of Deputy Commissioner-Operations Group. Concurrent with her position as Technical Assistant, she was appointed as Team Head of the LN Task Force. The LN Task Force was then headed by Atty. Quimosing. As Team Head, she was tasked to supervise the handling of LN cases and review the results of the investigation and recommendation for the issuance of the assessment.[31]

Atty. Escober also testified that an LN was issued against the accused and his case was assigned to ROs Martinez and Sarmiento. When RO Sarmiento resigned, the case was transferred to her. Soon after, the LOA was issued for the investigation of accused's books and as a result of the investigation, PAN and FAN were issued assessing accused of deficiency taxes and VAT. According to her, before Atty. Quimosing affixed his signature, she also reviewed the assessment notices.

During cross-examination, Atty. Escober confirmed that her participation in accused's case was limited to the review of his case records. Likewise, she confirmed that she knew the FAN was issued beyond three (3) years from the filing of the returns. When asked on re-direct examination why the FAN was issued despite the lapse of the three-year period, she replied that the 10-year period from discovery

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[31] Judicial Affidavit, Exhibit "P-33".

was to apply since there was a fraudulent return (following accused's under-declaration of more than 50%, of his purchases).[32]

Explaining further, Atty. Escober stated that the purchases were converted to sales (as contemplated in the NIRC) since there could have been no viable reason for the purchase if accused had no intention to sell.

TESTIMONY OF ARMANDO S. TUBIG

Tubig, BIR's Administrative Assistant IV also assumed the witness stand where he declared that he personally mailed to accused the FAN and letter of demand for TY 2007 through registered mail on 09 December 2011.[33] As proof, he pointed to the transmittal letter he and Nestor Silva prepared.

Upon cross-examination, Tubig admitted that the transmittal letter made no mention that the registered mail pertained to the FAN. On re-direct examination, however, he clarified that the content of the mail matter he mailed to accused was the Assessment Notice and Formal Letter of Demand (**FLD**).[34]

Subsequently, plaintiff offered its supporting documentary evidence[35], which the Court admitted in a Resolution dated 12 February 2019.[36]

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32 TSN dated 04 April 2018.
33 Judicial Affidavit, Exhibit "P-34".
34 TSN dated 04 April 2018.
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Exhibit	Document
P-1	Joint Complaint-Affidavit of Ronan P. Martinez, Maricol O. Domingo and Leo S. Castillo, Revenue Region Office No. 6, BIR Manila, dated 10 December 2015
P-2	LOA 2008 00046687 of Ronan P. Martinez designating to investigate, examine and prepare audit report pertinent to the book of accounts and accounting records of Bonner Purpura Armada for the taxable year 2007, dated 7 January 2010
P-3	Memorandum of Assignment of Maricol O. Domingo for the conduct of collection and enforcement strategies against the tax liability of Bonner Purpura Armada, dated 23 April 2013
P-3-1	Printed name of Maricol Domingo as the person who received the Memorandum of Assignment of Maricol Domingo for the conduct of collection and enforcement strategies against the tax liability of Bonner Purpura Armada dated 23 April 2013
P-3-2	Date received as 4/25/13 by Maricol Domingo of the Memorandum of Assignment addressed to her dated 23 April 2013

P-4	Memorandum of Assignment of Leo S. Castillo to continue the conduct of collection and enforcement strategies against the tax liability of Bonner Purpura Armada, dated 4 July 2013
P-4-1	Date of the Memorandum of Assignment of witness Castillo, 4 July 2013, as appearing at the upper right hand corner
P-4-2	Signature of witness Castillo appearing beside the printed words "received by", in the Memorandum of Assignment of Leo S. Castillo to continue the conduct of collection and enforcement strategies against the tax liability of Bonner Purpura Armada, dated 4 July 2013
P-4-3	Date 7/16/13 at the bottom left part of the Memorandum of Assignment in the Memorandum of Assignment of Leo S. Castillo to continue the conduct of collection and enforcement strategies against the tax liability of Bonner Purpura Armada dated 4 July 2013
P-5	Annual Income Tax Return of Bonner Purpura Armada for the year 2007, first (1st) page thereof
P-5-1	Annual Income Tax Return of Bonner Purpura Armada for the year 2007, second (2nd) page thereof
P-6	Balance Sheet (as of 31 December 2007) submitted by Bonner Purpura Armada to the BIR for the taxable year 2007
P-7	Income Statement (for the year 31 December 2007) submitted by Bonner Purpura Armada to the BIR for the taxable year 2007
P-8	Details of Taxpayer's Supplier's Records (for LN No. 032-RLF-07-00-00005) with the registered purchaser's name as accused Armada
P-9	Letter Notice (LN No. 032-RLF-07-00-00005) of the BIR to accused Armada as to the resulting discrepancies disclosed for the taxable calendar year 2007 based on Reconciliation of Listing for Enforcement (RELIEF) and Third Party Matching-Bureau of Customs (TPM-BOC), date 14 July 2009
P-10	Follow-Up Letter of BIR to accused Armada regarding the Letter Notice (LN No. 032-RLF-07-00-00005), dated 12 August 2009
P-12	Revenue Officer's Audit Report on Income Tax for the period of 1 January to 31 December 2007 of accused Armada as submitted by Ronan P. Martinez
P-13	Revenue Officer's Audit Report on Value-Added Tax for the period of 1 January to 31 December 2007 as submitted by Ronan P. Martinez
P-14	Preliminary Assessment Notice (PAN) with Details of Discrepancy against accused Armada, dated 27 May 2011
P-14-1	Details of Discrepancies
P-15	Registry Return of PAN for the taxable year 2007 against accused Armada
P-16	Final Assessment Notice (FAN) with Details of Discrepancy against accused Armada, dated 2 November 2011, first (1st) page thereof
P-16-1	Final Assessment Notice (FAN) with Details of Discrepancy against accused Armada, dated 2 November 2011, second (2nd) page thereof
P-16-2	Details of Discrepancy
P-17	List of Registered Mails transmitted to the BIR-Phil Postal Corp (Field Office), dated 9 December 2011
P-18	Assessment Notice No. F-032-LNTF-IT-035 issued by the BIR against accused Armada for his income tax liability, dated 2 November 2011
P-19	Assessment Notice No. F-032-LNTF-07-VT-035 issued by the BIR against accused Armada for his value-added tax (VAT) liability, dated 2 November 2011
P-20	1st Notice issued by Revenue Region No. 6, BIR-Manila against accused Armada for the collection of his tax liabilities, dated 23 October 2012
P-21	Final Notice Before Seizure issued by Revenue Region No. 6, BIR-Manila against accused Armada for his income tax and VAT liabilities which he failed to settle with the BIR, dated 26 April 2013
P-21-2	Registry Return Receipt of the Final Notice Before Seizure against Bonner Purpura Armada at U-1 G/F CMMFI Bldg., S.H. Loyola St., cor. R. Papa St., Sampaloc, Manila with the following details: Addressed to: Armada Bonner Purdura (Jovick Trading) Unit 1, G/F CMFFI Bldg., R. Papa St., cor. S.H. Loyola St., Sampaloc, Manila; with a signature appearing above the space labeled for signature or name of addressee, with registry receipt number 911446

P-21-4	Registry Return Receipt of the Final Notice Before Seizure against Bonner Purpura Armada at 1240 Castanos St., Sampaloc, Manila with the following details: Addressed to: Armada Bonner Purdura (Jovick Trading) 1240 Castanos St., Sampaloc, Manila; Signature of Addressee's Agent: Maricel Sowegue; Date of Delivery: 5-3-13 with registry return receipt number 911445
P-22	Warrant of Distraint and/or Levy issued by the BIR against accused Armada for his income tax and VAT liabilities, dated 23 July 2013
P-22-1	Signature of Renato Del Rosario, AMT Head as appearing in the Warrant of Distraint and/or Levy with Control No. AMT-WDL-2013-0413 issued by the BIR against accused Armada for his income tax liability and VAT liabilities, dated 23 July 2013
P-22-2	Signature of Zenaida Ordinario, Assistant Division Chief, Collection Division in the Warrant of Distraint and/or Levy with Control No. AMT-WDL-2013-0413 issued by the BIR
P-22-3	Signature of Ceferina M. Ong, Chief, Regional Collection Division in the Warrant of Distraint and/or Levy with Control No. AMT-WDL-2013-0413 issued by the BIR
P-22-4	Dated of 23 July 2013 as appearing in the Warrant of Distraint and/or Levy with Control No. AMT-WDL-2013-0413 issued by the BIR
P-23	Service of the Warrant of Distraint and/or Levy by the BIR against accused Armada, dated 16 December 2013, received by Charlyn Kristel Fernandez
P-23-1	Printed name of Charlyn Kristel Fernandez and signature appearing above it as appearing in the Service of the Warrant of Distraint and/or Levy with Control No. AMT-WDL-2013-0413 issued by the BIR
P-23-2	Printed name and signature of Leo S. Castillo as appearing in the Service of Warrant of Distraint and/or Levy with Control No. AMT-WDL-2013-0413 issued by the BIR
P-24	Warrant of Garnishment with Control No. WG-2014-8205 issued by the BIR against accused Armada dated 19 February 2014
P-24-1	Printed name and signature of Marivic G. Tulio, Chief, Regional Collection Division, on the Warrant of Garnishment with Control No. WG-2014-8205 issued by the BIR against accused Armada dated 19 February 2014
P-24-2	Signature of Metrobank's receptionist at the upper right-hand corner of the Warrant of Garnishment with Control No. AMT-WG-2014-8205 issued by the BIR and addressed to the President/Branch Manager of Metrobank thru its Legal Division, dated 19 February 2014
P-24-3	Dated March 14, 2014, appearing above the signature of Metrobank's receptionist at the upper right-hand corner of the Warrant of Garnishment with Control No. AMT-WG-2014-8205 issued by the BIR and addressed to the President/Branch Manager of Metrobank thru its Legal Division, dated 19 February 2014
P-24-4	Printed name and signature of Leo S. Castillo as appearing in the bottom right of the service of the Warrant of Garnishment with Control No. AMT-WG-2014-8205 issued by the BIR and addressed to the President/Branch Manager of Metrobank thru its Legal Division
P-25	Memorandum addressed to the Chief, Collection Division, Revenue Region No. 6, Collection Division, BIR-Manila regarding services of warrant of distraint and/or levy and warrants of garnishments against accused Armada as prepared by Leo S. Castillo, dated 6 August 2014
P-26	Demand Letter issued by the Revenue Region No. 6, BIR-Manila against accused Armada informing him of his income tax and VAT liabilities and requiring its settlement prior to the initiation of any judicial action for its collection, dated 18 September 2014
P-29	Notice of Informal Conference to accused Armada
P-30	Judicial Affidavit of Revenue Officer Ronan P. Martinez
P-30-A	Signature of Ronan P. Martinez as appearing on his judicial affidavit
P-30-B	Signature of APA Agnes Bagaforo-Arellano II to whom RO Martinez subscribed his judicial affidavit
P-30-C	Signature of Prosecution Attorney Christine Fatima V. Estepa on the Sworn Attestation of Counsel/Lawyer attached with the judicial affidavit
P-30-D	Signature of APA Atty. Agnes Bagaforo-Arellano II to whom Prosecution Attorney Estepa subscribed her Sworn Attestation/Counsel
P-31	Judicial Affidavit of RO Leo S. Castillo
P-31-1	Signature of RO Leo S. Castillo as appearing on his judicial affidavit

P-31-2	Subscription made by RO Leo S. Castillo of his judicial affidavit
P-31-3	Signature of Prosecution Attorney Christine Fatima V. Estepa in the Sworn Attestation Clause attached with the judicial affidavit
P-31-4	Signature of APA Atty. Agnes Bagafor-Arellano II to whom Prosecution Attorney Estepa subscribed her Sworn Attestation Clause
P-32	Judicial Affidavit of RO Maricol O. Domingo
P-32-1	Signature of RO Maricol O. Domingo as appearing on her judicial affidavit
P-32-2	Subscription made by Maricol O.Domingo for her judicial affidavit
P-32-3	Signature of Prosecution Attorney Christine Fatima V. Estepa in the Sworn Attestation Clause
P-32-4	Signature of APA Agnes Bagaforo-Arellano II to whom Prosecution Attorney Estepa subscribed her Sworn Attestation Clause
P-33	Judicial Affidavit of Atty. Amelita A. Escober
P-33-1	Signature of Atty. Amelita A. Escober as appearing on her judicial affidavit
P-33-2	Attestation Clause on the Judicial Affidavit of Atty. Amelita A. Escober
P-33-3	Notarization on the Judicial Affidavit of Atty. Amelita A. Escober
P-33-4	Notarization on the Attestation Clause of the Judicial Affidavit of Atty. Amelita A. Escober
P-34	Judicial Affidavit of Revenue Officer Armando S. Tubig
P-34-1	Signature of Revenue Officer Armando S. Tubig as appearing on the judicial affidavit
P-34-2	Attestation Clause on the Judicial Affidavit of Revenue Officer Armando S. Tubig
P-34-3	Notarization on the Judicial Affidavit of Revenue Officer Armando S. Tubig
P-34-4	Notarization on the Attestation Clause on the Judicial Affidavit of Revenue Officer Armando S. Tubig
P-35	Warrant of Garnishment with Control No. AMT-WG-2014-8213 issued by the BIR and addressed to the President/Branch Manager of the Bank of the Philippine Islands thru its Legal Division with the following details: issued against Armada Bonnier Purdura with address at U-1 G/F CMFFI Bldg., S.H. Loyola St., cor. R. Papa St., Sampaloc Manila, for the Income Tax and VAT deficiency amount of Eighty One Million Six Hundred Thirty Eight Thousand Six Hundred Thirty Eight Thousand Six Hundred Nine and Thirty Two Centavos (P81,638,609.32); bearing Control Number AMT-WG-2014-8213, signed by Marivic G. Tulio, Chief, Regional Collection Division dated 19 February 2014.
P-35-1	Printed name of Marivic G. Tulio and the signature appearing above it as found in Warrant of Garnishment with Control No. AMT-WG-2014-8213 issued by the BIR and addressed to the President/Branch Manager of the Bank of Philippine Islands thru its Legal Division, dated 19 February 2014
P-35-2	Printed name and signature of Leo S. Castillo as appearing in the Service of the Warrant of Garnishment with Control No. AMT-WG-2014-8213 issued by the BIR and addressed to the President/Branch Manager of the Bank of Philippine Islands thru its Legal Division
P-36	Warrant of Garnishment with Control No. AMT-WG-2014-8206 issued by the BIR and addressed to the President/Branch Manager of Banco De Oro thru its Legal Division with the following details: issued against Armada Bonnier Purdura with address at U-1 G/F CMFFI Bldg., S.H. Loyola St., cor. R. Papa St., Sampaloc Manila, for the Income Tax and VAT deficiency amount of Eighty One Million Six Hundred Thirty Eight Thousand Six Hundred Thirty Eight Thousand Six Hundred Nine and Thirty Two Centavos (P81,638,609.32); bearing Control Number AMT-WG-2014-8206, signed by Marivic G. Tulio, Chief, Regional Collection Division dated 19 February 2014.
P-36-1	Printed name of Marivic G. Tulio and the signature appearing above it as found in Warrant of Garnishment with Control No. AMT-WG-2014-8206 issued by the BIR and addressed to the President/Branch Manager of the Banco De Oro thru its Legal Division, dated 19 February 2014
P-36-2	Printed name and signature of Leo S. Castillo as appearing in the bottom right of the Service of the Warrant of Garnishment with Control No. AMT-WG-2014-8206 issued by the BIR and addressed to the President/Branch Manager of the Banco De Oro thru its Legal Division

After plaintiff rested its case, accused sought the dismissal of the cases by filing a Demurrer to Evidence. In a Resolution dated 22 April 2019[37], the Court denied it and trial proceeded with the accused's evidence. Accused himself and his wife, Mrs. Armada, executed their judicial affidavits as defense witnesses.

P-37	Warrant of Garnishment with Control No. AMT-WG-2014-8203 issued by the BIR and addressed to the President/Branch Manager of the Land Bank of the Philippines thru its Legal Division with the following details: issued against Armada Bonnier Purdura with address at U-1 G/F CMFFI Bldg., S.H. Loyola St., cor. R. Papa St., Sampaloc Manila, for the Income Tax and VAT deficiency amount of Eighty One Million Six Hundred Thirty Eight Thousand Six Hundred Thirty Eight Thousand Six Hundred Nine and Thirty Two Centavos (P81,638,609.32); bearing Control Number AMT-WG-2014-8203, signed by Marivic G. Tulio, Chief, Regional Collection Division dated 19 February 2014.
P-37-1	Printed name of Marivic G. Tulio and the signature appearing above it as found in Warrant of Garnishment with Control No. AMT-WG-2014-8203 issued by the BIR and addressed to the President/Branch Manager of the Land Bank of the Philippines thru its Legal Division, dated 19 February 2014
P-37-2	Printed name and signature of Leo S. Castillo as appearing in the bottom right of the Service of the Warrant of Garnishment with Control No. AMT-WG-2014-8203 issued by the BIR and addressed to the President/Branch Manager of the Land Bank of the Philippines thru its Legal Division
P-38	Warrant of Garnishment with Control No. AMT-WG-2014-8204 issued by the BIR and addressed to the President/Branch Manager of the Philtrust Bank of the Philippines thru its Legal Division with the following details: issued against Armada Bonnier Purdura with address at U-1 G/F CMFFI Bldg., S.H. Loyola St., cor. R. Papa St., Sampaloc Manila, for the Income Tax and VAT deficiency amount of Eighty One Million Six Hundred Thirty Eight Thousand Six Hundred Thirty Eight Thousand Six Hundred Nine and Thirty Two Centavos (P81,638,609.32); bearing Control Number AMT-WG-2014-8204, signed by Marivic G. Tulio, Chief, Regional Collection Division dated 19 February 2014.
P-38-1	Printed name of Marivic G. Tulio and the signature appearing above it as found in Warrant of Garnishment with Control No. AMT-WG-2014-8204 issued by the BIR and addressed to the President/Branch Manager of the Philtrust Bank thru its Legal Division, dated 19 February 2014
P-38-2	Printed name and signature of Leo S. Castillo as appearing in the bottom right of the Service of the Warrant of Garnishment with Control No. AMT-WG-2014-8204 issued by the BIR and addressed to the President/Branch Manager of the Philtrust Bank thru its Legal Division
P-39	Memorandum addressed to the Chief, Collection Division, Subject: RE: Armada Bonner Purdura U-1 G/F CMMFI Bldg., S.H. Loyola St., cor. R. Papa St., Sampaloc Manila; Demand/ Assessment No. F-032-LNTF-07-IT-035/VT-035, Amount: P91,638,609.32; Kind of Tax Def: IT/VT; Year Covered: 2007; prepared by: Maricol O. Domingo, revenue Officer II (Collection), dated 25 June 2013
P-39-1	Name and Signature of Maricol O. Domingo RO II as appearing in the Memorandum addressed to the Chief, Collection Division, dated 25 June 2013
P-40	Revenue Special Order No. 454-2009

36 Division Docket (CTA Case No. O-617), Volume II, pp. 641-642.

37 Id., pp. 669-686.

TESTIMONY OF MRS. JOBILLEE E. ARMADA

On the witness stand, Mrs. Armada, testified that she has been in-charge of Jovick Trading's operations and has been assisting its staff in the computation of sales and the preparation of financial statements and tax returns, as well as the payment of taxes due. For TY 2007, she testified that the total sales amounted to ₱368,928.33, whereas the total income was ₱21,488.36. The IT return for TY 2007 was filed on 11 April 2008, while the quarterly VAT returns for the 1st, 2nd, 3rd and 4th quarters were filed on 13 April 2007, 26 July 2007, 09 October 2007 and 23 January 2008, respectively.[38]

Mrs. Armada also declared that, except for the FAN with Details of Discrepancy and Assessment Notices that their office staff received, she did not come to know of other BIR document sent to or received by their office.[39]

Furthermore, in the FAN that they received, it was indicated that Jovick Trading was being assessed a deficiency IT of ₱59,048,765.45 and VAT of ₱22,589,843.87. These alleged deficiency taxes were based solely on the under-declaration of purchases derived from the Summary List of Sales (**SLS**) of their suppliers. As her husband had requested, she went to BIR Manila then to the BIR National Office where she spoke with RO Martinez. She told the latter that there was no way that Jovick Trading had earned the amount reflected in the FAN. She was thereafter advised to submit documents and wait for his (RO Martinez's) call but none came. Instead, they received a complaint accusing her husband of willfully failing to pay IT and VAT for TY 2007.

Mrs. Armada also claimed that, upon receipt of the complaint, her husband executed a counter-affidavit to answer the allegations against him. She likewise executed an Affidavit, which was attached to the counter-affidavit where she stated that her husband did not commit the offense charged against him as he did not willfully fail to pay the tax.

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[38] Exhibits "A-7" "A-11", "A-12", "A-14" and "A'16".

[39] Judicial Affidavit, Exhibit "A-18".

During cross-examination, Mrs. Armada did not deny that she was not able to locate and submit the documents that RO Martinez had told her to submit. On re-direct examination, she maintained that, other than the FAN, their office did not receive any communications from the BIR. She likewise mentioned that their staff lacked education to discern the importance of documents. She also stated that their store is just small and incapable of ₱50 Million worth of purchases (as the BIR had claimed).

TESTIMONY OF ACCUSED BONNER PURPURA ARMADA

When accused took the witness stand, he declared that he is the sole proprietor of Jovick Trading, a general merchandise engaged in the buying and selling of prepaid cards (which he purchases from Smart Communications, Inc. (**Smart**) and resells the same to customers). For that purpose, he was given an ID as an "agent" by Smart with an agent code number. According to him, he started his business in 2002. For the earnings for TY 2007, he claimed that he is unaware of how much was earned since it is his wife who is in-charge of Jovick Trading's business operations, including the sales, payment of taxes and preparation of documents required of the business to be submitted to the BIR (like the tax returns). Although he claimed that his wife takes care of the operation; he, however, insisted that the returns were filed and taxes have been paid accordingly.

Accused added that his office (not him) indeed received the FAN and while he was surprised to have been assessed deficiency IT and VAT of ₱59,048,765.45, he requested his wife to go to the BIR and verify the matter. According to his wife, she spoke with RO Martinez to whom she had explained that there was no basis for the deficiency tax assessment. RO Martinez however only told his wife to submit documents and wait for his call. No call came and instead, a complaint was filed accusing him of willfully failing to pay IT and VAT.

In a Counter-Affidavit[40] he filed with the DOJ, to counter the accusation against him, accused insisted that he paid the correct amount of taxes and the returns filed were true and accurate. As to the

40 Exhibit "A-1".

amount indicated in the FAN, he denied that his business actually earned the amount for the year 2007.

During cross-examination, accused also did not deny that he maintains other businesses and actually supervises his brother's poultry business in Laguna. According to him, since he spends majority of his time there, his wife manages Jovick Trading. He further explained that, with Jovick Trading, he only purchased cell cards from Smart and is under the impression that Filipino Telecom, is the same company as Smart (as appearing in the BIR's Taxpayers Supply Records).[41]

Later, in further support of his defenses, accused offered his documentary evidence[42], which the Court admitted in a Resolution dated 12 September 2019.[43] Still later, accused filed his Memorandum[44] on 25 November 2019, while plaintiff filed its Memorandum[45] on 29 November 2019. Thereafter, the case was submitted for decision in a Resolution[46] dated 30 January 2020.

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41 TSN dated 08 July 2019.

42

Exhibit	Document
A-1	Counter-Affidavit of Bonner Armada dated 11 February 2016
A-2	Affidavit of Jobillee E. Armada dated 10 February 2016
A-3	Final Assessment Notice (FAN)
A-4	Details of Discrepancy dated 2 November 2011
A-5	Assessment Notice No. F-032-LNTF-07-IT-035 for Income Tax dated 2 November 2011
A-6	Assessment Notice No. F-032-LNTF-07-VT-035 for Value Added Tax dated 2 November 2011
A-7	Annual Income Tax Return of Defendant for Taxable Year 2007
A-8	Balance Sheet as of 31 December 2007
A-9	Income Statement for the year ended 31 December 2007
A-10	Land Bank of the Philippines BIR Tax Payment Deposit Slip dated 11 April 2008
A-11	Land Bank of the Philippines BIR Tax Payment Deposit Slip dated 13 April 2008
A-12	Quarterly Value Added Tax (VAT) Return for the Second Quarter of 2007
A-13	Land Bank of the Philippines BIR Tax Payment Deposit Slip dated 26 July 2007
A-14	Quarterly Value Added Tax for the Third Quarter of 2007
A-15	Land Bank of the Philippines BIR Tax Payment Deposit Slip dated 9 October 2007
A-16	Quarterly Value Added Tax for the Fourth Quarter of 2007
A-17	Land Bank of the Philippines BIR Tax Payment Deposit Slip dated 23 January 2008
A-18	Judicial Affidavit of Bonner P. Armada
A-18-1	Signature of Mr. Armada in his Judicial Affidavit
A-19	Judicial Affidavit of Jobillee Armada
A-19-1	Signature of Mrs. Armada in her Judicial Affidavit

43 Division Docket (CTA Case No. O-617), Volume II, pp. 728-729.
44 Id., pp. 736-751.
45 Id., pp. 754-803.
46 Id., pp. 809-812.

ISSUES

The following issues[47] were forwarded for the Court's resolution:

I.

WHETHER THE ACCUSED IS GUILTY BEYOND REASONABLE DOUBT FOR WILLFUL FAILURE TO PAY THE BASIC DEFICIENCY VAT FOR TAXABLE YEAR 2007 IN THE AMOUNT OF TEN MILLION TWO HUNDRED FIFTY-FOUR THOUSAND SIXTY-TWO PESOS AND SEVENTY-EIGHT CENTAVOS (PHP10,254,062.78) IN VIOLATION OF SECTION 255, IN RELATION TO SECTION 253(D) AND 256, OF THE NIRC.[48]

II.

WHETHER THE ACCUSED IS GUILTY BEYOND REASONABLE DOUBT FOR WILLFUL FAILURE TO PAY THE BASIC DEFICIENCY INCOME TAX FOR TAXABLE YEAR 2007, IN THE AMOUNT OF TWENTY-SEVEN MILLION THREE HUNDRED FIFTY-FOUR THOUSAND SEVEN HUNDRED FORTY-ONE PESOS AND FORTY-ONE CENTAVOS (PHP27,354,741.41) IN VIOLATION OF SECTION 255, IN RELATION TO SECTIONS 253(D) AND 256 OF THE NIRC.[49]

RULING OF THE COURT

A. CRIMINAL ASPECT

These two consolidated cases charge accused for willful failure to pay IT and VAT for TY 2007, in violation of Section 255 of the NIRC of 1997, as amended, to wit:

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

[47] B. Issues, Pre-Trial Order, Division Docket (CTA Case No. O-617), Volume I, p. 359.
[48] For CTA Crim. Case No. O-617.
[49] For CTA Crim. Case No. O-618.

> 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.
>
> ...

The two (2) Informations charging accused for violation of Section 255 were in relation to Sections 253(d)[50] and 256[51] of the NIRC of 1997, as amended. However, the latter provisions pertain to corporation, association or general co-partnership, and the liability of the responsible officers. Clearly, both provisions are *inapplicable* in the cases at bar since accused is indicted in his personal capacity as Jovick Trading's sole proprietor.

To sustain conviction for willful failure to pay tax under Section 255 of the NIRC of 1997, as amended, plaintiff should have established the following elements:

> ...
> 1) Accused is a person required by the NIRC or rules and regulations to pay the tax;
> 2) Accused failed to pay the tax at the time required by law; and,
> 3) Failure to pay the tax was willful.[52]
>
> ...

In *Capistrano Daayata, et al. v. People of the Philippines*[53], the Supreme Court ruled that the quantum of such evidence must be beyond reasonable doubt. It stated:

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50 (d) In the case of associations, partnerships or corporations, the penalty shall be imposed in the partner, president, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation.

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

52 *People of the Philippines v. Efren O. Docena, et al.*, CTA EB Crim. No. 030, 04 January 2016.

53 G.R. No. 205745, 08 March 2017.

> ...
>
> Conviction in criminal actions demands proof beyond reasonable doubt. Rule 133, Section 2 of the Revised Rules on Evidence states:
>
> > 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.**
>
> While not impelling such a degree of proof as to establish absolutely impervious certainty, the quantum of proof required in criminal cases nevertheless charges the prosecution with the immense responsibility of establishing moral certainty, a certainty that ultimately appeals to a person's very conscience. While indeed imbued with a sense of altruism, this imperative is borne, not by a mere abstraction, but by constitutional necessity:
>
> > This rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused. **Requiring proof beyond reasonable doubt finds basis not only in the due process clause of the Constitution, but similarly, in the right of an accused to be "presumed innocent until the contrary is proved."** "Undoubtedly, it is the constitutional presumption of innocence that lays such burden upon the prosecution." Should the prosecution fail to discharge its burden, it follows, as a matter of course, that an accused must be acquitted...[54]
>
> ...

ACCUSED IS A PERSON REQUIRED BY THE NIRC OR RULES AND REGULATIONS TO PAY THE TAX

Anent the first element, the parties stipulated on the fact that accused is registered with the BIR under TIN 215-814-168-000, and that he is a sole proprietor engaged in the retail of general merchandise,

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[54] Emphasis supplied.

including cellular/mobile cards. Section 51(A) of the NIRC of 1997, as amended, also mandates:

> ...
>
> **SEC. 51.** *Individual Return.* —
>
> (A) *Requirements.* —
>
> (1) Except as provided in paragraph (2) of this Subsection, the following individuals are required to file an income tax return:
>
> (a) <u>Every Filipino citizen residing in the Philippines;</u>
>
> ...

Corollary thereto, Section 74 of the same Code provides:

> ...
>
> **SEC. 74.** *Declaration of Income Tax for Individuals.* —
>
> (A) *In General.* — Except as otherwise provided in this Section, every individual subject to income tax under Sections 24 and 25(A) of this Title, who is receiving self-employment income, whether it constitutes the sole source of his income or in combination with salaries, wages and other fixed or determinable income, shall make and file a declaration of his estimated income for the current taxable year on or before April 15 of the same taxable year. <u>In general, 'self-employment income' consists of the earnings derived by the individual from the practice of profession or conduct of trade or business carried on by him as a sole proprietor or by a partnership of which he is a member.</u> Nonresident Filipino citizens, with respect to income from without the Philippines, and nonresident aliens not engaged in trade or business in the Philippines, are not required to render a declaration of estimated income tax. The declaration shall contain such pertinent information as the Secretary of Finance, upon recommendation of the Commissioner, may, by rules and regulations prescribe. An individual may make amendments of a declaration filed during the taxable year under the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner.[55]
>
> ...

Accused, therefore, is required by law to file his return and correspondingly pay taxes. The duty of filing returns and payment of taxes are undoubtedly known to the accused as he filed both IT and

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55 Underscoring supplied.

VAT returns for the subject TY 2007 and paid taxes thereon. Indubitably, the first element is present in these cases.

ACCUSED DID NOT FAIL TO PAY THE
TAX AT THE TIME REQUIRED BY LAW

Our tax system employs a self-assessment method, whereby taxpayers are obliged to pay taxes based on their declared income. This, however, is without prejudice to the right of the government to assess taxpayers for deficiency taxes, in accordance with established laws, rules and procedure and within the period prescribed.

The cases at bar stemmed from the government's right to assess deficiency taxes. While it is undisputed that accused was compliant insofar as filing of tax returns and payment of taxes based on the income declared thereon at the times required by law, the BIR assessed accused for deficiency IT and VAT.

Prior to the assessment, the BIR conducted a third-party matching *via* the RELIEF System and found that accused has undeclared purchases (based on the SLS of its suppliers). The BIR then converted the undeclared purchases to sales by grossing up the value using the cost of sales ratio and multiplied by the gross profit rate, which ultimately resulted in additional income.

For accused's alleged failure to reconcile and refute the discrepancy in the purchases, the investigation ripened into a formal assessment for deficiency taxes. As the parties so stipulated, accused's office staff received the FAN dated 02 November 2011. It was also stipulated that, when accused's wife got hold of the FAN, she communicated with RO Martinez and explained verbally that they could not have purchased the undeclared purchases. Thereafter, she called RO Martinez to say that she could no longer submit the documents required of her. Clearly, accused never protested against the FAN.

It is an elementary rule that failure to file an administrative protest to the FAN renders the assessment final, executory and demandable.[56] With the assessment becoming final, executory and demandable, the duty of the taxpayer to pay the said deficiency taxes within the time prescribed arises. Willful failure to do so is penalized under the NIRC.

The second element that the plaintiff must prove beyond reasonable doubt is that accused failed to pay the deficiency taxes within the time required by law.

To show whether there was failure to pay within the required period (and eventually penalize the taxpayer for it), the time or deadline for payment of the assessed tax must be clear. It is settled that an assessment does not only include a computation of tax liabilities, it also includes a demand for payment[57] of the definite amount of liability and the deadline for payment. Obviously, for the second element to concur, proof must show complete failure on the part of the taxpayer to pay the assessed tax within the time required.

Although the hands of the Court are tied in ruling on the validity of the assessment, for it has long become final; it can peruse over the contents of the FAN, including its attachments as any other documentary evidence for purposes of weighing their probative value in relation to the issues raised.

Under the rules of admissibility of evidence, documents as evidence consist of writings or any material containing letters, words, numbers, figures, symbols or other modes of written expressions offered as proof of their contents.[58] Upon careful review of the FAN and the attached Assessment Notices, <u>no deadline for payment was indicated</u>. The second to the last paragraph of the FAN states:

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[56] **Section 228**. *Protesting an assessment.* –

...

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.

...

[57] *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, G.R. No. 215957, 09 November 2016.

[58] Rule 130 B. Documentary Evidence, Section 2.

> ...
>
> In view thereof, you are hereby required to pay the aforesaid tax liability through the duly authorized bank in which you are enrolled <u>within the time shown in the enclosed assessment</u>. If payment has been made, it is requested that this Office be furnished with the copy of the Payment Form 0611-A and the Official Receipt issued by the accredited bank.[59]
>
> ...

In the enclosed Assessment Notice for IT and VAT, the deadline for payment was likewise left blank. The taxpayer was instructed, to wit:

> ...
>
> Please present this notice to the nearest Revenue District Office or other duly authorized issuing office for the issuance of LN Payment Form (BIR Form 0611A) and pay the total amount payable on or before ________________ to any accredited bank where you enrolled or to ____.
>
> ...

It is also noteworthy that the computation of interest in the FAN was only up to 31 July 2011, while the FAN was issued 02 November 2011. Hence, the total amount of liability indicated in the FAN was not definite and was still subject to re-computation.

In *Commissioner of Internal Revenue v. Fitness by Design, Inc.*[60], the Supreme Court emphasized the importance of a formal assessment, to wit:

> ...
>
> A final assessment is a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof." This demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]". Thus, this must be "sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period."
>
> ...

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59 Underscoring supplied.
60 Supra at note 57.

Given that the deadline for payment was not indicated (and the total amount of liability was not fixed), it is impossible for this Court to construe his failure to pay his actual deficiency tax liabilities for both IT and VAT within the time required.

Incidentally, plaintiff likewise failed to sufficiently show that accused received the notices for collection made after the finality of the FAN. RO Domingo sent the two FNBS by registered mail, whereas the BIR Legal Division of RR 6 also sent the Demand Letter by registered mail. Although there exists a presumption that the notices were received in the ordinary course of mail, such presumption is disputable and may be controverted. Here, other than the FAN, accused denied vehemently that he received the correspondences. In *Victor Ting, et al. v. Court of Appeals, et al.*[61], the Supreme Court ruled:

> ...
> Given petitioners' denial of receipt of the demand letter, it behooved the prosecution to present proof that the demand letter was indeed sent through registered mail and that the same was received by petitioners. This, the prosecution miserably failed to do. Instead, it merely presented the demand letter and registry return receipt as if mere presentation of the same was equivalent to proof that some sort of mail matter was received by petitioners. Receipts for registered letters and return receipts do not prove themselves; they must be properly authenticated in order to serve as proof of receipt of the letters...
>
> Likewise, for notice by mail, it must appear that the same was served on the addressee or a duly authorized agent of the addressee. In fact, the registry return receipt itself provides that "[a] registered article must not be delivered to anyone but the addressee, or upon the addressee's written order, in which case the authorized agent must write the addressee's name on the proper space and then affix legibly his own signature below it." In the case at bar, no effort was made to show that the demand letter was received by petitioners or their agent. All that we have on record is an illegible signature on the registry receipt as evidence that someone received the latter. As to whether this signature is that of one of the petitioners or of their authorized agent remains a mystery. From the registry receipt alone, it is possible that petitioners or their authorized agent did receive the demand letter. Possibilities, however, cannot replace proof beyond reasonable doubt...

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61 G.R. No. 140665, 13 November 2000.

> As we stated in Savage v. Taypin..., "penal statutes must be strictly construed against the State and liberally in favor of the accused." Likewise, the prosecution may not rely on the weakness of the evidence for the defense to make up for its own blunders in prosecuting an offense.
>
> ...

Plaintiff merely presented the Registry Return Receipts of the two FNBS, one with an illegible signature and the other with printed name "Maricel Sowegue" (**Sowegue**) and signature above the printed name. Other than these, plaintiff failed to prove that the signatories appearing on the registry return receipts were accused's or of his authorized agent. Nowhere in the records would show that Sowegue was indeed an authorized agent of accused. Likewise, the illegible signature appearing in the other registry receipt does not bear any semblance with accused's signature in his Judicial Affidavit.

As for the WDL which was served personally, Fernandez received the same. In the same vein, plaintiff failed to sufficiently prove that Fernandez was indeed accused's liaison officer. Unlike in the FAN where both accused and his wife admitted that Clemente was their staff, there was no such admission with respect to Fernandez. Thus, even with the issuance of the WDL to accused, it could not be assumed validly that he was made aware thereof and that he was to pay the assessed deficiency tax within the expected time (from his supposed receipt of the WDL).

ACCUSED'S FAILURE TO PAY TAXES
WAS NOT WILLFUL

Owing to the absence of the preceding (second) element; obviously, there could not be any finding that accused willfully failed to pay the deficiency taxes. Black's Law Dictionary,[62] defined "willful" as:

> ...
> An act or omission is 'willfully' done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or <u>with the specific intent to fail to do something the law</u>

[62] 6th Edition, St. Paul Minn. West Publishing Co., 1990, p. 1599.

> requires to be done; that is to say, with bad purpose to either to disobey or to disregard the law...
>
> A willful act may be described as one done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently. A willful act differs essentially from a negligent act. The one is positive and the other negative.
>
> Act is 'willful' within meaning of section *(sic)* of Internal Revenue Code imposing penalty for willful failure to pay federal income and social security taxes withheld from employees if it is voluntary, conscious and intentional; no bad motive or intent to defraud the United States need be shown, and a 'reasonable cause' or 'justifiable excuse' element has no part in definition.[63]
>
> ...

In tax crimes, "willfulness" has been simply defined as:

> ...
> Willful in the tax crime statutes means a voluntary, intentional violation of a known legal duty and bad faith or bad purpose need not be shown.[64]
>
> ...

Thus, to attribute to the 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 to 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.[65]

As earlier stated, considering that plaintiff was not able to prove beyond reasonable doubt that accused was made fully aware of his obligation to pay taxes and when to pay the same, it could not be

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[63] See *Harrington v. U.S.*, C.A.R.I., 504 F.2d 1306, 1315; Underscoring supplied.

[64] [Mertens (Law of Federal Income Taxation) Chapter 47.04, page 28, Volume 13, see *U.S. v. Green*, 757 F2d 116, 85-1 USTC 9178 (CA7 1985), in which the Court, citing *U.S. v. Moore*, 627 F2d 830 (CA 1980) and *U.S. v. Verkuilen*, 690 F2d 648, 82-2 USTC 9618 (CA7 1982), upheld the conviction of a tax protester for willful failure to file returns], also cited in *People of the Philippines v. Estelita Delos Angeles*, CTA Crim. Case No. O-027, 25 November 2009.

[65] *People of the Philippines v. Corazon C. Gernale*, CTA Crim. Case No. O-336, 26 September 2018.

established that accused's failure to pay his deficiency taxes was willful on his part.

In *Guilbemer Franco v. People of the Philippines*[66], the Supreme Court ruled that the prosecution has the burden to prove that all the elements of the offense are present and that the accused actually committed said offense, to wit:

> ...
>
> The burden of such proof rests with the prosecution, which must rely on the strength of its case rather than on the weakness of the case for the defense. Proof beyond reasonable doubt, or that quantum of proof sufficient to produce a moral certainty that would convince and satisfy the conscience of those who act in judgment, is indispensable to overcome the constitutional presumption of innocence.
>
> In every criminal conviction, the prosecution is required to prove two things beyond reasonable doubt: *first*, the fact of the commission of the crime charged, or the presence of all the elements of the offense; and *second*, the fact that the accused was the perpetrator of the crime.
>
> ...

B. CIVIL ASPECT

CIVIL LIABILITY *EX DELICTO*

The institution of the criminal action necessarily carries with it the civil action arising from the crime. Section 11, Rule 9 of Revised Rules of the Court of Tax Appeals (**RRCTA**), as amended provides:

> ...
>
> **Sec. 11.** *Inclusion of civil action in criminal action.* – In cases within the jurisdiction of the Court, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall be deemed jointly instituted in the proceeding. The filing of the criminal action shall necessarily carry with it the filing of the civil action. No right to reserve the filing of such civil

66 G.R. No. 191185, 01 February 2016; italics in the original text.

> action separately from the criminal action shall be allowed or recognized.
>
> ...

The Supreme Court has consistently held that what is deemed instituted with the criminal action is only the civil liability *ex delicto*. Civil liability arising from other sources of obligation, such as from law, which can stand independently of the criminal prosecution, is not included.[67]

Generally, an acquittal in a criminal case does not *ipso facto* result in the extinguishment of civil liability *ex delicto*. An exception would be when there is a finding in a final judgment in the criminal action that the act or omission from which civil liability may arise did not exist.

In these cases, the Court finds that accused cannot be held civilly liable for failure of plaintiff to prove the guilt of accused.

CIVIL LIABILITY ARISING FROM THE FINAL ASSESSMENT NOTICE

To reiterate, what is deemed instituted with the criminal action is only the civil liability *ex delicto*. It does not include that which arose from law such as the deficiency assessment against the taxpayer. The ruling of the Supreme Court in *Macario Lim Gaw, Jr. v. Commissioner of Internal Revenue*[68] is instructive:

> ...
>
> Rule 111, Section 1(a) of the Rules of Court provides that what is deemed instituted with the criminal action is only the action to recover civil liability arising from the crime. Civil liability arising from a different source of obligation, such as when the obligation is created by law, such civil liability is not deemed instituted with the criminal action.

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67 *Gloria S. Dy v. People of the Philippines, et al.*, G.R. No. 189081, 10 August 2016
68 G.R. No. 222837, 23 July 2018; Emphasis in the original text.

It is well-settled that the taxpayer's obligation to pay the tax is an obligation that is created by law and does not arise from the offense of tax evasion, as such, the same is not deemed instituted in the criminal case.

In the case of *Republic of the Philippines, v. Patanao,* We held that:

> **Civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him.** The criminal liability arises upon failure of the debtor to satisfy his civil obligation. The incongruity of the factual premises and foundation principles of the two cases is one of the reasons for not imposing civil indemnity on the criminal infractor of the income tax law. x x x Considering that the Government cannot seek satisfaction of the taxpayer's civil liability in a criminal proceeding under the tax law or, otherwise stated, since the said valid civil liability is not deemed included in the criminal action, acquittal of the taxpayer in the criminal proceeding does not necessarily entail exoneration from his liability to pay the taxes. It is error to hold, as the lower court has held that the judgment in the criminal cases Nos. 2089 and 2090 bars the action in the present case. **The acquittal in the said criminal cases cannot operate to discharge defendant appellee from the duty of paying the taxes which the law requires to be paid, since that duty is imposed by statute prior to and independently of any attempts by the taxpayer to evade payment. Said obligation is not a consequence of the felonious acts charged in the criminal proceeding nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of non[-]existence of the criminal acts charged...**

Further, in a more recent case of *Proton Pilipinas Corp. v. Republic of the Phils.*, We ruled that:

> While it is true that according to the aforesaid Section 4, of Republic Act No. 8249, the institution of the criminal action automatically carries with it the institution of the civil action for the recovery of civil liability, however, in the case at bar, **the civil case for the collection of unpaid customs duties and taxes cannot be simultaneously instituted and determined in the same proceedings as the**

> **criminal cases before the Sandiganbayan, as it cannot be made the civil aspect of the criminal cases filed before it.** It should be borne in mind that **the tax and the obligation to pay the same are all created by statute; so are its collection and payment governed by statute.** The **payment of taxes is a duty which the law requires to be paid. Said obligation is not a consequence of the felonious acts charged in the criminal proceeding nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of non-existence of the criminal acts charged. Hence, the payment and collection of customs duties and taxes in itself creates civil liability on the part of the taxpayer. Such civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business and not because of any criminal act committed by him.**

...

From the foregoing, any civil liability of accused arising from the finality of the FAN is not deemed included in these cases. Hence, the Court is precluded from awarding the same. Needless to state, this is without prejudice to the right of the BIR to institute a collection suit against accused for any unpaid taxes due it.

WHEREFORE, premises considered, accused **BONNER PURPURA ARMADA** is **ACQUITTED** of the offenses charged in CTA Crim. Case Nos. O-617 and O-618, respectively, for failure of the plaintiff to prove his guilt beyond reasonable doubt. Accordingly, the cash bail bonds of accused are hereby **DISCHARGED** and are to be **RELEASED** to him upon presentation of proper documents, in accordance with usual accounting rules and regulations.

No pronouncement as to civil liability *ex delicto*.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

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

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice