REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

CTA EB CRIM. NO. 083
(CTA Crim. Case No. O-659)

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and
Modesto-San Pedro, *JJ.*

- versus -

SIXTA LEE GO,
Respondent.

Promulgated:
MAY 17 2021 3:50pm

x--x

DECISION

CASTAÑEDA, JR., *J.:*

This is an appeal, by way of Petition for Review,[1] filed by petitioner People of the Philippines under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) of the Decision dated November 27, 2019 (Assailed Decision)[2] and the Resolution dated June 16, 2020 (Assailed Resolution)[3] both rendered by the Third Division of this Court (Court in Division) in CTA Crim. Case No. O-659. In the Assailed Decision, the Court in Division acquitted respondent Sixta Lee Go for failure of the prosecution to prove her guilt beyond reasonable doubt. Moreover, no civil liability was

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[1] Court *En Banc's* Docket, pp. 5-13.
[2] Penned by Associate Justice Erlinda P. Uy, concurred in by Associate Justice Ma. Belen M. Ringpis-Liban and Associate Justice Maria Rowena Modesto-San Pedro; Court *En Banc*'s Docket, pp. 20-49.
[3] Penned by Associate Justice Erlinda P. Uy, concurred in by Associate Justice Ma. Belen M. Ringpis-Liban and Associate Justice Maria Rowena Modesto-San Pedro; Court *En Banc*'s Docket, pp. 51-53.

imposed on the accused. This present Petition for Review seeks the review of the civil aspect of the case.

The respective dispositive portions of the Assailed Decision and Resolution are quoted hereunder:

Assailed Decision:

> "**WHEREFORE**, in light of the foregoing considerations, accused **SIXTA LEE GO** is hereby **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt.
>
> Further, the accused is likewise declared not civilly liable to pay the assessed deficiency income tax and value added tax. Accordingly, Assessment Notice Nos. 32-09-IT-3790 and 32-09-VT-3791, Final Notice Before Seizure dated May 20, 2013, Warrant of Distraint and/or Levy and Warrants of Garnishment, are declared **VOID**.
>
> **SO ORDERED.**"

Assailed Resolution:

> "**WHEREFORE**, premises considered, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

The facts of the present case, as culled from the records, are as follows:[4]

> "Accused Sixta Lee Go is charged before this Court in CTA Crim. Case No. O-659 for violation of Section 255 of the NIRC of 1997, as amended, under the Amended Information dated January 4, 2018, the accusatory portion of which reads:
>
> 'That in *(sic)* or about and during the period comprised from the year 2009 to November 8, 2012, inclusive, in the City of Manila, Philippines, the said accused, SIXTA LEE GO, being then the owner/proprietress and, therefore, the responsible

[4] Court *En Banc*'s Docket, pp. 20-32 (Citations omitted).

officer, of HUG QUIAPO TRADING with business address at No. 2345 Osmeña Highway, San Andres, this city, did then and there willfully and unlawfully fails, refuses and neglects, as she still fails, refuses and neglects to pay her deficiency internal revenue tax liabilities for the year 2009, to wit:

Kind of Tax	Assessment/ Demand No.	Year	Date	Amount
Deficiency **Income Tax**	32-09-IT-03790	2009	11/08/2012	1,259,443.98
Deficiency Value Added Tax	32-09-VT-3791	2009	11/08/2012	1,021,719.06
			TOTAL	2,281,163.04

or in the total amount of P2,281,163.04, ***exclusive of charges*** and penalties, despite notice and service of assessment and Warrant of Distraint and/or Levy dated November 8, 2012, without formally protesting against or appealing the same, and repeated demands made upon her to do so, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount of **P2,281,163.04**, Philippine currency, **exclusive of charges and penalties**.

CONTRARY TO LAW.'

After careful consideration of the allegations in the Amended Information and the attachments thereto, the Court found probable cause for the issuance of a warrant of arrest against accused in the Resolution dated March 23, 2018 and issued a Warrant of Arrest on April 12, 2018.

On May 18, 2018, accused voluntarily appeared and submitted herself to the jurisdiction of the Court and posted the required bail bond for her provisional liberty in the instant case.

When arraigned on June 13, 2018, accused Sixta Lee Go, assisted by her counsel, Atty. Laureano L. Galon, Jr., entered a plea of 'Not Guilty' to the crime charged in the Amended Information dated January 4, 2018.

Pre-trial was held on June 13, 2018, and thereafter, the parties filed their *Joint Stipulation of Facts and Issues* on June 29, 2018, which was approved by the Court on July 5, 2018.

As stated in the *Pre-Trial Order* dated August 1, 2018, the parties stipulated on the following facts and issues, to wit:

'**A. Facts:**

1. The identity of the accused Sixta Lee Go as the same person charged in the Information;

2. The jurisdiction of the Honorable Court over the case;

3. The accused was then doing business under the name and style of Hug Quiapo Trading;

4. Hug Quiapo Trading is a single proprietorship type of business;

5. The registered business address of Hug Quiapo Trading was at G40 City Plaza Mall, Quiapo, Manila until November 2010.

B. Issues:

1. Whether the accused Sixta Lee Go is criminally liable for violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 8424; and

2. Whether or not accused is civilly liable to pay Deficiency Income Tax in the amount of One Million Two Hundred Fifty-Nine Thousand Four Hundred Forty-Three Pesos and 98/100 centavos (Php1,259,443.98) and Deficiency Value Added Tax in the amount of One Million Twenty-One Thousand Seven Hundred Nineteen Pesos and 06/100 centavos (Php1,021,719.06), or in the total amount of Two Million Two Hundred Eighty-One Thousand One Hundred Sixty-Three Pesos and 04/100 centavos (Php2,281,163.04) for taxable year 2009.'

To establish the culpability of accused, the prosecution presented six (6) witnesses, namely: (1) Amalia S. Canlas; (2) Celestino F. Centino II; (3) Ma. Paz Arcilla; (4) Henry B. Benitez; (5) Benhur C. Nacorda; and (6) Felicidad De La Rosa. They testified as follows:

1. **Amalia S. Canlas** testified on direct examination that from 2010 to 2012, she was a Revenue Officer assigned at Revenue District Office No. 32, Revenue Region No. 6, BIR, Manila; tasked, among others, to examine the books of accounts and other accounting records of taxpayers, pursuant to a Tax Verification Notice and/or Letter of Authority. After investigation, she prepares the corresponding audit reports reflecting deficiency internal revenue taxes, if any.

Allegedly, she was assigned and authorized to investigate accused's books of accounts and other accounting records for taxable year 2009 by virtue of Tax Verification Notice No. (TVN) 2003 00115883 dated June 11, 2010, issued by Revenue District Officer Atty. Claire Corpus of Revenue District Office No. 32, Revenue Region No. 6, BIR, Manila.

On June 23, 2010, she personally served the original copy of the subject TVN and the First Request for Presentation of Records to accused at her registered address at G40 City Plaza Mall, Quiapo, Manila, and it was received by a certain Catherine Gallardo, Assistant Area Supervisor. Despite receipt thereof, accused failed to present and submit her books of accounts and other accounting records for taxable year 2009. Thus, she prepared and served the 2nd Request for Presentation of Records, Final Request for Presentation of Records, and Issuance of Subpoena Duces Tecum, to accused at her registered address.

Thereafter, Regional Director Alfredo V. Misajon issued Letter of Authority No. SN: eLA201000043185 (LOA-023-2011-00000064) dated January 31, 2011, authorizing her to examine the books of accounts and other accounting records of accused for taxable year 2009. On February 1, 2011, she personally served the original copy thereof to accused at her residential address at 4 Kingfisher St., Kaligayahan, Novaliches, Quezon City, where it was received by a certain Lilian Villaraiz.

For failure of accused to submit her books of accounts and other accounting records, she computed accused's deficiency taxes based on the best evidence obtainable rule under Section 6 (B) of the NIRC of 1997, as amended, in relation to RMO No. 23-2000. On May 28, 2012, accused was informed of the result of the investigation through a Post Reporting Notice with Computation of Deficiency Taxes and by inviting her for an informal conference.

Since accused still failed to submit any evidence to controvert the proposed assessment, the entire docket of accused was indorsed and forwarded by the Revenue District Officer of RDO No. 32 to the Assessment Division of Revenue Region No. 6, BIR, Manila, for review.

On *cross-examination*, she testified that the issuance of TVN is not found in the NIRC of 1997, as amended. The issuance of TVN under the reasons stated in Revenue Memorandum Order No. 19-2009 are exclusive, but the taxpayer does not fall within the list. That is why an LOA was issued after the issuance of the TVN, because it was found out that the TVN is not the proper mode of looking into the records of the taxpayer in this case. Allegedly, a TVN is only good for sixty (60) days, while an LOA has no expiration until the audit is completed.

The TVN, First, Second, and Final Notice were allegedly sent to the address of accused at G40 City Plaza Mall, Quiapo, Manila. However, the Letter of Authority was served at the residence of accused, because by that time, she already knew for a fact that accused was no longer holding office at Quiapo, Manila.

2. **Celestino F. Centino II** testified on *direct examination* that in 2012, he was a Revenue Officer-Reviewer, assigned at the Assessment Division, Revenue Region No. 6, BIR, Manila. He was tasked to review the reports of investigation of revenue officers of various districts of Revenue Region No. 6, BIR, Manila, where taxpayers were audited by virtue of a Tax Verification Notice and/or Letter of Authority duly issued by the Revenue District Officer and Regional Director, respectively.

On July 3, 2012, the internal revenue tax docket of accused for taxable year 2009, together with the report of investigation, was assigned to him for review. He then conducted a review of the records, as well as the report of investigation of Revenue Officer Amalia S. Canlas. Thereafter, he prepared the Preliminary Assessment Notice with Details of Discrepancies dated October 3, 2012, which was duly signed by the Regional Director.

The Billing Section of the Assessment Division transmitted the original Preliminary Assessment Notice with Details of Discrepancies dated October 3, 2012, to the Administrative Division for mailing to accused at her registered address at G40 City Plaza Mall, Quiapo, Manila. On November 8, 2012, the Billing Section of the Assessment Division issued Assessment Notice Nos. 32-09-IT-3790 and 32-09-VT-3791, as well as the Formal Letter of Demand with Details of Discrepancies, to accused at her registered address at G40 City Plaza Mall, Quiapo, Manila, for deficiency income tax and VAT in the amount of ₱1,259,443.98 and ₱1,021,719.06, respectively, inclusive of increments.

The deficiency income tax amounting to ₱1,259,443.98 was computed by disallowing 50% of the claimed purchases and operating expenses for being unsupported, pursuant to Section 6 (B) of the NIRC of 1997, as amended, in relation to RMC No. 23-2000.

The deficiency VAT amounting to ₱1,021,719.06 was based on unaccounted rental in the amount of ₱315,626.00 which should be subject to VAT, pursuant to Section 106 of the NIRC of 1997, as amended; and input taxes that were disallowed for failure of accused to present supporting documents, pursuant to Section 113 of the NIRC of 1997, as amended.

Thereafter, the original copy of Assessment Notice Nos. 32-09-IT-3790 and 32-09-VT-3791, and the corresponding Formal Letter of Demand with Details of Discrepancies dated November 8, 2012, were transmitted to the Administrative Division for mailing to accused.

On *cross-examination*, he testified that after endorsing the docket to the Administrative Division, he has no personal knowledge whether the documents were sent by registered mail or not.

On *re-direct examination*, he testified that in issuing the PAN and in determining the address of accused in this case, it is the procedure of the office to check with the ITS database of the BIR. In this case, the place of business of the taxpayer is the Plaza Mall, Quiapo.

3. **Ma. Paz Arcilla** testified on *direct examination* that she is the Revenue Officer IV-Chief, Billing Section of the Assessment Division, Revenue Region No. 6, since June 15, 2001. She is tasked to personally supervise the service and monitoring of Preliminary Assessment Notices with Details of Discrepancies and supervise the preparation, issuance, service and monitoring of Final Assessment Notices and Formal Letters of Demand with Details of Discrepancies, Final Decision on Disputed Assessment, demand letters and transcripts of assessments of tax cases.

The tax docket of accused for taxable year 2009 was forwarded to her office for the service of the Preliminary Assessment Notice with Details of Discrepancies dated October 3, 2012, issuance and service of Final Assessment Notice, and Formal Letter of Demand with Details of Discrepancies dated November 8, 2012, to accused at her registered address at G40 City Plaza Mall, Quiapo, Manila.

On November 8, 2012, the original copy of Assessment Notices No. 32-09-IT-3790 and 32-09-VT-3791, and the corresponding Formal Letter of Demand with Details of Discrepancies, were issued by her office, and transmitted to the

Administrative Division of the BIR, for service to accused at her registered address.

On *cross-examination*, she testified that her only participation in the case was for the service of the PAN. She further said that there is nothing in the PAN, Assessment Notices, and FLD, to indicate that it was received by accused.

4. **Henry B. Benitez** testified on *direct examination* that in 2013, he was a Revenue Officer-Seizure Agent of the BIR, assigned at the Collection Division, Revenue Region No. 6, Manila. He was tasked to enforce the collection of final and demandable internal revenue taxes and to submit reports thereon.

On April 29, 2013, the internal revenue tax docket of accused for taxable year 2009, was assigned to him for the enforcement of collection proceedings through summary remedies. Thus, he conducted a review of the records of accused Lee Go for taxable year 2009, and prepared a Preliminary Collection Letter dated May 2, 2013.

On May 3, 2013, he served the PCL dated May 2, 2013 to accused at her registered business address at G40 City Plaza Mall, Quiapo, Manila, through registered mail, under Registry Receipt No. 911695. Thereafter, accused still failed to pay her deficiency taxes, prompting him to prepare and serve the Final Notice before Seizure on May 21, 2013 to accused at her registered business address at G40 City Plaza Mall, Quiapo, Manila, through registered mail, under Registry Receipt No. 914639.

After serving the Final Notice Before Seizure, he prepared his report and forwarded the same to Arrears Management Team II, including the entire docket bearing the 2009 internal revenue tax case of accused, for the continuation of collection proceedings and administrative summary remedies.

On *cross-examination*, he testified that his participation was only on the collection aspect of the case. The PAN and the Final Notice Before Seizure was served by registered mail to accused at G40 City Plaza Mall, Quiapo, Manila.

On *re-direct examination*, he testified that he served the documents through registered mail because they did not have enough personnel to conduct personal service.

5. **Benhur C. Nacorda** testified on *direct examination* that he is designated as Mailing-In-Charge at the Administrative

Division, Revenue Region No. 6 of the BIR. His duties include sending by registered mail the PAN with Details of Discrepancies, Assessment Notices, FLD, and other correspondence to taxpayers, as well as records keeping.

The subject deficiency tax assessments under the PAN, Assessment Notices, and FLD were transmitted to the Administrative Division by the Assessment Division, for mailing to accused at her registered address at G40 City Plaza Mall, Quiapo, Manila.

As per their office records, the PAN was served to accused Lee Go on October 3, 2012, through registered mail, under Registry Receipt No. 909108, and it was not returned by the postmaster. Likewise, the subject Assessment Notices and FLD were also served to accused on November 8, 2012, through registered mail, under Registry Receipt No. 913426, and it was likewise not returned by the postmaster.

On *cross-examination*, he testified that his duty was merely to serve copies of the documents to accused Lee Go, which he served by registered mail. He further said that there is no showing on the face of the PAN that it was ever received by accused Lee Go, while Exhibit "P-16" are only copies of the supposed registry receipts of the documents sent, with no return cards. Allegedly, there is also no showing on the subject Assessment Notices and the FLD, that it was received by accused nor a representative of accused.

On *re-direct examination*, he testified that the mail matter containing the PAN and the FLD were not returned by the postmaster.

On *re-cross examination*, he said that it is not a matter of procedure to wait for the registry return card to know who actually received the letter. He also stated that he was not the one who sent the mail, as it was Mr. Macatangay, a retired employee, who did the mailing and he is testifying based on records only.

6. **Felicidad De La Rosa** testified on *direct examination* that she is a Revenue Officer of the BIR and currently assigned at the Collection Division, Revenue Region No. 6, BIR, Manila. As Revenue Officer-Seizure Agent of the Collection Division, she was tasked, among others, to enforce collection of final and demandable internal revenue taxes and to submit reports thereon.

On June 19, 2013, the internal revenue tax docket of accused Sixta Lee Go for taxable year 2009 was assigned to her for the enforcement of collection proceedings through summary remedies. She conducted a review of the records of accused and prepared the Warrant of Distraint and/or Levy dated November 22, 2013. Thereafter, she served the WDL at her registered business address at G40 City Plaza Mall, Quiapo, Manila.

After she served the WDL on November 22, 2013, accused still failed to pay her deficiency taxes, prompting her to prepare and serve, on various dates, Warrants of Garnishment to several banks. The said Warrants informed the said banks that the BIR is seizing, distraining, and garnishing the deposits of accused and other property in their possession or control, sufficient to cover accused's tax obligation; and ordered the said banks to transfer, surrender, transmit and/or remit to the BIR such property/cash in their possession owned by accused Lee Go. Upon service of the Warrants of Garnishment, she recommended to the Chief of the Collection Division, Revenue Region No. 6, BIR, Manila that the tax docket of accused be forwarded to the Legal Division, Revenue Region No. 6, BIR, Manila. Thereafter, the Chief of the Collection Division, through the Regional Director, indorsed and forwarded the tax docket to the Legal Division, for legal action.

On May 26, 2017, they filed a complaint against accused for violation of Section 255 of the NIRC of 1997, as amended, before the Office of the City Prosecutor of Manila.

On *cross-examination*, she testified that she prepared the Warrants of Distraint and/or Levy, and Memorandum referring the case to the Chief of the Collection Division. She personally served the Warrant of Distraint and/or Levy, but there is nothing on its face to show that it was received by accused. She left the original copy at the registered address of accused at Quiapo, but she did not exert effort to personally serve the document to accused Lee Go.

On *re-direct examination*, she testified that she served the Warrants of Garnishment to the main office of various banks, and not to accused Lee Go.

On *re-cross examination*, she testified that she does not know whether the bank notified the taxpayer concerning the service of Warrants of Garnishment.

Upon completion of the testimonies of the foregoing witnesses, the prosecution filed its *Plaintiff's Formal Offer of Evidence* on February 13, 2019, to which accused filed her *Comments-Opposition and Objections (Of Plaintiff's Formal*

Offer of Evidence) on February 27, 2019 which the Court resolved in the Resolution dated May 20, 2019.

To counter the prosecution's evidence, the defense presented accused Sixta Lee Go, while the supposed testimonies of the other three (3) defense witnesses were stipulated by both parties, as will be discussed hereinbelow.

On *direct examination*, accused **Sixta Lee Go** testified that she is a Filipino, 63 years old, a businesswoman, and a resident of No. 4 Kingfisher Street, Kaligayahan, Novaliches, Quezon City.

From her understanding, she was charged for her failure to pay tax in 2009. In 2009, she was engaged in business of selling electronics, under the name Hugs Quiapo Trading, with address at G40 City Plaza Mall, Quiapo, Manila. By November 2010, she closed her store because business was slow and she incurred losses. In support of this contention, she presented a Barangay Certification and a Certification issued by CKE International Holdings Corporation. She also had a photocopy of her BIR Form No. 1905, stating that she can no longer find the original, and a Certification from the City Treasurer of Manila.

She was surprised that a criminal case was filed against her before the CTA, as she was under the impression that the criminal case filed against her for the failure to submit documents, was already dismissed by Branch 21, METC, Manila. She stated that she never received any letter from the BIR after the case from METC, Manila was dismissed. Moreover, as of 2010, the BIR already knew that she already closed her business, because she filed BIR Form No. 1905.

On *cross-examination*, she testified that she submitted her books to the BIR sometime in October 2010. Allegedly, the BIR has her home address, but she has no proof that she submitted the same to the BIR.

On clarificatory questions, she testified that her home address is at 'No. 4 Kingfisher Street, Zabarte Subdivision, Barangay Kaligayahan, Novaliches, Quezon City,' which she provided to the BIR during the application process for her business. The BIR has the data in their files because the residential address appears in the subpoena and referral letter of Regional Director Arnel Guballa to the DOJ.

She stated that she only knew of the case after a policeman informed her that there was a warrant for her arrest. Thereafter, she immediately went to the CTA and posted bail. However, she never received any notice from the DOJ or City Prosecutor of Manila.

As mentioned earlier, in order to dispense with the oral testimonies of accused's last three (3) intended witnesses, namely: a representative of Barangay 306, Zone 30, District III of the City of Manila, a representative of CKE International Holdings Corporation, and a representative of the City Treasurer's Office of Manila, the parties submitted their *Joint Stipulations and Manifestation*, stating that:

> '1. The accused submitted on 11 June 2019 the certified true copy of the Barangay Certification issued on 16 July 2012 and requested to transfer the marking of Exhibit 'A-1' of this document and the transfer also of the marking of 'A-1-1,' the second paragraph of the Barangay Certification to the original of the same document;
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> 2. The accused submitted on 11 June 2019 the original copy of the Certification issued by the CKE International Holdings Corporation dated 16 July 2012 and requested to transfer the marking of Exhibit 'A-2' of this document and the transfer also of the marking of 'A-2-1,' the first paragraph of the Certification to the original of the same document;
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> 3. When a representative of Barangay 306, Zone 30, District III of the City of Manila will be called to testify, the witness will identify the Barangay Certification issued on 16 July 2012, marked as Exhibit 'A-1,' and that this document was officially issued by Barangay 306, Zone 30, District III of the City of Manila, and that the signature appearing on top of the name, Joey Uy Jamisola is the signature of Joey Uy Jamisola, the Punong Barangay of Barangay 306, Zone 30, District III of the City of Manila at the date and time that this document was issued.
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> 4. When a representative of CKE International Holdings Corporation will be called to testify, the witness will identify the Certification issued on dated 16 July 2012 marked as Exhibit 'A-2'; and that this document was officially issued by CKE International Holdings Corporation; and that CKE International Holdings Corporation is the owner of Manila City Plaza Shopping Mall; and that the signature appearing on top of the name, Julie Sta. Maria is the signature of Julie Sta. Maria, the Building Administrator of City Plaza Shopping Mall of

CKE International Holdings Corporation at the date and time that this document was issued;

5. When a representative of the City Treasurer's Office of Manila will be called to testify, the witness will identify the Certification dated 30 September 2013 marked as, Exhibit 'A-4,' and that this document is an official document issued by the City Treasurer's Office of Manila; and that the signature appearing on top of the name, Oscar John L. Sangalang is the signature of Oscar John L. Sangalang, the Chief of the License Division of the City of Manila.'

Thereafter, defense counsel filed a *Formal Offer of Documentary Exhibits (Of Accused Sixta Lee-Go)* on June 19, 2019, to which the prosecution filed its Comment (To Accused Formal Offer of Documentary Exhibits) on June 26, 2019. In the Resolution dated July 4, 2019, the Court resolved the said Formal Offer of Documentary Evidence and ordered the parties to submit their respective memoranda within thirty (30) days from notice.

On August 2, 2019, the prosecution filed its *Plaintiff's Memorandum*, while accused filed her *Memorandum (Of Accused Sixta Lee-Go)* on August 28, 2019. Thereafter, this case was submitted for decision on September 2, 2019."

On November 27, 2019, the Court in Division rendered the Assailed Decision.

Aggrieved, petitioner filed a Motion for Reconsideration but the Court in Division likewise denied the same for lack of merit in the Assailed Resolution.

On October 16, 2020, petitioner filed the present Petition for Review.

In a Resolution[5] dated November 11, 2020, the Court *En Banc* ordered the respondent to file a Comment to the Petition for Review within ten (10) days from receipt thereof.

Respondent filed her Comment-Opposition (To the Petition for Review) on December 28, 2020.[6]

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[5] *Id.*, pp. 56-57.
[6] *Id.*, pp. 58-62.

Thus, in a Resolution[7] dated January 26, 2021, the present Petition for Review was submitted for decision.

THE ISSUE

As stated earlier, petitioner seeks the review of the Assailed Decision and Resolution of the Court in Division insofar as it imposed no civil liabilities on the accused based on the sole issue stated below:[8]

> **"WHETHER OR NOT THE PRESUMPTION THAT THE MAIL MATTER CONTAINING THE PRELIMINARY ASSESSMENT NOTICE AND ASSESSMENT NOTICES AND THE CORRESPONDING FORMAL LETTER OF DEMAND WERE RECEIVED BY RESPONDENT IN THE ORDINARY COURSE OF MAIL PURSUANT TO SECTION 3(V) OF RULE 131 OF THE RULES OF COURT IS APPLICABLE IN THE CASE AT BAR."**

THE COURT *EN BANC*'S RULING

After thorough evaluation of the factual antecedents of the present case, the arguments of the parties, as well as the relevant laws and jurisprudence on the matter, the Court *En Banc* finds that the present Petition for Review should be denied for lack of merit. There is no substantial matter much less compelling reason to disturb the findings of the Court in Division in the Assailed Decision and Resolution.

Section 205 of the National Internal Revenue Code of 1997, as amended, provides the requisites for the award of civil liability in criminal cases, to wit:

> "SEC. 205. *Remedies for the Collection of Delinquent Taxes.* — The civil remedies for the collection of internal revenue taxes, fees or charges, and any increment thereto resulting from delinquency shall be:
>
> (a) x x x
>
> (b) By civil or criminal action. *jc*

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[7] *Id.*, pp. 64-65.
[8] *Id.*, p. 7.

Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes: *Provided, however,* That the remedies of distraint and levy shall not be availed of where the amount of tax involved is not more than One hundred pesos (P100).

The judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case as finally decided by the Commissioner.

The Bureau of Internal Revenue shall advance the amounts needed to defray costs of collection by means of civil or criminal action, including the preservation or transportation of personal property distrained and the advertisement and sale thereof, as well as of real property and improvements thereon." *(Emphasis supplied)*

The above provision mandates that before the civil liability for the payment of taxes may be included in the judgment, there must be a final determination of such liability by the Commissioner. This determination of civil liability for the payment of taxes by the Commissioner refers to a formal assessment.

Section 228 of the National Internal Revenue Code of 1997, as amended (1997 NIRC) prescribes the procedure to be observed in the issuance of tax deficiency assessments. The said provision, in relevant part, provides:

"SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:

xxx xxx xxx

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice." *(Emphasis supplied)* Ju

To implement the foregoing provisions, Revenue Regulations (RR) No. 12-99, as amended,[9] specifies the due process requirement to be observed in issuing deficiency tax assessments. The relevant portion of the said issuance reads:

> "**SECTION 3.** ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*** —
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> 3.1.1 ***Preliminary Assessment Notice (PAN).*** — If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in 'ANNEX A' hereof).
>
> If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> xxx xxx xxx
>
> **3.1.3** ***Formal Letter of Demand and Final Assessment Notice (FLD/FAN).*** — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; *otherwise, the assessment shall be void* (see illustration in ANNEX 'B' hereof).

[9] As amended by RR No. 18-2013 dated November 28, 2013.

xxx xxx xxx

3.1.6 ***Modes of Service.*** – The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner of his duly authorized representative through the following modes:

(i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A *known* address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.

In case personal service is not practicable, the notice shall be served by substituted service or by mail.

(ii) Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:

The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.

If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.

If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.

If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

Should the party be found at his registered or known address or any other place but refuse to receive the notice, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

'Disinterested witnesses' refers to persons of legal age other than employees of the Bureau of Internal Revenue.

(iii) Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.

The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information. The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.

Service to the tax agent/practitioner, who is appointed by the taxpayer under circumstances prescribed in the pertinent regulations on accreditation of tax agents, shall be deemed service to the taxpayer."

In *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,*[10] the Supreme Court categorically held that failure to strictly comply with the notice requirements prescribed under Section 228 of the 1997 NIRC and RR No. 12-99 is tantamount to denial of due process. The Supreme Court further stressed that the absence of PAN will render nugatory any assessment made by the tax authorities. As aptly explained by the Supreme Court: Je

[10] G.R. No. 185371, December 8, 2010, 637 SCRA 644, 646.

> **"Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made.** The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations — that taxpayers should be able to present their case and adduce supporting evidence.
>
> xxx xxx xxx
>
> **From the provision quoted above, it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the 'due process requirement in the issuance of a deficiency tax assessment,' the absence of which renders nugatory any assessment made by the tax authorities.** The use of the word *'shall'* in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process. **Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void.**" *(Emphasis supplied and citations omitted)*

In the case of *Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue*,[11] the Supreme Court held that it is a requirement of due process that the taxpayer must **actually receive the assessment**, to wit:

> "x x x It must be noted, however, that the foregoing rule requires that the notice be sent to *the taxpayer*, and not merely to a disinterested party. Although there is no specific requirement that the taxpayer should receive the notice within the 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

[11] G.R. No. 155541, January 27, 2004, 421 SCRA 275.

> penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, **due process requires that it must be served on and received by the taxpayer.**" *(Emphasis supplied)*

Thus, it is not simply a question of whether the assessment notices were sent to respondent by petitioner. It is imperative that the taxpayer *actually* received such tax assessment notices.

Meanwhile, in the case of *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*,[12] the Supreme Court enunciated the rule in cases where the taxpayer denies the receipt of assessment notices and also the requisite proof to show the fact of mailing of assessment notices. The Supreme Court held:

> "**If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. Here, the *onus probandi* has shifted to the BIR to show by contrary evidence that [the taxpayer] indeed received the assessment in the due course of mail. It has been settled 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, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee.**
>
> **To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the taxpayer or its authorized representative. And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention.** The Court does not put much credence to the self-serving documentations made by the BIR personnel, especially if they are unsupported by substantial evidence establishing the fact of mailing. While it is true that an assessment is made when the notice is sent within the prescribed period, the release, mailing, or sending of the same must still be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or control, and without adequate supporting evidence cannot suffice. Otherwise, the

[12] G.R. No. 202695, February 29, 2016, 785 SCRA 258-259.

> defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices." *(Emphasis supplied)*

Based from the foregoing, the rule is that in case the taxpayer denies receipt of the assessment notices from the BIR, the latter has the burden to prove by competent evidence that the required notices were *actually* received by the taxpayer. It is also clear that to prove the fact of mailing, it is essential for the petitioner to present the registry receipt issued by the Bureau of Posts or the Registry return card signed by the taxpayer or its authorized representative or at least a certification issued by the Bureau of Posts attesting to the same fact.

In the Assailed Decision, however, the Court in Division found as follows:[13]

> "In this case, the prosecution failed to present proof that the subject assessment notices were actually received by accused Lee Go. While the prosecution presented Registry Receipt No. 909108, the same was not identified with particularity as the specific Registry Receipt issued for the mailing of the PAN to accused Lee Go, as there were other folded and illegible registry receipts present in the subject document.
>
> Finally, even if We consider the same as sufficient proof of mailing of the PAN, and give credence to the fact of mailing of Formal Letter of Demand dated November 8, 2012 by virtue of Registry Receipt No. 913426, it is still necessary for the prosecution to further prove that the subject documents were in fact received by accused Lee Go, considering that she directly denied having received said mail matters. As held in the GJM case, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention.
>
> Additionally, even the testimonies of the prosecution witnesses failed to convince this Court that the subject assessment notices were actually received by accused, as follows:
>
> Celestino F. Centino II testified that he has no personal knowledge if the subject assessment notices were actually mailed by the Administrative Division.
>
> Ma. Paz Arcilla, on the other hand, admitted that there is nothing on record to show that the PAN, Assessment Notices and Formal Letter of Demand to show that it was served to and/or received by accused Lee Go.

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[13] Court *En Banc*'s Docket, pp. 45-46.

> Benhur C. Nacorda testified that there is no showing in the PAN that it was received by accused Lee Go. He also testified that Exhibit 'P-16' merely shows the supposed registry receipts of the persons to whom the documents were allegedly sent, without any return card attached. There was also nothing in the Assessment Notices and Formal Letter of Demand, and the Transmittal Letter, to show that they were received by accused. In fact, Benhur C. Nacorda even admitted that he has no personal knowledge, as he was not the one who sent the subject documents by registered mail. In fact, it was Mr. Macatangay, a retired employee who did so, and he was merely testifying based on the records.
>
> Clearly, the prosecution witnesses did not confirm the recipient of the subject assessment notices, if any, nor did they provide additional proof that the same, were in fact mailed and received by accused Lee Go, or by her authorized representative.
>
> All told, the evidence presented by the prosecution failed to establish that the subject assessment notices were properly served, and actually received by accused Lee Go. Hence, the subject deficiency tax assessments for 2009 are declared void, for having been issued in violation of the due process requirements under the law and RR No. 12-99. In addition, considering that there are no valid assessments to begin with, the Warrant of Distraint and/or Levy and Warrants of Garnishment issued by the CIR to accused are likewise void.
>
> Correspondingly, as the subject deficiency tax assessments in this case are declared void, it therefore follows that there is no legal obligation on the part of the accused to pay the subject deficiency tax assessments." *(Citations omitted)*

The Court *En Banc* agrees with the Court in Division. Indeed, petitioner failed to establish that there was final, demandable and executory assessment under which respondent is liable to pay deficiency taxes.

Guided by the aforequoted doctrinal pronouncements by the Supreme Court, the Court *En Banc* finds that petitioner's evidence miserably failed to satisfactorily prove that respondent *actually* received the PAN, Assessment Notices and the corresponding FLD. Hence, the failure of petitioner to prove actual receipt of the assessment notices by respondent leads to the conclusion that no assessment was validly issued.

Given the above finding, there is no need to dwell on the other argument raised in this Petition, *i.e.*, the alleged failure of petitioner to file a protest, because it is settled that a void assessment bears no fruit.[14] *gr*

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[14] *Commissioner of Internal Revenue v. Azucena T. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006, 480 SCRA 396.

WHEREFORE, the present Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice