REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

THE PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

DAVID DE LEON AND ANN MARIE DE LEON,
Accused.

CTA CRIM. CASE NO. O-594

Members:
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

OCT 24 2018
1:45 p.m.

X---X

DECISION

RINGPIS-LIBAN, *J.*:

The Case

Accused David De Leon (David) and Ann Marie De Leon (Ann) are charged in their capacity as President and Treasurer, respectively, of D&A Food Products, Inc. (DAFPI), for violation of Section 255 of the National Internal Revenue Code of 1997, as amended, for failure of DAFPI to pay its deficiency taxes for taxable year 2007.

DAFPI has its business address at 306 A. Mabolo St., Santulan, Malabon City, Metro Manila.

The prosecution, 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 National Building, Diliman, Quezon City.

The Amended Information against the two accused reads as follows:

"That sometime in 2007, in Caloocan City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, did then and there willfully, unlawfully and feloniously fail and refuse to pay the following tax deficiencies, *to wit:*

Kind of Tax	YEAR	Basic Deficiency Tax	Interest	Amount of Tax Due
Income Tax	2007	Php 1,482,052.33	Php 739,787.22	Php 2,275,839.55
Value Added Tax	2007	1,044,746.29	606,161.99	1,650,908.28
Compromise Penalty	2007			13,000.00
			Total	Php 3,939,747.83

for the taxable year 2007, and still fail and refuse to do so up to the present, despite the finality and incontestability of the Assessment Notices/Formal Letter of Demand all dated 09 December 2010 issued by the Commissioner of Internal Revenue, through the Regional Director; to the damage and prejudice of the government.

Contrary to law."

On January 11, 2017, the Third Division of this Court issued a Resolution[1] ordering the issuance of warrants of arrest for accused David and Ann de Leon.

On January 13, 2017, the Court issued the Warrant of Arrest[2] for both accused.

On January 20, 2017, accused David and Ann de Leon voluntarily appeared before the Court and submitted themselves to the jurisdiction of the Court by posting a cash bond in the amount of ₱20,000.00 each, for their provisional liberty.

[1] *Docket*, CTA Crime Case No. O-594, pp. 152-155.
[2] *Id.*, pp. 156-159.

During the arraignment on February 8, 2017, both accused, with the assistance of their counsel, entered a plea of "Not Guilty" to the crime charged. After termination of the pre-trial held on April 5, 2017, the parties presented their respective evidence.

On May 5, 2017, accused, through counsel, filed a Manifestation[3] that they are submitting a Waiver of their Appearance[4] during the trial of the case. This was granted in the Court's Resolution dated August 15, 2017.[5]

Trial ensued and, to prove its case, the prosecution presented three (3) witnesses, namely: Asnar C. Macabanding, Grace S. Lazaro, and Ma. Gina B. Gagarin.

The prosecution's first witness, ***Asnar C. Macabanding***[6], Revenue Officer (RO) II presently assigned at Revenue District Office (RDO) No. 24, Valenzuela City, testified that he was previously assigned to RDO No. 26, Malabon/Navotas Districts prior to 2016;[7] that as RO, he is tasked to conduct audit investigation of all internal revenue taxes for tax cases assigned to him and to perform other related functions assigned to him;[8] that he was one of the revenue examiners assigned to conduct the investigation of all internal revenue tax liabilities of DAFPI for the period January 1, 2007 to December 31, 2007, pursuant to Tax Verification Notice (TVN) No. 00046228 dated November 6, 2008, together with the First Request of Presentation of Records and that his counterpart is Revenue Gerardo B. Dizon under Group Supervisor Lolita A. Loreto;[9] that the BIR Records show that the TVN together with the First Request for Presentation of Records were personally received by Ariel C. Chua, the taxpayer's authorized representative;[10]that, initially, RO Gerardo B. Dizon commenced the audit examination and investigation of DAFPI;[11] that when DAFPI failed to comply with the First Request for Presentation of Records, the Second Request for Presentation of Records[12] and Final Notice[13] were issued and served;[14] that these were served through registered mail and both were received by Nancy Batolome, taxpayer's authorized representative on November 28, 2008 and February 10, 2009, respectively, as evidenced by Registry Return Receipts;[15]

[3] *Id.*, pp. 231-232.
[4] *Id.*, p. 233.
[5] *Id.*, pp. 321-322.
[6] Testified on June 14, 2017.
[7] *Id.*, p. 247.
[8] *Id.*
[9] *Id.*, p. 248.
[10] *Id.*
[11] *Id.*
[12] Exhibit "P-5".
[13] Exhibit "P-7".
[14] *Id.*, p. 249.
[15] *Id.*, Exhibits "P-6" and "P-8".

that the bases for the assessment which she also identified are a) DAFPI's Income Tax Return (ITR)[16] with Financial Statement[17] for taxable year 2007, b) Summons and/or Subpoena Duces Tecum dated October 20, 2009[18] as well as 2nd Indorsement dated January 7, 2010[19], c) Post Reporting Notice[20], d) Revenue Officer's Audit Report on Income Tax for TY 2007[21], e) RO's Audit Report on VAT for TY 2007[22], f) Preliminary Assessment Notice (PAN)[23], g) Final Assessment Notice (FAN) on Income Tax for TY 2007[24], h) FAN on VAT for TY 2007[25]; i) Formal Letter of Demand (FLD) for TY 2007;[26] that there are corresponding Registry Return Receipts in the BIR Records for the PAN, FAN and the FLD;[27] that after RDO Rosemarie Ramos-Ragasa informed the President of DAFPI about his authority to continue the audit investigation[28], he prepared a Memorandum for the issuance of a Subpoena Duces Talcum *(sic)* in order for the accused to present their books of account and other accounting records but accused failed to cooperate;[29] that the Office of the Legal Division issued a 2nd Indorsement dated January 7, 2010 to assess DAFPI based on the best evidence obtainable;[30] and that he identified his Judicial Affidavit executed on May 31, 2017, marked as Exhibit "P-34".[31]

On **cross examination**[32], he testified that he does not personally know both accused; that he took over the audit and investigation more or less in 2009; that the case was reassigned to him when RO Gerardo Dizon was transferred to another district; that upon assuming the case, RO Dizon had already served notices up to the final notice; that he sent a notice informing the taxpayer that the case was reassigned to him and when there was no compliance or reply, he forwarded the case to the Legal Division; that he was not privy to the service of the TVN; that he was also not privy to the position of Nancy Bartolome, the person who received the First Request for Presentation of Records; that he does not know, based on the records, if the Second Request for Presentation of Records and the Final Notice were received by the accused; that when he personally sent the notice of reassignment to the taxpayer which he sent to the accused's registered address he was only allowed to stay outside by the guard and

[16] Exhibit "P-1".
[17] Exhibit "P-2".
[18] Exhibit "P-11".
[19] Exhibit "P-13"
[20] Exhibit "P-14".
[21] Exhibit "P-15".
[22] Exhibit "P-16".
[23] Exhibit "P-17".
[24] Exhibit "P-20".
[25] Exhibit "P-21".
[26] Exhibit "P-22".
[27] *Id.* at Note 1, p. 250.
[28] Exhibit "P-9".
[29] *Id.*, p. 251, Exhibit "P-12".
[30] *Id.*
[31] *Id.*, pp. 246-289.
[32] TSN of the hearing on June 14, 2017, pp. 332-343.

that when it was given back to him, it was also signed by Nancy Bartolome; that Nancy Bartolome did not sign the document in his presence; that in handing the guard the document, he told the guard that it should be accepted by an authorized representative; that he does not remember asking what the position of Nancy Bartolome was; that upon the failure of the accused to present records, he forwarded the docket to the Legal Division for issuance of summons; that after forwarding the docket to the Legal Division he did not conduct any further examination or investigation.

On **redirect**[33], RO Macabanding further testified that upon return of the docket from Legal, he assessed the accused based on best evidence obtainable under RMC 23-2000; that he used the accused's previously filed income tax return to assess and that per RMC 23-2000, it could be assessed at 50% disallowance; the he prepared a report regarding the assessment[34]; that the taxpayer was furnished the result of the initial assessment; that the Post Reporting Notice was personally sent to accused; and that he prepared the RO Audit Report on income and VAT assessment.

The prosecution's second witness, ***Ma. Gina B. Gagarin***[35], RO II, Seizure Agent, Forfeited Assets Management Unit, NOB, Quezon City, testified that among her functions and duties are the collection of delinquent accounts through exhaustion of available administrative remedies such as Preliminary Collection Letter (PCL), Final Notice Before Seizure (FNBS), Warrants of Distraint and/or Levy (WDL), Warrant of Garnishment and Determination of Property Holdings from Assessor's Office, service and enforcements of such warrants and determination of property holdings from Assessor's Office for the purpose of locating properties of delinquent taxpayers and subjecting it to summary remedies, and to refer delinquent accounts to the Legal Division for enforcement of judicial action[36]; that part of her functions as regards the case of DAFPI was to continue the collection enforcement initiated by RO Grace S. Lazaro when DAFPI failed to completely settle their offer of compromise settlement and failed to submit supporting documents in support of their offer of compromise on the ground of financial incapacity[37]; that she prepared Memoranda Reports on April 11, 2013[38] and December 9, 2013[39], respectively, for the continuance of administrative summary remedies, and failing to collect, referred the docket of the case to the Legal Division for appropriate legal action; that based on the BIR Records, the Legal Division sent a Final Notice Before

[33] *Id.*, pp. 343-349.
[34] Exhibits "P-14" to "P-16".
[35] Testified on August 16, 2017 and September 20, 2017.
[36] *Id.* at Note 1, p. 312, Judicial Affidavit of Ma. Gina B. Gagarin, Exhibit "P-35".
[37] *Id.*, p. 313.
[38] Exhibit "P-30".
[39] Exhibit "P-31".

Filing Criminal Complaint dated January 9, 2013[40] through registered mail;[41] and that she executed a Judicial Affidavit[42], marked as Exhibit "P-35".

On **cross-examination,** she testified that she has not met either of the accused personally[43]; that a Memorandum of Assignment was issued in her favor for the purpose of continuing the enforcement of collection;[44] that she received the said Memorandum of Assignment on June 11, 2013;[45] that she conducted a series of follow up telephone calls on the taxpayer but the taxpayer still failed to continue the payment and submission of the required documents;[46] that she wrote the Memorandum Report dated April 11, 2013 on the same day that she received the Memorandum of Assignment; that the Memorandum Report is not accurate because the follow ups were made immediately after receipt of the LOA and the basis for the Memorandum Report was the follow up calls that she conducted that day;[47] that she does not recall making surveillance on the date of the Memorandum Report, but that it was done after several phone calls and collection letters;[48] that she cannot recall letting the taxpayer receive collection letters;[49] that after a series of telephone calls and notices to the taxpayer, she made the WDL and served it personally at the business establishments; that she served the WDL to Stephen Piora on October 16, 2013 at 11:00 in the morning after inquiring if it was the business establishment and if he was connected to the company, to which he answered yes to both questions;[50] that she did not ask Stephen Piora to provide an identification card to prove that he is the real Stephen Piora[51]; that the business establishment where she served the WDL had a signage that said D&A Food Products at the gate; that since the gate was half-open and there was a guard there, they inquired if there was anyone they could talk to inside and the guard pointed to the small office where Stephen Piora was;[52] that this was her basis for concluding that the taxpayer was still doing business at the said address;[53] that she is not part of the legal division; and that based on the BIR Record, a FNBS was made.[54]

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[40] Exhibit "P-32".
[41] *Id.* at Note 1, p. 314, Exhibit "P-33".
[42] *Id.*, pp. 311-319.
[43] *Id.*, p. 361, TSN of Hearing on August 16, 2017.
[44] *Id.*, p. 363, Exhibit "P-30".
[45] *Id.*, p. 378-f, TSN of Hearing on September 20, 2017.
[46] *Id.*, p. 378-h.
[47] *Id.*, p. 378-j.
[48] *Id.*, p. 378-l.
[49] *Id.*
[50] *Id.*, p. 378-n.
[51] *Id.*, p. 378-q.
[52] *Id.*, p. 378-r.
[53] *Id.*, p. 378-s.
[54] *Id.*, p. 378-w;

The prosecution's third witness, ***Grace S. Lazaro***[55], previously RO III, and now OIC-Chief, Collection Section, RDO No. 26, Malabon-Navotas District, testified that she has been employed with the BIR since March 1990, that among her functions as RO assigned as Seizure Agent were the collection of delinquent accounts through exhaustion of available administrative remedies such as PCL, FNBS, WDL, Warrant of Garnishment and Determination of Property Holdings from Assessor's Office, service and enforcements of such warrants and determination of property holdings from Assessor's Office for the purpose of locating properties of delinquent taxpayers and subjecting it to summary remedies, and to refer delinquent accounts to the Legal Division for enforcement of judicial action;[56] that she recalls having served only the PCL[57] and Warrants of Garnishment[58] on various banks by virtue of Memorandum of Assignment dated February 24, 2011 while the other available summary remedies were served by the other seizure agent, RO Gagarin;[59] that DAFPI coordinated with the BIR and applied for a compromise settlement for Income and VAT liabilities by paying 10% of the basic tax, in installment basis, payable in three (3) months using Payment Form 0605 in the amount of ₱34,824.88[60] and ₱49,401.74,[61] respectively;[62] that after the initial payment of the accused, the case was re-assigned to RO Gagarin;[63] and that she executed a Judicial Affidavit, marked as Exhibit "P-36".

On **cross-examination,** she testified that she recalled having served the PCL and the Warrants of Garnishment from various banks to accused David De Leon who coordinated with her;[64] that she did not serve the PCL to Ann De Leon; that she served the PCL that was issued on August 24, 2011 on May 17, 2012;[65] that the one who received the PCL was Madel Elmedo and not either David or Ann De Leon;[66] that she does not have any idea who Madel Elmedo is;[67] that she just assumed that she was a representative of accused because she was the one present at the address she went to; that it is her opinion that Madel Elmedo received the PCL in behalf of David De Leon; and that the address she went to was the place of business of the accused.[68]

[55] Testified on December 6, 2017.
[56] *Id.* at Note 1, pp. 386-387.
[57] Exhibit "P-25".
[58] Exhibits "P-18", "P-24", "P-26", and "P-27".
[59] *Id.*, p. 387.
[60] Exhibit "P-28".
[61] Exhibit "P-29".
[62] *Id.* at Note 59.
[63] *Id.*, p. 388.
[64] *Id.*, p. 407-g.
[65] *Id.*, p. 407-i.
[66] *Id.*, p. 407-k.
[67] *Id.*, p. 407-l.
[68] *Id.*. p. 407-p.

On September 19, 2017, accused filed a Manifestation and Motion praying that the Court dismiss the civil and criminal aspects of the case as they were allowed to continue the payment from the compromise settlement and voluntarily paid the amount of ₱252,679.86 representing full settlement of its deficiency taxes for TY 2017.

In an Order dated September 20, 2017, the prosecution was ordered to file its comment/opposition thereto.

On October 25, 2017, the prosecution filed its Motion to Admit Comment/Opposition[69].

On November 9, 2017, the Court denied accused's Motion for lack of merit ratiocinating that the act of the accused in settling the 10% compromise on the assessments issued by the BIR for CY 2007 does not, in any way, terminate the criminal proceeding or affect the criminal liability of the accused for violation of the Tax Code.[70]

On December 15, 2017, the prosecution filed its Formal Offer of Exhibits[71] to which accused filed their Comment/Objection on January 23, 2018.[72]

With the admission of its documentary evidence on February 1, 2018, except for Exhibits "P-10" and "P-23" for not being properly identified by its witnesses, the prosecution rested its case.[73]

The defense presented two (2) witnesses, namely, accused David De Leon and Catherine E. Anicoche.

Accused ***David De Leon***[74] testified that he is the President of DAFPI; that BIR-RDO 26 is the government agency where the Corporation files its AITR and pays their tax dues for Income Tax and VAT; that the subject of the BIR's inquiry is the AITR filed by DAFPI for taxable year 2007;[75] that it was only when the case was filed against him that he became aware that the DAFPI did not comply with the BIR's request to present records and to abide by its

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[69] *Id.*, pp. 381-384.
[70] *Id.*, pp. 399-404.
[71] *Id.*, pp. 408-460.
[72] *Id.*, pp. 462-466.
[73] *Id.*, pp. 470-471.
[74] Testified on February 14, 2018.
[75] Exhibits"A-6" to "A-7"

subpoena duces tecum; that this was the purported basis of filing the criminal complaint against him and his wife;[76] that he was not aware of the BIR's request for the DAFPI's records; that he has not seen the First Request for Presentation of Records[77], the Second Request for Presentation of Records,[78] and the Final Notice;[79] that he was unaware that the BIR summoned DAFPI to produce its books of accounts and other accounting records for year 2007;[80] that he has no knowledge of the Summons and/or Subpoena Duces Tecum issued on October 20, 2009 which was addressed to the treasurer of the company; that he is not the company's treasurer; that he also has no knowledge of the Post-Reporting Notice[81], PAN[82], FAN[83], PCL[84], and that the PCL was not addressed to him; that sometime in 2012, the corporation's external accountant, Ms. Catherine Anicoche, informed him that the company needs to apply for a compromise settlement with the BIR since the company was experiencing financial difficulties and was not capable of paying the assessment made by the BIR as regards their deficiency taxes for 2007; that he paid the compromise settlement in full comprising deficiency income tax amounting to ₱49,401.74 on October 29, 2012[85], ₱64,176.86 on December 18, 2012[86], and ₱49,401.74 on July 25, 2013[87], showing the corresponding payment forms and LBP BIR Tax Payment Deposit Slips; that he also made payments for deficiency VAT amounting to ₱34,824.88 on October 29, 2012[88], and ₱34,824.88 on July 25, 2013[89], showing the corresponding payment forms and LBP BIR Tax Payment Deposit Slips; that the Subpoena he received sometime during the early quarter of 2016 before Assistant City Prosecutor (ACP) Ramon B. Mendoza of the City of Caloocan took him by surprise as he thought there was a successful compromise settlement with the BIR;[90] that during the preliminary investigation of the case it so happened that the company's external accountant had just given birth[91] and was unable to furnish the BIR forms and proof of payment to BIR; that despite requests to postpone the hearings, ACP Mendoza immediately resolved the case without the benefit of a full-blown preliminary investigation;[92] that on August 14, 2017, DAFPI was allowed to continue the payment for the incomplete compromise settlement where it paid ₱252,679.86 representing full settlement of

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[76] *Id.* at Note 1, p. 474.
[77] Exhibit "P-4".
[78] Exhibit "P-5".
[79] Exhibit "P-7".
[80] Exhibit "P-11".
[81] Exhibit "P-14".
[82] Exhibit "P-17".
[83] Exhibit "P-20".
[84] Exhibit P-25".
[85] Exhibits "A-1" to "A-1-1".
[86] Exhibits "A-3" to "A-3-1".
[87] Exhibits "A-5" to "A-5-1".
[88] Exhibits "A-2" to "A-2-1".
[89] Exhibits "A-4" to "A-4-1".
[90] *Id.* at Note 1, p. 476.
[91] Exhibits "A-15" and "A-15-1".
[92] *Id.*, p. 477.

the 10% of basic income tax amounting to ₱148,205.23[93] and 10% of the basic VAT of ₱104,474.63[94] based on the assessed deficiency tax for TY 2007 and identifying the corresponding BTR-BIR Deposit Slips thereof; that the purpose of DFAPI in entering into a compromise settlement in the BIR was due to its financial incapacity as proven by the Corporation's AITR and Financial Statements for 2008[95] and 2009[96] showing the continuous decline in the profits of the company to levels that made it incapable of discharging its financial responsibilities, the Affidavit of Non-Operation[97], Approval Retirement of Business[98], and the Application for Retirement of Business stamped "Retired"[99]; and that he executed a Judicial Affidavit marked as Exhibit "A-18".

The prosecution declined to cross-examine the witness. However, during the ***interpolation of the Court***, accused testified that he is in the Chicharon business;[100] that since 2008, the business was struggling as the price of the materials increased;[101] that it ceased operation and does not exist anymore as it is a retired business; that when he was the President, during the relevant period, there was no communications received by him from the BIR;[102] that his highest educational attainment was first year college; that he rarely stays in the office because most of the time he is in Bulacan monitoring the work of his employees; that he has no knowledge of the BIR notices because he had not received any and no one handed him any; that he was only made aware that he needed to pay the corporation's tax deficiencies when their accountant, Cathy, made it known to him in 2012;[103] that he relied on Cathy as regards what to do next regarding the payments due as he was unfamiliar with those matters;[104] that he does have tax deficiencies and he wanted to settle; that he partially paid the tax deficiencies but was unable to settle the full amount; that his inability to settle in full was what he perceived as the reason for this criminal case;[105] that Cathy told him about some notices that he ignored to which he responded that he did not receive any notices; that he instructed Cathy to pay what needed to be paid; that he admits that the English language in which the notices were written were confusing to him; [106] that he has fully settled the remaining balance due for the compromise settlement and no longer has any obligation to the government, but he also admitted that he erred in not fully paying it before; that he did not intend to not

[93] Exhibits "A-16" to "A-16-1".
[94] Exhibits "A-17" to "A-17-1".
[95] Exhibits "A-8", "A-8-1", "A-9" to "A-9-13".
[96] Exhibits "A-10", "A-10-1", "A-11" to "A-11-23"
[97] Exhibit "A-12".
[98] Exhibit "A-13".
[99] Exhibit "A-14".
[100] *Id.* at Note 1, p. 566.
[101] *Id.*, p. 567.
[102] *Id.*. p. 568.
[103] *Id.*, p. 570.
[104] *Id.*, p. 571.
[105] *Id.*, p. 573.
[106] *Id.*, p. 574.

pay the full amount of his tax deficiencies because he did not want any remaining balance; that he discovered, through Cathy, that there was still an unpaid amount in 2012; and that Cathy was already their accountant in 2008, but that she did not inform him that there was still an unpaid amount in 2008 and 2009.[107]

The defense' last witness, ***Catherine E. Anicoche***,[108] testified that she is an employee of ARL Business Consultancy, Inc. which is the external accountant engaged by DAFPI in their business and BIR transactions; that DAFPI is their retained client and all of its BIR transactions are referred to her because she heads the Accounting Department; that when the case of DAFPI was referred to her sometime in the last quarter of 2012, the FLD was issued already so the scope of their engagement consisted primarily in negotiating with the BIR for possible compromise penalty considering that the company was already financially incapable;[109] that upon receiving copies of the FLD, she inquired with the client's representative where the other notices are; that the client's representative replied that the FLD was the only letter they found at the office which they saw accidentally as they were clearing their office in preparation for transfer to another office location; that upon receiving the letter, she immediately coordinated and verified the status of the case with RO Lazaro; that upon conferring with RO Lazaro, she found out that they were already exhausting remedies of distraint as against accused's bank accounts; that she represented to RO Lazaro that she would be handling the case in behalf of DAFPI; that she manifested to RO Lazaro that DAFPI intends to cooperate with the BIR and does not intend to run away from its obligations, if any; that she raised with RO Lazaro the possibility of entering into compromise settlement with the BIR and paying the compromise penalty considering that DAFPI was going through financial difficulties; that she presented to RO Lazaro the Audited Financial Statements and AITR of DAFPI for the succeeding years following TY 2007; that RO Lazaro told her to pay 10% of the basic tax due and gave her instructions pertaining to the Payment Form and allowed her to pay it in three (3) installments; that she assisted DAFPI for the payment of the 10% compromise penalty for IT and VAT deficiencies on October 29, 2012, December 18, 2012, and on July 25, 2013; that it is her opinion that the criminal case was pursued by the plaintiff because the BIR records were not updated, but that her records also show that their client overlooked the last installment payment for the VAT deficiency, but substantially paid the compromise penalty already; that when the criminal case was filed against their client in the latter part of 2015, she was pregnant during that time; that since the subject of the inquiry was in the year 2012-2013, she had to dig in the files to check the payments made by their client which were in their custody at the time; that because of her pregnancy, accused's lawyer filed postponements before the Prosecutor's Office during the preliminary investigation; that she gave birth on February 24, 2016 and was

[107] *Id.* p. 576.
[108] Testified on April 4, 2018.
[109] *Id.* at Note 1, p. 585.

unable to provide the files in their custoday, hence, accused failed to present evidence during the preliminary investigation;[110] that the prosecutor resolved the case against the accused; that accused filed a Motion for Reconsideration thereafter which attached the documentary evidence as well as her affidavit supporting their motion;[111] and that she executed a Judicial Affidavit marked as Exhibit "A-19".

On ***cross-examination,*** she testified that she is still connected with ARL Business Consultancy but they don't handle DAFPI anymore because they are no longer operating;[112] that she made transactions on behalf of DAFPI for TY 2007, including transacting with the BIR for purposes of availing compromise penalty; that prior to the filing of the complaint by the BIR in the Prosecutor's Office, she already caused the payment of the compromise penalty but it was not fully paid because she became pregnant; and that during her pregnancy up to the time she gave birth, she had no replacement or any assistant to substitute her duty to facilitate transactions with the BIR on behalf of DAFPI.[113]

During ***interpolation of the Court,*** she testified that there was an agreement between the BIR and her client to settle the tax liability by paying 10% of the basic tax due; that the same was to be settled in three installment payments but that only two installments were paid and the third installment was not paid; that it was after the client failed to pay the third installment that the case was filed; that she only found out about it when they got the FLD that was already past due;[114] that she went to the BIR thereafter and found that the case was already filed in court; that they attempted and offered to pay the last installment but she was informed by the BIR that it could not be done as the case was filed in court already but this was not relayed in writing;[115] that when she made the offer to pay to the BIR, she did not bring the cash with her; and that the offer was not entertained because the cash was not on hand.[116]

The defense filed its Formal Offer of Evidence on April 18, 2018[117] and rested its case with the admission of its documentary evidence in the Resolution dated May 9, 2018.[118]

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[110] *Id.*, pp. 586-587.
[111] Exhibit "A-15".
[112] *Id.*, p. 6.
[113] *Id.*, p. 7.
[114] *Id.*, p. 9.
[115] *Id.*, pp. 10-11.
[116] *Id.*, p. 12.
[117] *Id.* at Note 1, pp. 593-689.
[118] *Id.*, pp. 692-693. In the Resolution, Exhibits "A-11-1" to "A-11-23" were denied for not being marked by the defense. The Court also noted that Exhibit "A-11" referred to the 2009 (not the 2008) Audited Financial Statements of DAFPI.

The prosecution failed to file its Memorandum[119] while the defense submitted its Memorandum on July 10, 2018[120] within the extended period granted by the Court.[121] The case was submitted for decision in the Resolution dated August 1, 2018.[122]

The Issues

The main issue confronting this Court is whether or not accused are guilty of the crime charged.

The Arguments

The prosecution claims that the notices were properly sent and received by the accused and the latter failed to interpose objections on the issued assessments; and that the accused are guilty for willful non-payment of deficiency taxes.

On the other hand, accused Spouses De Leon argue that there was no valid assessment because there was no proper service of assessment notices; that they are not liable for willful non-payment of taxes and that the payment of compromise is an act of good faith.

The Ruling of the Court

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

> "**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

[119] *Id.*, pp. 699-700.
[120] *Id.*, pp. 704-724.
[121] *Id.*, pp. 702-703.
[122] *Id.*, p. 741.

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 prosecution 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 a person required to pay tax;
2. The accused failed to pay such tax at the time required by law; and
3. The failure to pay the tax was willful.

DAFPI is a juridical person required to pay its taxes

There is no question that DAFPI is a juridical person required to pay its taxes under Sec. 23(E) of NIRC, 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"

Under Sec. 256 of the NIRC which we previously quoted, penal liability for violations of Sec. 255 is pinned upon the responsible officer of the corporation, specifically, accused David De Leon, President of DAFPI and accused Ann Marie De Leon, Treasurer of DAFPI. Accused David De Leon admitted that he is the President of the Corporation in his Judicial Affidavit[123]. Accused Ann De Leon, on the other hand, did not testify, but is designated as Treasurer in the defense's Exhibit "A-6-1", which is also the prosecution's Exhibit "P-1", the AITR of DAFPI for CY 2007.

Whether or not the assessment notices issued by the BIR were received by DAFPI

Both accused were charged of willful failure to pay deficiency income tax, value-added tax and expanded withholding tax for taxable year 2007 arising from BIR Assessment/Demand Notice No. 31601. Inasmuch as the alleged deficiency income and value-added tax arose from an assessment, as stated in the Information, it becomes necessary for the prosecution to prove that they issued the subject assessment notices pursuant of Section 228 of the NIRC.

Section 228 of the NIRC, as amended, in relation to Section 3 of Revenue Regulations No. 12-99, provides the due process requirements in an assessment. Section 228 provides:

> ***Protesting of Assessment*** – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall notify first the taxpayer of his findings: *Provided, however,* That a pre-assessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayer shall be informed in writing of the law and facts on which the assessment is made; otherwise, the assessment shall be void.

[123] Exhibit "A-18".

> 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 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.
>
> 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.

In the case of *Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue*,[124] 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 penalties and interests begin to accrue

[124] G.R. No. 155541, January 27, 2004.

> 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."

To prove that DAFPI was properly assessed for deficiency taxes and that notices were issued, sent and received by DAFPI, the BIR presented the following documents: Tax Verification Notice (TVN) No. 00046228 dated November 6, 2008, First Request of Presentation of Records, Second Request for Presentation of Records, Final Notice, DAFPI's Income Tax Return (ITR) with Financial Statement for taxable year 2007, Summons and/or Subpoena Duces Tecum dated October 20, 2009, 2nd Indorsement dated January 7, 2010, Post Reporting Notice, Revenue Officer's Audit Report on Income Tax for TY 2007, Revenue Officer's Audit Report on VAT for TY 2007, Preliminary Assessment Notice No. 2781 dated October 22, 2010 and Registry Return Receipt, Final Assessment Notice on Income Tax for TY 2007 dated December 9, 2010, Final Assessment Notice on VAT for TY 2007 dated December 9, 2010, Formal Letter of Demand for TY 2007 dated December 9, 2010, all under one Registry Return Receipt, Preliminary Collection Letter dated August 24, 2011, Warrants of Garnishment dated August 31, 2012, undated Warrant of Distraint and/or Levy, and Final Notice Before Filing Criminal Complaint dated January 9, 2013 with Registry Receipt.

Both accused however, aver that they did not receive all the notices issued by the BIR. They claim that the prosecution violated the accused's right to due process and that the prosecution failed to show that it properly effected constructive notice to the accused when the ROs left the notice at the accused's registered business address without it having been attested to, witnessed and signed by at least two (2) ROs other than the RO who constructively served the same.

There is positive testimony on record by the accused that he did not receive any of the notices. In the hearing dated February 14, 2018, accused David De Leon testified[125], as follows:

[125] TSN of Hearing dated February 14, 2018, pp. 13-16.

JUSTICE VICTORINO

Aside from your claim, do you have other evidence that would show that there was indeed no notices of such assessment were sent to you by the BIR? What is your highest educational attainment?

MR. DE LEON

Ano, first year college po.

JUSTICE VICTORINO

First year college. So maliban doon sa sinabi mon a hindi ka nakatanggap ng kahit na anong komunikasyon mula sa BIR, meron ka pa bang ibang ebidensya na magpapatunay na talagang wala kang natanggap sa BIR?

MR. DE LEON

Ano po kasi, your Honors, ang schedule ko po bihira ako sa office. Minsan nasa Bulacan ako pag gabi, tinitignan ko yung trabaho nun tao.

JUSTICE LIBAN

So wala?

MR. DE LEON

Wala ho ako minsan doon e. Hinde ako madalas nandoon e.

JUSTICE VICTORINO

Ibig mong sabihin porke wala ka, walang natanggap ang opisina mo.

MR. DE LEON

Wala ho akong alam na may natanggap po ako.

JUSTICE VICTORINO

Wala kanga lam. So ang ibig bang sabihin na wala kang alam, walang natanggap? Ganun ba 'yon?

MR. DE LEON

Wala hong nag-abot sa akin e. Hindi ko ho kasi alam.

JUSTICE LIBAN

So walang natanggap ang opisina mo?

MR. DE LEON

Oho. Wala ho.

JUSTICE VICTORINO

Paano mo nalamang walang natanggap?

MR. DE LEON

Nalaman ko lang ho noong sinabi noon Accountant naming noon 2012 may mga dapat kaming bayaran. Meron daw kaming mga kulang. So doon lang kami nag-ano na parang meron na pala akong dapat kailangang bayaran. Hindi ko nga ho alam e.

x x x x x x x x x

Considering that both accused denied having received the assessment notices from the BIR, it is incumbent upon the latter to prove by competent evidence that the notices were indeed received by DAFPI. Thus, the burden of proof is shifted to the BIR to prove by contrary evidence that Roxy received the assessment notices in the due course of mail.

In ***Barcelon Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue,***[126] the Supreme Court held:

> In its Decision, the CTA resolved the issues raised by the parties thus:
>
> Jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The onus probandi was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail. The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee (*Republic vs. Court of Appeals, 149 SCRA 351*). Thus as held by the Supreme Court in *Gonzalo P. Nava vs. Commissioner of Internal Revenue, 13 SCRA 104, January 30, 1965:*
>
> "The facts to be proved to raise this presumption are (a) that the letter was properly addressed with postage prepaid, and (b) that it was mailed. Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary

[126] G.R. No. 157064, August 7, 2006.

course of the mail. But if one of the said facts fails to appear, the presumption does not lie. (VI, Moran, Comments on the Rules of Court, 1963 ed, 56-57 citing *Enriquez vs. Sunlife Assurance of Canada, 41 Phil 269*)."

xxx xxx xxx

xxx. What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized representative. And if said documents cannot be located, Respondent at the very least, should have submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts. xxx

In the case of ***Protector's Services, Inc. vs. Court of Appeals***,[127] the Supreme Court ruled that:

"When a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3 (v), Rule 131 of the Rules of Court, that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favoured by the presumption to prove that the mailed letter was indeed received by the addressee."

The prosecution claims that the all the notices were validly served to DAFPI because they were either sent personally or via registered mail.

The evidence shows that the BIR notices that were served ***personally*** are the following: TVN dated November 6, 2008 and First Request for Presentation of Records dated November 7, 2008 received by **Ariel L. Chua** on November 10, 2008; Post-Reporting Notice, undated, received by **Amelia Ferido** on July 16, 2010; Preliminary Collection Letter dated August 24, 2011 received by **Madel**

[127] 386 Phil. 611, cited in the case of *Barcelon, Roxas Securities, Inc. vs. CIR*, G.R. No. 157064, August 7, 2006.

Elmedo; and the WDL, undated, received by **Stephen Piora** on October 16, 2013.

On the other hand, the BIR notices that were sent through ***registered mail***, are the following: Second Request for Presentation of Records dated November 18, 2008, signed received by **Nancy Bartolome** on November 28, 2008 on registry return card; Final Notice for Presentation of Records dated January 29, 2009, signed received by **Nancy Bartolome** on December 10, 2009 on registry return card, PAN dated October 22, 2010, signed received by **Nancy Bartolome** on November 29, 2010 on registry return card; FAN/FLD dated December 9, 2010, signed received by **Nancy Bartolome** on December 20, 2010 on registry return card; and the Final Notice Before Filing Criminal Complaint dated January 9, 2013 with registry receipt but no registry return card.

Curiously enough, none of the individuals who received the various notices, namely, **Ariel L. Chua, Amelia Ferido, Madel Elmedo, Stephen Piora, and Nancy Bartolome,** were disavowed by the accused as being an authorized representative of DAFPI. However, there is also no evidence established by the prosecution on these individuals' identities and if they were indeed authorized to receive notices in behalf of the company.

Prosecution witness RO Macabanding testified that he was not privy to the service of the TVN.[128] No other evidence or witness was presented by the prosecution to establish the identity and authority of **Ariel L. Chua** or **Amelia Ferido** who received the Post-Reporting Notice either.

As for the personal service of the PCL by RO Lazaro, her testimony[129] shows that she did not ascertain the authority of **Madel Elmedo** to receive the notice on behalf of the company, thus:

> ATTY. MAIGUE
> Ms. Witness, it was stated in your Judicial Affidavit that you personally served the preliminary collection letter to the accused.
>
> Q May we know who did you serve it to? Both of the accused or just one of the accused?
>
> MS. LAZARO
> A As a Revenue Officer assigned as seizure agent, I recall having served the preliminary collection letter to the taxpayer David De Leon.

[128] *Id.* at Note 1, p. 335, TSN of Hearing dated June 14, 2017, p. 13.
[129] TSN of Hearing dated December 6, 2017, pp. 7-15.

ATTY. MAIGUE
Q David De Leon?

MS. LAZARO
A Yes. And I served the warrant of garnishment from various banks and the taxpayer coordinated with me... interrupted

ATTY. MAIGUE
That's enough. I'm only concerned with the preliminary collection letter.

Q So you served it to Mr. David De Leon?

MS. LAZARO
A Yes, sir.

ATTY. MAIGUE
Q You did not serve it to Ms. Ann De Leon?

MS. LAZARO
A Yes, sir.

ATTY. CAMPOS, JR.
Your Honors, the best evidence is the preliminary collection letter itself, your Honors.

JUSTICE VICTORINO
She already answered. She served it to David De Leon.

MS. LAZARO
A February (pause)

ATTY. MAIGUE
Q February?

MS. LAZARO
A May 17, 2012.

ATTY. MAIGUE
Q Okay, so it is... interrupted

JUSTICE LIBAN
You read that from what document?

ATTY. CAMPOS, JR.
Preliminary Collection Letter.

ATTY. MAIGUE
One of their attachments, your Honor.

Q So it was served on May 17, 2012 and it was issued on?

MS. LAZARO
A August 24, 2011.

ATTY. MAIGUE
Okay. Because there is a ... interrupted

JUSTICE LIBAN
Can you just let the witness to read the document?

ATTY. MAIGUE
No need, your Honors. I'm just concerned because there is a signature here of a certain Madel Elmedo.

Q Do you know who is this Madel Elmedo? Because you told us that Mr. David received the, David De Leon, on of the accused received the preliminary collection letter, but it was signed by a certain Madel Elmedo on the date that you served it May 5...interrupted

MS. LAZARO
2012.

ATTY. CAMPOS, JR.
2012.

JUSTICE LIBAN
It appears that the ... interrupted

ATTY. MAIGUE
It's not personally served, your Honors.

JUSTICE LIBAN
No, it appears from that document that the one who received it is Madel . . . interrupted

ATTY. MAIGUE
Yes, your Honors. Madel . . . interrupted

JUSTICE LIBAN
Is that so?

ATTY. MAIGUE
Elmedo, your Honors. There's a signature.

JUSTICE VICTORINO
Madel?

ATTY. MAIGUE
Elmedo.

JUSTICE LIBAN
Elmedo. Is that right?

MS. LAZARO
Madel Elmedo, your Honors.

JUSTICE LIBAN
So the one who received that document is Madel Elmedo?

MS. LAZARO
Yes, your Honors.

JUSTICE LIBAN
So it's not David . . . interrupted

MS. LAZARO
De Leon.

JUSTICE LIBAN
De Leon or Ann Marie De Leon.

ATTY. MAIGUE
Yes, your Honors.

Q So do you know who Madel Elmedo is, Ms. Witness?

MS. LAZARO
A I don't know her, your Honors.

ATTY. MAIGUE
Okay.

MS. LAZARO
Or the representative of David De Leon.

ATTY. MAIGUE
Okay.

JUSTICE LIBAN
Maybe?

MS. LAZARO
Maybe.

JUSTICE LIBAN
Maybe. All right.

ATTY. MAIGUE
Q So you have no idea who she is?

MS. LAZARO
A Yes, your Honors.

ATTY. MAIGUE
Q And you served this personally?

MS. LAZARO
A Yes, sir.

ATTY. MAIGUE
Q To David De Leon? You saw him there, Ms. Wtiness?

MS. LAZARO
(pause)

JUSTICE LIBAN

You just assumed that she is a representative of De Leon because she was the one present at the address that you went to?

MS. LAZARO

Yes, your Honors.

JUSTICE VICTORINO

Question: Why did you serve the preliminary collection letter to Madel Elmedo when are actually supposed to serve the same to David De Leon and Ann Marie De Leon? Why did you serve it to her?

MS. LAZARO

I think, your Honors, when I went there it was Madel Elmedo who received my preliminary collection letter in behalf of David De Leon.

JUSTICE VICTORINO

You think?

JUSTICE LIBAN

You just said maybe a while ago.

ATTY. MAIGUE

For the record, your Honors, the prosecution is offering the testimony of Ms. Grace, that she personally served the preliminary collection letter and that she has personal knowledge ... interrupted

JUSTICE LIBAN

She did. She personally said that, but not ... interrupted

ATTY. MAIGUE

But not on the accused, your Honors.

JUSTICE LIBAN

That is proven that she personally served it. But ...interrupted

ATTY. CAMPOS, JR.

Through a representative.

JUSTICE LIBAN

Apparently, it's not De Leon who received it... interrupted

ATTY. MAIGUE

But she has no idea if whether Madel Elmedo is a representative or not.

Likewise, the testimony of RO Gagarin[130] on her personal service of the WDL shows that she did not ascertain the authority of **Stephen Piora** to receive the notice on behalf of the company, thus:

ATTY. UY

Yes, your Honors, but is already contrary to what has been stated in her letter in the progress report or in the memorandum report, anyway, I will proceed with the next question.

Q You also made a report, Memorandum Report on December 9, 2013 and in this letter you said that you made an evaluation the evaluation further disclosed that the Warrant of Distraint was served upon the taxpayer and this was received by a certain Stephen Feora *(sic)*, was it you who served the Warrant of Distraint...

MS. GAGARIN
A I can recall that, after series of telephone calls and notices as a procedure of the BIR we have to make and to serve the Warrant of Distraint and Levy I made it personally because the docket was assigned to me.

ATTY. UY
Q How did you serve it?

MS. GAGARIN
A I served it personally at the business establishments and there was somebody in there.

ATTY. UY
Q Do you know who is this Stephen Feora *(sic)* what is relation *(sic)* to the company?

MS. GAGARIN
A Well, that person was there in that office so when I served the Warrant of Distraint and Levy I asked if that is the business establishment and then he said yes, so I served the warrant and I also asked if he is connected to the company and then he said yes, I made him write his name and signature.

JUSTICE VICTORINO

Is it reflected in the record?

[130] TSN of Hearing dated September 20, 2017, pp. 13-19.

MS. GAGARIN
Yes, your Honor, I guess in the warrant.

JUSTICE VICTORINO
Where is that reflected, that the person to whom you served the warrant gave his name and signed in the document?

MS. GAGARIN
Yes, your Honor, this is the Warrant of Distraint and Levy and I served it at 11 in the morning, that person was there and it was on October 16, 2013 that I served the Warrant of Distraint and Levy that is where I made a report probably.

ATTY. UY
This has not been presented as part of the exhibit for the prosecution, nonetheless, we observed that there is no name stated in the Warrant of Distraint and levy but only a signature.

JUSTICE VICTORINO
We note the manifestation of the defense counsel.

ATTY. UY
Q Did you ask what is his position to the company?

MS. GAGARIN
A Well, when I served it, I just asked him what is your name, are you connected with this company, so he said yes so I served the Warrant of Distraint and Levy and then he signed his name and then we went out immediately.

x x x x x x x x x

ATTY. UY
Q Did you ask Stephen Fiona *(sic)* if he has any identification card to prove that he is the real Stephen Fiona *(sic)?*

MS. GAGARIN
A No.

ATTY. UY
Q Did you ask Stephen Fiona *(sic)* if he knows the accused David and Ann Marie De Leon?

MS. GAGARIN
A When we went to that business of De Leon, and he said yes, so that business we presumed was part of the business organization and

then when I asked his name he said he is Stephen Fiona *(sic)* and served the warrant.

JUSTICE VICTORINO
Was the place you went to a factory, an office?

MS. GAGARIN
It is a big factory.

JUSTICE VICTORINO
Is there any signage?

MS. GAGARIN
Only a small D&A Food Products at the gate.

JUSTICE VICTORINO
It was the address of that supposedly premises is the same as that registered in the name of your business establishment?

MS. GAGARIN
Yes, your Honor.

ATTY. UY
Did you knock at the gate or is it open where you can really enter into that office premises?

MS. GAGARIN
The gate is half open and there was a guard outside so we asked if somebody we can talk to inside the office so, that was the time we presumed that it was D&A and then the guard pointed to that small office where Mr. Stephen Fiona *(sic)* was there, so I asked some questions.

ATTY. UY
Q So, that was your basis for concluding that the taxpayer is still doing business at the said address?

MS. GAGARIN
A Yes, ma'am.

The remaining assessment notices, namely, Second Request for Presentation of Records[131], Final Notice for Presentation of Records[132], PAN[133],

[131] Exhibit "P-5".
[132] Exhibit "P-7".
[133] Exhibit "P-17".

FAN/FLD[134], Final Notice Before Filing Criminal Complaint[135] were all sent by registered mail. To prove that these were sent by the BIR, the prosecution presented the Transmittal Slip with attached registry return receipts.[136]

The registry return receipts for all these notices were signed by **Nancy Bartolome.** However, testimony from RO Macabanding shows that the identity and authority of Nancy Bartolome to receive notices on behalf of the company was not established as well.

> ATTY. CRISTOBAL-UY
> For the record, you are showing to me the tax verification notice.
>
> Q How about the first request for presentation of records dated November 7, 2015, do you know who received that document?
>
> MR. MACABANDIG
> A Per BIR records, ma'am, it was mailed by Mr. Dizon.
>
> ATTY. CRISTOBAL-UY
> Q Yes. Who received that document?
>
> MR. MACABANDIG
> A A certain Nancy Bartolome.
>
> **ATTY. CRISTOBAL-UY**
> **Q And do you know what is the position of the said Nancy Bartolome?**
>
> **MR. MACABANDIG**
> **A No, ma'am. I was not privy to that.**
>
> ATTY. CRISTOBAL-UY
> Q How about the second request for presentation of records and final notice, do you know who received that document?
>
> MR. MACABANDIG
> A Per records, ma'am, it's also Nancy Bartolome.

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[134] Exhibits "P-20" to "P-22".
[135] Exhibit "P-32".
[136] Exhibits "P-6", "P-8, "P-19", and "P-23". The prosecution failed to present the registry return receipt of the Final Notice Before Filing Criminal Complaint.

ATTY. CRISTOBAL-UY
Q And I would assume that you also do not know the position of Nancy Bartolome?

MR. MACABANDIG
A Yes.

ATTY. CRISTOBAL-UY
Q Do you know based on the records if any of these documents were received by the accused?

MR. MACABANDIG
A Based on the records, no, ma'am. But the notice I personally sent to the taxpayer when I served the notice of reassignment, I sent the notice to his registered address and I was only allowed to stay outside. The guard took the notice and when it was given back to me, it was also signed by Nancy Bartolome.

JUSTICE VICTORINO
What's the name?

MR. MACABANDING
Nancy Bartolome po.

JUSTICE VICTORINO
So are you telling this court that insofar as the notice that you prepared, you personally went to the registered address… interrupted

MR. MACABANDING
Address of the taxpayer.

JUSTICE VICTORINO
Of the accused and served it to someone?

MR. MACABANDING
Usually, ma'am, the guard, ma'am.

JUSTICE VICTORINO
To the guard. And the guard, what did the guard do after receiving your notice?

MR. MACABANDING
He took the notice and when he come back *(sic)*, it was already signed by Nancy Bartolome.

JUSTICE VICTORINO
Where did he go?

MR. MACABANDING
Inside, ma'am.

JUSTICE VICTORINO
Inside the?

MR. MACABANDING
His registered address.

JUSTICE VICTORINO
The registered, was it a building? A house?

MR. MACABANDING
In my recollection, it's like it was a building, ma'am.

JUSTICE VICTORINO
A building. It was a building. So the security guard of the building received the notice that you prepared and went back inside the building and when he came back, it was already signed by one Nancy Bartolome.

MR. MACABANDING
Bartolome.

JUSTICE VICTORINO
Proceed, attorney.

ATTY. CRISTOBAL-UY
Q Now when you said that, how did you know that it was signed by a certain Nancy Bartolome?

MR. MACABANDING
A Per signature.

ATTY. CRISTOBAL-UY
Q But does *(sic)* the said Nancy Bartolome did not sign it in your presence?

MR. MACABANDING
A No, ma'am.

ATTY. CRISTOBAL-UY
Q So you have not seen that Nancy Bartolome?

MR. MACABANDING
A No, ma'am.

ATTY. CRISTOBAL-UY
Q You did not exert any effort to ask or to proceed with asking the security guard where is this Nancy Bartolome?

MR. MACABANDING
A When I handed him the paper, I told him that it should be accepted by an authorized representative.

ATTY. CRISTOBAL-UY
Q And then you did not also ask regarding the position of the said Nancy Bartolome?

MR. MACABANDING
A I cannot remember what were the exact words but I can remember is when I served the notice, I explicitly told them the recipient that it should be received by the authorized representative.

Not only did the prosecution fail to establish the identity and authority of Nancy Bartolome, it also did not present any other witnesses to attest to the orderly sending of the notices or the mailing thereof. Furthermore, the registry return receipt which would have served as proof that the FAN and the FLD were served to the taxpayer, Exhibit "P-23", was denied in the Resolution dated February 1, 2018, for not being properly identified by the prosecution's witness.

Applying the quoted cases in the case at bar, this Court finds that the evidence of the prosecution failed to satisfactorily prove that DAFPI actually received the PAN, FAN and Formal Letters of Demand. Hence, the failure of the BIR to prove receipt of the assessment notices by DAFPI leads to the conclusion that no assessment was validly issued.

Whether or not accused willfully failed to pay the assessed tax liabilities

Now, did both accused willfully fail to pay the assessed tax liabilities at the time it was legally required to be paid, to the damage and prejudice of the government?

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.[137]

Clearly, therefore, 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.

Considering that the prosecution failed to prove the fact of mailing of the PAN, FAN and Formal Letters of Demand, and no evidence was presented to prove that accused actually received the assessments, the PAN No. 2781 and the Income Tax and VAT Assessment Notices issued On December 9, 2010, which were the basis of the criminal complaint and Amended Information for willful failure to pay tax under Section 255, cannot be considered valid assessments which would give rise to an obligation to pay the assessed deficiency taxes on the part of DAFPI.

There being no valid assessment, accused, therefore, cannot be made liable for non-payment of deficiency taxes as alleged in the Information because as held in ***Commissioner of Internal Revenue vs. Reyes***,[138] a void assessment bears no fruit.

The Court notes, however, that accused voluntarily paid the aggregate amount of ₱252,679.86 representing full settlement by DAFPI of the 10% basic IT and the 10% basic VAT based on the assessed deficiency tax on August 14, 2017 when it was allowed by the BIR to continue payment for compromise settlement.[139] This payment has been confirmed by the BIR as pertaining to the civil aspect of this case.[140] Moreover, the BIR has manifested that the payment is considered an offer of compromise settlement on the ground of financial incapacity of DAFPI is still subject to review, evaluation and/or approval by the Evaluation Board.

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[137] Black's Law Dictionary, 6th Edition, p. 1599.
[138] G.R. No. 159694, January 27, 2006.
[139] *Id.* at Note 1, p. 371, Exhibits "A-16", "A-16-1", "A-17", "A-17-1".
[140] *Id.*, p. 382.

In view of this Court's finding, however, that there was no valid assessment, this likewise dispenses with the civil liability of the accused.

CONCLUSION

In all criminal prosecutions, the burden of proof is on the prosecution to establish the guilt of the accused beyond reasonable doubt. It has the duty to prove each and every element of the crime charged in the Information to warrant a finding of guilt for the said crime or for any other crime necessarily included therein.[141]

In the appreciation of evidence in criminal cases, it is a basic tenet that the prosecution has the burden of proof in establishing the guilt of the accused for the offense with which he is charged. *Ei incumbit probation qui dicit non qui negat; i.e.*, "he who asserts, not he who denies, must prove." The conviction of appellant must rest not on the weakness of his defense, but on the strength of the prosecution's evidence.[142]

After careful consideration of the testimonial and documentary evidence presented by both parties, the Court finds that the prosecution was not able to prove the guilt of the accused beyond reasonable doubt.

WHEREFORE, premises considered, this case is **DISMISSED** for failure of the prosecution to prove beyond reasonable doubt the guilt of both accused. Therefore, accused **DAVID DE LEON and ANN MARIE DE LEON** are hereby **ACQUITTED** of the crime charged.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

[141] *Leonila Batulanon vs. People of the Philippines*, G.R. No. 139857, September 16, 2006
[142] *People of the Philippines vs. Nenita B. Hu*, G.R. No. 182232, October 6, 2008 citing *People vs. Corpuz*, 459 Phil 100.

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.

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Acting Division Chairperson's Attestation, is it 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