Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA Crim. Case No. 0-260** For: Violation of Sec. 56(b), Section 106(A) and Section 57(A)(B) of the National Internal Revenue Code of 1997, as amended.
-versus-	**Members:** **CASTAÑEDA, JR.**, *Chairperson* **CASANOVA**, *and* **COTANGCO-MANALASTAS,** *JJ.*
VICTORIO A. OCAMPO Accused.	**Promulgated:** AUG 05 2013 9:40 a.m.

x---x

RESOLUTION

CASANOVA, *J.*:

This resolves accused Victorio A. Ocampo's Demurrer to Evidence filed on July 1, 2013, with plaintiff's Comment/Opposition (to Demurrer to Evidence) filed on July 8, 2013.

Accused is charged before this Court with violation of Sections 56(b), 106(A) and 57 (A)(B) in relation to 253(d), 255 and 256 of the National Internal Revenue Code (NIRC) of 1997, as amended, under Information[1] which reads as follows:

> "That on or about November 20, 2006, in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, and feloniously fail and refused to pay tax

[1] Docket, p. 4.

liabilities in sums of P1,776,738.89, P931,421.91 and P4,912.11, as Deficiency income, VAT and EWT for the year 2003, despite receipt of assessment notice and demand to pay said deficiency taxes from the Commissioner of the Bureau of Internal Revenue.

CONTRARY TO LAW."

Records show that in the hearing[2] dated July 11, 2012, accused pleaded "Not Guilty" to the aforementioned charge. On July 30, 2012, both parties filed a Joint Motion to Reset Preliminary Conference[3] to August 6, 2012 which was granted by this Court in a Resolution[4] dated August 1, 2012.

Thereafter, in the August 16, 2012 hearing[5], the Court, upon motion of both parties, reset the pre-trial to September 27, 2012 and set the preliminary conference on September 3, 2012. On September 20, 2012, accused filed a Motion to Set Case for Preliminary Conference[6] and the same was granted in a Resolution[7] dated September 21, 2012.

In the October 11, 2012 hearing[8], the Court conducted and terminated the Pre-Trial and the prosecution's initial presentation of evidence was set on October 24, 2012. In the Pre-Trial Order[9] dated October 11, 2012, both the prosecution and defense agreed to adopt the joint stipulations of facts and issues entered in the course of the preliminary conference, to wit:

"Thus, both prosecution and defense had admitted as follows:

1. That the Second Division of the Honorable Court of Tax Appeals has exclusive original jurisdiction over the CTA Criminal Case NO. 0-260 entitled 'People of the Philippines vs. Victorio A. Ocampo;

2. That accused Victorio A. Ocampo is the same Victorio A. Ocampo charged in the Information in the above-captioned case;

[2] Minutes of the Hearing dated July 11, 2012, Ibid, p. 44.
[3] Id, pp. 48-49.
[4] Id, p. 50.
[5] Minutes of the Hearing dated August 16, 2012, Id, p.54.
[6] Id, pp. 71-72.
[7] Id, p. 73.
[8] Minutes of the Hearing dated October 11, 2012, Id, p. 93.
[9] Id, pp. 95-112.

3. That Mazzegon Builders Corporation filed its annual corporate income tax return for taxable year 2003 together with its financial statements before the Bureau of Internal Revenue, Revenue District Office No. 25 on 16 April 2004;

As to the factual issues, those to be resolved are:

1. Whether or not the assessment for deficiency income tax, value-added tax, and expanded withholding tax issued by the BIR to Mazzeggon Buiders Corporation has become final, executory and unappealable.

2. Whether or not the accused Victorio A. Ocampo as the President of Mazzeggon Builders Corporation is liable to pay deficiency income tax, value-added tax, and expanded withholding tax liability of PhP2,713,072.91 for taxable year 2003 due to his willful non-payment of tax pursuant to Section 255 in relation to Sections 253 (d) and 256 of the 1997 Tax Code.

As to the legal issue to be resolved, it is whether or not accused is liable for the offense charged in the Information."[10]

THE EVIDENCE PRESENTED BY THE PROSECUTION

The prosecution presented the following witnesses:

1. MS. CHARITO LOS BAÑOS[11]

DIRECT EXAMINATION

Based on the Judicial Affidavit of Ms. Charito Los Baños[12], she is presently employed as a Revenue Officer of Revenue District Office of Plaridel, Bulacan.[13] She was one of the Revenue Examiners assigned to conduct the investigation /examination of all internal revenue taxes liabilities of Mazzeggon Builders Corporation (Mazzeggon) for the period January 1, 2003 to December 31, 2003, pursuant to a Letter of Authority No. 00047879 dated February 22, 2005.[14] She claimed that she personally served, sometime in February 2005, the Letter of Authority at the registered business address of the taxpayer at Brgy. Sta. Cruz, Sapang Palay, San Jose del Monte, Bulacan and the same was

[10] Id, pp. 95-96.
[11] Minutes of the Hearing dated October 24, 2012, Id, p. 128.
[12] Judicial Affidavit of Ms. Charito Los Baños, Exhibit "DD".
[13] Answer to Question No. 3, Docket, p. 257.
[14] Answer to Question No. 6, Ibid, p. 258.

received by Ms. Marivic Tandingan, an authorized representative of the taxpayer.[15] She, likewise, served the First Request for Presentation of Records to Ms. Tandingan.[16] Afterward, she prepared the Second Request for the Presentation of Records and sent it to the taxpayer through registered mail[17] as shown in the registry receipt attached on the lower portion of the second request.[18] She claimed that the taxpayer did not submit the documents listed in the first and second requests.[19] Consequently, they prepared a Final Notice addressed to the taxpayer and the same was, likewise, sent via registered mail. The registry receipt of the mail was attached to the lower portion of the Final Notice.[20] However, she stated that the taxpayer still did not submit the requested documents.[21] Consequently, she drafted a Memorandum addressed to the Revenue District Office specifically requesting that a Subpoena Duces Tecum (SDT) be issued to the taxpayer.[22] After receiving the SDT, she personally went to the premises of Mazzeggon and served the said subpoena to Mr. Howard Ocampo, the son of the taxpayer sometime in April of 2006.[23]

On May 2006, she received an Indorsement from the Regional Office requiring her to assess Mazzeggon based on best evidence obtainable because of the failure of the taxpayer to fully comply with the SDT.[24] When she found out that Mazzeggon was liable for deficiency EWT, VAT and income tax, she subsequently prepared the respective Revenue Officer's Audit Report on Withholding Taxes, VAT and Income Taxes.[25] Thereafter, they forwarded the tax docket of Mazzeggon to the Assessment Division of Revenue Region No. 5-Valenzuela City and recommended, through a Memorandum, the issuance of a Preliminary Assessment Notice.[26]

CROSS EXAMINATION

In the cross examination conducted during the hearing on October 24, 2012, Ms. Charito Los Baños testified that she inquired what position Ms. Marivin (sic) Tandingan holds in the Company before serving to the latter the Letter of Authority and, Ms. Los Baños found out that she was an authorized representative of the taxpayer and, likewise,

---

[15] Answers to Questions Nos. 8, 9, 10, 11, and 12, Id, pp. 259-260.
[16] Answers to Question Nos. 18 and 19, Id, p. 260.
[17] Answers to Question Nos. 28 and 34, Id, pp. 261-262.
[18] Answer to Question No. 35, Id, p. 262.
[19] Answers to Question Nos. 36 and 37, Id.
[20] Answers to Question Nos. 38, 43, and 44, Id, p. 263.
[21] Answer to Question No. 45, Id.
[22] Answer to Question No. 46, Id.
[23] Answers to Question Nos. 54, 61, 62, and 63, Id, pp. 264-265.
[24] Answer to Question No. 68, Id, p 266.
[25] Answers to Question Nos. 75, 84, and 94, Id, pp. 267-269.
[26] Answer to Question No. 102, Id, p. 270.

stays in the house of the accused.[27] She asserted that both the office address and residence of the accused is one and the same.[28] She testified that it was their Liaison Officer who sent via registered mail the documents pertaining to the Request for Presentation of Books of Accounts as well as the Final Notice mentioned in the Judicial Affidavit.[29] She admitted that when she served personally the subpoena duces tecum to Mr. Howard Ocampo, she assumed that, being the son of one of the officers of the corporation, Mr. Ocampo is authorized to receive the subpoena duces tecum. She did not likewise inquire of any other officers of the corporation before serving the said subpoena.[30]

RE-DIRECT EXAMINATION

Here, Ms. Los Baños testified that the documents which were sent through a registered mail were delivered at the address stated in the Financial Statements of the Mazzeggon.[31] She also testified that after serving the SDT, they submitted affidavits stating that they personally served the same.[32]

RE-CROSS EXAMINATION

Ms. Los Baños testified that there is no street number or number of the house in the registered business address of the taxpayer. And, she found out the exact address of the taxpayer upon inquiry with the Barangay.[33]

2. ANGELITA SALORITOS[34]

DIRECT EXAMINATION

Based on the Judicial Affidavit of Ms. Angelita Saloritos,[35] she is presently assigned and designated as a Reviewer for BIR-Revenue Region No. 5 (BIR-RR5).[36] She is familiar with this case on the ground that she was the Revenue Officer assigned to conduct the review on the investigation/examination of all internal revenue taxes liabilities of Mazzeggon for the period January 1 to December 31, 2003. She claimed

[27] Stenographic Notes Taken During the Hearing on October 24, 2012, pp.14-15.
[28] Ibid, pp. 15-16.
[29] Id, pp. 19, 20, and 22.
[30] Id, pp. 25-26.
[31] Id, pp. 31-32.
[32] Id, p. 34.
[33] Id, pp.37-40.
[34] Minutes of the Hearing dated November 14, 2012, Docket, p. 140.
[35] Exhibit "EE".
[36] Docket, p. 272.

that the result of her review confirmed the report of Revenue Officer Charito Los Baños which showed that Mazzeggon was liable for deficiency income tax, value-added tax, and expanded withholding tax. Thus, she caused the preparation and the issuance of the Preliminary Assessment Notices (PANs).[37] Thereafter, she indorsed the PANs to the Administrative Division of RR-5 for them to have it mailed to the registered business address of the Mazzeggon. According to her, the PANs were duly sent to Mazzeggon since the Administrative Division of RR-5 furnished the Assessment Division with a copy of the Registry Return Notice[38] indicating the date of receipt as well as the signature of the addressee.

When Mazzeggon did not respond to the PANs, she subsequently prepared the Final Assessment Notices (FANs) and the Formal Letter of Demand.[39] Thereafter, she indorsed said documents to their Administrative Division for them to have it mailed to the registered business address of Mazzeggon.[40] To prove the fact of mailing, the Administrative Division of RR-5 furnished the Assessment Division with a copy of the Registry Return Notice indicating the date of receipt as well as the signature of the addressee.[41] However, Mazzeggon did not respond to the FANs.[42] Consequently, when the FANs became final, executory and unappealable, the Assessment Division then forwarded the tax docket case of Mazzeggon to the Collection Section of RDO No. 25 to initiate the collection proceedings.[43]

CROSS-EXAMINATION

She admitted that, to her knowledge, the accused, being the President of the corporation is liable for the entire obligation of the corporation.[44] When asked how she was able to determine who received that PANs, she answered, *"(I)n the registry Return."*[45] She said that the subject document was received but she "forgot" who received it.[46] When Justice Castañeda asked her, "Do you know whose signature that is?" She answered, *"No, your Honor."*[47] When she was asked again by Justice Castañeda as to whether she knew personally the person who actually received the FANs, she, likewise, answered in the negative.[48]

---

[37] Ibid, p. 273.
[38] Id, p. 276.
[39] Id, p. 277.
[40] Id, p. 279.
[41] Id.
[42] Id, p. 280.
[43] Id.
[44] Stenographic Notes Taken During the Hearing on November 14, 2012, p. 11.
[45] Ibid, pp. 15-16.
[46] Id.
[47] Id, pp. 17-18.
[48] Id, p. 19.

3. ANGELITA MANANGHAYA[49]

DIRECT EXAMINATION

Based on Ms. Angelita Mananghaya's Judicial Affidavit[50], she is presently assigned and designated as a Seizure Agent for Revenue District Office No. 25-A Plaridel.[51] She said that she was the Revenue Officer assigned to verify whether the deficiency internal revenue tax liabilities of Mazzeggon for the period January 1, 2003 to December 31, 2003 had already been paid or settled.[52] When she found out that Mazzeggon had not yet paid its tax deficiencies, their office subsequently drafted a preliminary collection letter dated January 22, 2007 addressed to Mazzeggon, informing the latter to settle its deficiency tax liabilities, otherwise, their office would proceed with the collection of the aforesaid deficiency through the summary remedies of levy, distraint and garnishment and, recommend the filing of the appropriate court action for collection.[53] She claimed that the said letter was sent to Mazzeggon, as shown in the attached registry receipt to the preliminary collection letter, where the date of receipt is indicated.[54] Since Mazzeggon did not respond to the said letter, their office prepared a Final Notice before Seizure addressed and mailed to Mazzeggon. The receipt thereof, was similarly proven by a registry receipt. [55]

Thereafter, she caused the preparation and issuance of a Warrant of Distraint and/or Levy against Mazzeggon and personally served the same at the registered business address of the taxpayer on May 11, 2007 to Mr. Victorio Ocampo, who is the President of Mazzeggon.[56] Thereafter, she prepared a progress report regarding the service of the warrant and, likewise, caused the preparation and the issuance of several Warrants of Garnishment against Mazzeggon.[57]

CROSS EXAMINATION

Here, Ms. Mananghaya testified that Mazzeggon failed to pay the tax deficiencies since there was no official receipt attached in the docket.[58] When she was later on asked as to what is her proof of receipt

---

[49] Minutes of the Hearing dated December 5, 2012, p. 151.
[50] Exhibit "FF".
[51] Answer to Question No. 4, Docket, p. 281.
[52] Answer to Question No. 8, Ibid, p. 282.
[53] Answer to Question No.10, Id.
[54] Answers to Question Nos. 15 and 16, Id, p. 283.
[55] Answers to Question Nos. 18, 19, 20, and 21, Id, pp. 283-284.
[56] Answers to Question Nos. 22, 32, 33, 34 and 35, Id, pp. 284-285.
[57] Answers to Question Nos. 52 and 57, Id, pp. 287-288.
[58] Stenographic Notes Taken During the Hearing on December 5, 2012, p. 14.

of the Preliminary Collection Letter, she replied, *"It was not attached."*[59] When she was asked to present the previously mentioned Final Notice Before Seizure, she answered, *"I don't have a copy right now."*[60]

Thereafter, the accused's counsel asked her if there was any letter sent by the accused to their office showing the intent of the corporation to settle its obligation, she answered, *"I have the Letter but it was not directly addressed to me."*[61] When she was again asked if there was another letter sent by the accused, she answered, *"Yes"*. After receiving the said letter, she *"waited for the attachments because the compromise settlement needs requirements before submitting it to the Director's Office."* Nonetheless, she claimed that she responded to the letter of the accused which she sent through mail on July 12, 2007.[62]

3. CORAZON CRUZ[63]

DIRECT EXAMINATION

Based on the Judicial Affidavit of Ms. Corazon Cruz[64], she is presently assigned and designated as the Mailing Clerk of the Administrative Division of BIR-RR5.[65] She stated the she is familiar with this case since the three (3) Assessment Notices all numbered 68277 and all dated October 20, 2006, addressed to Mazzeggon, *"appeared in one of the registry books to have been mailed, postage prepaid by registered mail on October 20, 2006, registry no. 990."*[66] She claimed that the Final Assessment Notices were mailed and sent to Mazzeggon because the FANs *"did not return to Bureau of Internal Revenue"*, meaning, *"Mazzeggon duly received the FAN."*[67] She added that after Mazzeggon received the FANs, the Administrative Division received a copy of the registry return notice indicating the date of receipt and the signature of the addressee. Then, she furnished the Assessment Division the registry return notice for them to attach the said notice to the tax docket of Mazzeggon.[68] According to her, the details recorded in the registry books when the PANs and FANs are mailed and sent to the taxpayer are as follows: *"name of the taxpayer, the registered business address, the date of mailing, the date of receipt and the name of the addressee."*[69]

---

[59] Ibid, p. 15.
[60] Id, p. 16.
[61] Id, p. 17.
[62] Id, pp. 21-22.
[63] Minutes of the Hearing dated January 23, 2013, Docket, p. 159.
[64] Exhibit "GG".
[65] Docket, p. 289.
[66] Ibid, p. 290.
[67] Id.
[68] Id.
[69] Id, p. 291.

CROSS-EXAMINATION

Here, the counsel for the accused asked Ms. Cruz, *"Alam mo ba kung sino ang nakakatanggap ng mga sulat na ipinapadala sa Mazzegon Builders Corporation?"* In answer to this question, she replied, *"Hindi po."*[70]

On January 28, 2013, plaintiff filed its Formal Offer of Evidence.[71] The Court, however, denied the admission of all the exhibits offered in a Resolution[72] promulgated on February 19, 2013, to wit:

1. **Exhibits "A"** to **"J-1"**, **"L"** to **"M-2"**, **"P"** to **"P-8-c"**, **"R"** to **"S-6-a"**, **"T"** to **"T-6-a"**, and **"U"** to **"W-2"** for the prosecution's failure to submit the duly-marked exhibits and for the prosecution's failure to have the same identified;

2. **Exhibits "S-7", "S-7-a", "T-7"** and **"T-7-a"** for the prosecution's failure to submit the duly-marked exhibits, for the prosecution's failure to have the same identified, and for the prosecution's failure to show whether these exhibits are originals, certified true copies, faithful reproductions of the original or are mere photocopies; and

3. **Exhibits "DD", "EE", "FF",** and **"GG"** for the prosecution's failure to submit the duly-marked exhibits.

Thus, plaintiff filed its Motion for Reconsideration with Prayer to Admit Formal Offer of Evidence with Attached Exhibits[73] on March 4, 2013, with accused's Comment/Opposition to Prosecution's Motion for Reconsideration with Prayer to Admit Formal Offer of Evidence[74] filed on March 15, 2013. The Court, in a Resolution promulgated on April 17, 2013, granted prosecution's Motion for Reconsideration with Prayer to Admit Formal Offer of Evidence and admitted "**Exhibits "A", "B", "C", "D-2", "E", "E-1", "E-2", "E-3", "F-1", "F-2", "F-3", "G", "G-1" "G-2", "H", "H-1", "H-2", "H-3", "I", "I-1", "I-2", "I-3", "I-4", "J", "J-1", "L-3", "L-3-a", "L-3-b", "L-3-c", "L-3-d", "L-4", "L-4-a", "L-4-b", "L-4-c", "L-4-d", "L-5", "L-5-a", "L-5-b", "L-5-c", "L-5-d", "M", "M-1", "M-2", "P", "P-1", "P-2",**

---

[70] Stenographic Notes Taken During the Hearing on January 23, 2013, p. 7.
[71] Id, pp. 162-174.
[72] Id, pp. 177-178.
[73] Id, pp. 188-212.
[74] Id, pp. 293-300.

"P-3", **"P-4"**, **"P-5"**, **"P-5-a"**, **"P-5-b"**, **"P-5-c"**, **"P-6"**, **"P-6-b"**, **"P-6-c"**, **"P-7"**, **"P-7-a"**, **"P-7-b"**, **"P-7-c"**, **"P-7-d"**, **"P-8"**, **"P-8-a"**, **"P-8-b"**, **"P-8-c"**, **"R"**, **"R-1"**, **"R-2"**, **"R-3"**, **"R-4"**, **"R-5"**, **"R-6"**, **"S"**, **"S-1"**, **"S-2"**, **"S-3"**, **"S-4"**, **"S-5"**, **"T-1"**, **"T-2"**, **"T-3"**, **"T-4"**, **"T-5"**, **"T-6"**, **"T-6-a"**, **"U"**, **"U-1"**, **"U-2"**, **"V"**, **"V-1"**, **"V-2"**, **"V-3"**, **"V-4"**, **"V-5"**, **"W"**, **"W-1"**, **"W-2"**, **"DD"**, **"EE"**, **FF"**, and, **"GG"**.

However, this Court still **DENIES** the admission of the following exhibits:

1. **Exhibits "A-1"**, **"R-6-a"**, and **"S-6-a"** for the prosecution's failure to have the same identified;

2. **Exhibit "D"** since the description in the Formal Offer of Evidence could not be found in the duly marked exhibit;

3. **Exhibit "D-1"** which is described in the Formal Offer of Evidence as "Name and signature of Rene Aguas, Regional Director ("RD") RR5", actually indicates the name and signature of Marivic Tandingan;

4. **Exhibit "F"** which is described in the Formal Offer of Evidence as Second Request for Presentation of Records dated **24 May 2001** issued by RDO No. 25-Plaridel, actually indicates Second Request for Presentation of Records dated May **24, 2005** issued by RDO No. 25-Plaridel;

5. **Exhibit "P-6-a"** which is described in the Formal Offer of Evidence as "Date of issue, September 14, 2006", is actually illegible.

6. **Exhibit "S-6"** which is described in the Formal Offer of Evidence as Formal Letter of Demand **(Demand No. "29442"-VT)** is not actually indicated as such but can only be read as Formal Letter of Demand **(Demand No. "294")**.

7. **Exhibit "S-6-a"** which is described in the Formal Offer of Evidence as Due date **20 November "2006"**, is not actually indicated as such but can only be read as Due date **20 November "200"**.

8. **Exhibit "T"** which is described in the Formal Offer of Evidence as Final Assessment Notice No. **"68277"**, is not actually indicated as such but can only be read as Final Assessment Notice No. "**682"**;

9. **Exhibit "U-3"** which is described in the Formal Offer of Evidence as "Date of receipt" is actually illegible.

10. **Exhibit "V-6"** for the prosecution's failure to include the same in its Formal Offer of Evidence."

On May 7, 2013, accused filed a MOTION FOR PARTIAL RECONSIDERATION OF THE RESOLUTION DATED APRIL 17, 2013 WITH MOTION FOR LEAVE OF COURT TO FILE DEMURRER TO EVIDENCE.

On July 1, 2013, accused filed a Demurrer to Evidence. A Comment/Opposition (To Demurrer to Evidence) was filed by the plaintiff on July 8, 2013.

Hence, this Resolution.

In his Demurrer to Evidence, accused contends that he is entitled to an acquittal based on the following grounds:

a. The offense committed, if any, are already barred by the statute of limitation; and

b. Prosecution failed to prove that the element of "willfulness" or deliberate intent to evade the payment of taxes due is present in the instant case.

Anent the first ground, accused is of the view that, in accordance with Act No. 3326, 2008 Revised Manual for Prosecutors and the case of Zaldivia vs. Court of Appeals (G.R. No. 102342, July 3, 1992), the Bureau of Internal Revenue (BIR) has five (5) years from the date of the commission of the offense to file the case in Court and such 5-year period should be reckoned from the time that the accused received the Collection letter. Applying such theory in the instant case, petitioner contends that since the Assessment Notices were mailed on October 20, 2006, the case against him should have been filed on October 19, 2011. Further, even if the reckoning period is the period stated in the Investigation Data Form which is November 20, 2006, the case should have been filed on November 19, 2011. Consequently, the Information filed in 2012 was already outside the 5-year period within which to file the case.

Furthermore, accused posits that it is the actual filing of the case in court and not the filing of the BIR lawyer with the Office of the City Prosecutor for Preliminary Investigation which will toll the running of the prescriptive period. Accordingly, while the BIR has timely filed the case for preliminary investigation within the 5-year prescriptive period, the Information was, however, filed by the City Prosecutor, beyond the 5-year reglementary period. Thus, on this score alone, the instant case against him must already be dismissed.

Plaintiff, on the other hand, argues that while it is true that the Revised Manual for Prosecutors (2008) provides that the prescriptive period for violation of special law shall be interrupted only by the filing of the Complaint or Information in Court and shall begin to run again if the proceedings are dismissed for reasons not constituting double jeopardy, the same directive must be read in the light of the later ruling/interpretation of the Supreme Court in the case of *Panaguiton, Jr. vs. Department of Justice*[75].

We find accused's arguments untenable.

This matter has already been settled by the Supreme Court in the case of the *People of the Philippines vs. Ma. Theresa Pangilinan*[76] where it ruled that, it is the institution of proceedings for preliminary investigation against the accused that interrupts the period of prescription, to wit:

> "xxx. There is no more distinction between cases under the RPC and those covered by special laws with respect to the interruption of the period of prescription. **The ruling in *Zaldivia v. Reyes, Jr.*[77] is not controlling in special laws.** In *Llenes v. Dicdican,*[78] *Ingco, et al. v. Sandiganbayan*[79], *Brillante v. CA*[80], *and Sanrio Company Limited v. Lim,*[81] cases involving special laws, this Court held that **the institution of proceedings for preliminary investigation against the accused interrupts the period of prescription**. In *Securities and Exchange Commission v. Interport Resources Corporation, et. al.,*[82] the Court even ruled that investigations conducted by the Securities and

---

[75] G.R. No. 167571, November 25, 2008, 571 SCRA 549, 562.
[76] G.R. No. 152662, June 13, 2012.
[77] G.R. No. 102342, July 3, 1992, 211 SCRA 277.
[78] 328 Phil. 1272 (1996)
[79] G.R. No. 112584, May 23, 1997, 272 SCRA 563
[80] 483 Phil. 568 (2004)
[81] G.R. No. 168662, February 19, 2008, 546 SCRA 303.
[82] G.R. No. 135808, October 6, 2008, 567 SCRA 354, 415-416.

> Exchange Commission for violations of the Revised Securities Act and the Securities Regulations Code effectively interrupts the prescription period because it is equivalent to the preliminary investigation conducted by the DOJ in criminal cases.
>
> In fact, in the case of *Panaguiton, Jr. v. Department of Justice*,[83] which is on all fours with the instant case, this Court categorically ruled that **commencement of the proceedings for the prosecution of the accused before the Office of the City Prosecutor effectively interrupted the prescriptive period for the offenses they had been charged** xxx."

Based on the foregoing, it can be inferred that the running of the prescriptive period is tolled upon the filing of the complaint with the Office of the City Prosecutor for the conduct of preliminary investigation.

Thus, the filing of the complaint against the accused before the Office of the City Prosecutor on November 20, 2006 (the date stated in the Investigation Data Form[84]), effectively interrupted the prescriptive period for the offenses he had been charged. Consequently, *We* hold that those offenses allegedly committed by the accused have not yet prescribed when the Information was filed in this Court on January 20, 2012.

We shall now proceed to the second ground raised by the accused.

Accused contends that following Sections 255, 253(d) and 256 of the NIRC of 1997, as amended, the following elements have to be proven by the prosecution beyond reasonable doubt: (1)the corporate taxpayer is required to pay tax and it failed to pay such tax at the time required by law; (2) the accused is the president, general manager, branch manager, treasurer, officer-in-charge or employee responsible for the violation of the corporate taxpayer; and, (3)the accused willfully fails to pay the corporate taxes.

Accused further argues that the prosecution has not clearly proven that he received the Preliminary Assessment Notice and/or the Final Assessment Notice issued by the BIR. Likewise, there is no evidence that the procedures as mandated in Revenue Regulations No.

---

[83] G.R. No. 167571, November 25 2008, 571 SCRA 549, 562.
[84] Docket, p. 6.

12-99 were followed. Moreover, with regard to the element of "willfulness", the prosecution was not able to present any evidence which would prove that the non-payment of the tax was accompanied by the state of "willfulness". According to him, the prosecution's witness Ms. Angelita Mananghaya even admitted that two letters dated May 15, 2008 and June 9, 2008 were sent by the accused to show the intent of the corporation to settle the taxes being assessed by the BIR.

Plaintiff, on the other hand, counter-argues that the Preliminary Assessment Notice and the Final Assessment Notice are already final and executory due to accused's failure to file a protest within thirty (30) days from the receipt of the said notices, thus, accused is now barred from questioning them; assessment notice is not a condition precedent for the filing of criminal case; malice or intent is irrelevant in special penal laws as they are not *mala in se* but *mala prohibita*; and, the claim of the accused that "willfulness" to pay the tax is negated by the admission of Ms. Angelita Mananghaya that accused sent two (2) letters signifying his intent to settle the taxes being assessed by the BIR is premature to merit his acquittal. Accordingly, the prosecution did not offer in evidence the alleged letters, thus, accused should take the witness stand and present the alleged letters as part of his defense.

It should be recalled that in this criminal case, accused is charged for violation of Sections 253(d), 255 and 256 of the National Internal Revenue Code of 1997, as amended, the provision of which are hereunder quoted:

> **"Section 253.** *General Provisions.* –
>
> **x 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.
>
> x x x x
>
> **Section 255.** *Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* - Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate

> information, who willfully fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.
>
> Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years.
>
> **Section 256.** *Penal Liability of Corporations.* - Any corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000)."

As can be gleaned from the foregoing provisions, the elements of the offense are as follows:

1. Accused being a partner, president, general manager, branch manager, treasurer, officer-in-charge, and employee, is required to pay a tax, make a return, keep any record, or supply correct and accurate information; and

2. Accused being a partner, president, general manager, branch manager, treasurer, officer-in-charge, and employee, wilfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld or refund excess taxes withheld on compensation, at the time required by law or regulations.

In this case, accused Victorio A. Ocampo is being charged as President of Mazzeggon Builders Corporation for his willful and unlawful failure and refusal to pay tax liabilities in sums of P1,776,738.89, P931,421.91 and P4,912.11, representing deficiency income tax, VAT and EWT for the year 2003. To prove that the accused is the President of the taxpayer corporation, plaintiff presented the Account Information Form[85] as well as the Financial Statement for taxable year 2003 of Mazzeggon, which clearly designates Victorio A. Ocampo as its President. Moreover, records show that accused never denied his capacity as President of Mazzeggon. Thus, being a responsible officer of the corporation, accused is required by law to pay the alleged deficiency taxes, if there is any, for and in behalf of Mazzeggon.

It should be recalled that in this case, accused claims that it did not receive the PANs and FANs issued by the BIR. The prosecution, on the other hand, claims that based on the Judicial Affidavit of Ms. Angelita Saloritos, the PANs and FANs were sent to the registered business address of Mazzeggon via registered mail and, to prove the receipt of the said documents, plaintiff offered in evidence the Registry Return Notice No. 817[86] for the PANs and Registry Return Notice No. 990[87] for the FANs.

Jurisprudence provides that 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 favored by the presumption to prove that the mailed letter was indeed received by the addressee.[88]

Thus, in order to verify the aforesaid allegations of both parties, the Court decided to look into the subject Registry Return Notices and examine the details stated therein. And, in doing so, *We* found out that, while the said notices were all dated and signed by the respective recipient thereof, there was, however, no printed name under or beside the respective signature appearing thereon. Consequently, there is no way for this Court to determine who actually received the said documents. The prosecution, therefore, miserably failed to show the actual receipt of the subject PANs and FANs by the accused or by any of

[85] Exhibit "B".
[86] Exhibit "P-8".
[87] Exhibit "U".
[88] Barcelon, Roxas Securities, Inc. vs. CIR, G.R. No. 157064, August 7, 2006, citing the case of In Protector's Services, Inc. v. Court of Appeals, 386 Phil. 611, 623 (2000).

the authorized representative of Mazzeggon. Moreover, if *We* are to accept the signatures appearing on the said Registry Return Notices as proof of the actual receipt thereof, then, the taxpayer would be at the mercy of the revenue officer, without adequate protection or defense.

The rule is that receipts for registered letters and return receipts do not prove themselves; they must be properly authenticated in order to serve as proof of receipt of the letter.[89] At most, registry receipts show that it was possible for Mazzeggon and/or a certain person to have received the notices. Possibilities, however, cannot replace proof beyond reasonable doubt.[90]

Moreover, the crime of failure to pay tax under Section 255 is defined by the element of "willfulness" of not paying the tax, which in turn, requires the showing of "knowledge" and "voluntariness". However, how can *We* expect the accused to pay the said tax deficiencies if he is not even aware of the existence of and the obligation to pay the same.

Consequently, the claim that the subject assessment has become final and executory when accused failed to dispute the same within the thirty (30) day period has no merit, it appearing that accused never had the opportunity to do so not having received the said assessment notices. Thus, the alleged failure to pay the said deficiency taxes cannot be considered willful as to constitute a voluntary and intentional infraction of the law.

The Constitution mandates that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. The burden lies on the prosecution to overcome such presumption of innocence by presenting the quantum of evidence required. In doing so, the prosecution must rest its case on its own merits and cannot merely rely on the weakness of the defense. If the prosecution fails to meet the required quantum of evidence, the defense does not even need to present any evidence in its behalf; the presumption of innocence prevails and the accused should be acquitted.[91]

In fine, the totality of evidence presented in the present case does not support accused's conviction for violation of Sections 253(d), 255

---

[89] People of the Philippines vs. Katherine M. Lim and Edelyn Coronacion, et al., CTA Crim. Case No. 0-113, December 12, 2011, citing the case of Martin Del Rosario vs. Judge Eranio G. Cedillo, A.M. No. MTJ-04-1557, October 21, 2004.
[90] Ibid.
[91] People of the Philippines vs. Jhon-Jhon Alejandro Y Dela Cruz @ "Nognog", G.R. No. 176350, August 10, 2011, citing the case of *People v. Cantalejo*, G.R. No. 182790, April 24, 2009, 586 SCRA 777, 783.

and 256 of the National Internal Revenue Code of 1997, as amended, since the prosecution failed to prove the receipt of PANs and FANs by the accused. Therefore, accused Victorio A. Ocampo cannot be held criminally and civilly liable for the failure of the Mazzeggon Builders Corporation to pay the said deficiency taxes.

WHEREFORE, finding merit, the Demurrer to Evidence dated July 1, 2013, filed by the accused Victorio A. Ocampo, is hereby **GRANTED.** Accordingly, Criminal Case No. 0-260 is **DISMISSED**, for insufficiency of evidence.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice