REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case No. O-660** (Violation of Section 255 in rel. to Secs. 253(d) and 256 of the NIRC of 1997 as amended by REP ACT 8424
-versus-	Members: **DEL ROSARIO**, *P.J., Chairperson,* **FABON-VICTORINO**, *and* **MANAHAN**, *JJ.*
JOSE EDUARDO C. DELGADO, DELBROS, INC., CBW 124 District, 888 Delbros Avenue, Pascor Drive, Parañaque City, *Accused.*	Promulgated: OCT 23 2019 · 8:40 a.m.

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DECISION

MANAHAN, *J.:*

Accused Jose Eduardo C. Delgado and Delbros, Inc. (collectively, accused) are charged for violation of Section 255, in relation to Sections 253(d) and 256 of the 1997 National Internal Revenue Code (NIRC), in an Information quoted below:

> "The undersigned accuses **JOSE EDUARDO C. DELGADO and DELBROS, INC.** of Violation of Section 255 in rel. to Secs. 253(d) and 256 of the National Internal Revenue Code of 1997 as amended by REP ACT 8424, committed as follows:
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> That sometime in June 2012, and subsequently thereafter, in the City of Manila, Philippines, the said accused, **JOSE EDUARDO C. DELGADO** being then the President and responsible officer of **DELBROS, INC.**, a duly organized domestic corporation with business address then located at *Delbros Building, Atlanta Street corner 17th and 18th Streets, Port Area, this City,* did then and there willfully and unlawfully fail, refuse and neglect, to pay the internal revenue tax liabilities of **DELBROS, INC.** for the year 2008, to wit:

Kind of Tax	Assessment No./ Demand Letter	Year	Date	Amount
Basic Income Tax	32-08-IT-3464	2008	06-28-2012	Php19,924,744.39
Basic Value-Added Tax	32-08-VT-03465	2008	06-28-2012	12,235,357.59

or in the total amount of **Php. 32,160,101.98**, as well as the computed interest therefor in the amount of **Php. 12,762,864.76 (Income Tax) and Php.8,381,213.83 (Value Added Tax)** despite notice and service of said assessment and Warrants of Garnishment, without formally protesting against or appealing the same, and despite repeated demands made upon him to do so, to the damage and prejudice of the Government of the Republic of the Philippines in the total amount of **Php. 53,304,180.57,** Philippine currency.

Contrary to law."[1]

Antecedents

The above-quoted Information was filed with the Court on January 15, 2018. On February 1, 2018, the Court found probable cause for the issuance of a warrant of arrest against accused Jose Eduardo C. Delgado (Delgado) and set the bail at Php20,000.00.[2]

Accused Delgado voluntarily appeared and submitted to the Court's jurisdiction by posting a cash bond in the amount of Php20,000.00, which was accepted and approved by the Court.[3]

On May 9, 2018, the arraignment pushed through with the accused Delgado for himself and on behalf of Delbros, Inc. pleading "Not Guilty".[4]

In the same hearing, the parties admitted:

1) The identity of the accused as the same person charged in the Information;

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[1] Docket, CTA Crim. Case No. O-660, Vol. I, p. 6.
[2] Docket, Vol. I, pp. 161-164.
[3] Docket, Vol. I, Resolution dated February 12, 2018, pp. 187-188.
[4] Docket, Vol. II, Minutes of Hearing held on May 9, 2018, pp. 653-656; Order dated May 9, 2018, p. 661.

2) Accused Delgado is the President of Delbros, Inc. in 2008 and 2012;

3) The address of Delbros, Inc. indicated in the purported PAN is at "Delbros Bldg., Atlanta St. cor. 17th and 18th Sts. Port Area, Manila;" and

4) The purported PAN and Preliminary Collection Letter (Annex M of the Complaint) were issued only on May 30, 2012 and November 20, 2013, respectively.[5]

The Pre-Trial Order (PTO) was issued governing the proceedings.

During trial, the prosecution presented its witnesses:

(1) Group Supervisor (GS) Minda A. Cayago[6] on May 30, 2018[7] to prove that the tax audit and investigation of Delbros, Inc. for taxable year 2008 was by virtue of a valid Letter of Authority; that notices/requests for presentation of accounting records were served to Delbros, Inc.; that a summons and/or *Subpoena Duces Tecum* was issued and served upon accused to compel him to submit to the BIR the corporation's accounting records for taxable year 2008; to prove other material allegations in the Information; and, to identify documents mentioned in her judicial affidavit.[8] After which, the witness was subjected to cross-examination and re-direct examinations.

(2) Revenue Officer Ma. Paz Arcilla[9] on June 13, 2018[10] to prove that the BIR issued Assessment Notices and Formal Letter of Demand with Details of Discrepancies, all dated June 28, 2012 to Delbros, Inc. for taxable year 2008; to prove other material allegations in the Information; and, to identify documents mentioned in her judicial affidavit.[11] After which, the witness was subjected to cross, re-direct, and re-cross examinations.

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[5] Docket, Vol. II, Order dated May 9, 2018, p. 661; Pre-Trial Order (PTO), p. 728.
[6] Docket, Vol. I, Judicial Affidavit of GS Minda A. Cayago, pp. 586-590.
[7] Docket, Vol. II, Order dated May 30, 2018, pp. 738-739.
[8] Docket, Vol. I, Submission, pp. 584-585.
[9] Docket, Vol. I, Judicial Affidavit of Revenue Officer Ma. Paz Arcilla, pp. 640-642.
[10] Docket, Vol. II, Order dated June 13, 2018, pp. 746-747.
[11] Docket, Vol. I, Submission, pp. 638-639.

(3) Revenue Officer Dennis V. Ruelo[12] on June 20, 2018[13] to prove that he served to Delbros, Inc., by registered mail, the Preliminary Collection Letter and Final Notice Before Seizure; to prove other material allegations in the Information; and, to identify documents mentioned in his judicial affidavit.[14] After which, the witness was subjected to cross-examination and re-direct examinations.

(4) Ms. Edna A. Ortalla[15] on July 4, 2018[16] to prove that the BIR has issued Preliminary Assessment Notice with Details of Discrepancies, dated May 30, 2012 to Delbros, Inc. for taxable year 2008; to prove other material allegations in the Information; and, to identify documents mentioned in her judicial affidavit.[17] After which, the witness was subjected to cross, re-direct, and re-cross examinations.

(5) Mr. Benhur C. Nacorda[18] on July 11, 2018[19] to prove that witness Mr. Nacorda is a BIR employee designated as Mailing In-Charge of the Administrative Division, BIR Manila; to prove that based on the BIR Records, a Preliminary Assessment Notice and Final Assessment Notice/Demand Letter were sent by the Administrative Division, BIR Manila to Delbros, Inc. by registered mail on May 30, 2012 and June 28, 2012, respectively; to prove other material allegations in the Information; and, to identify documents mentioned in his judicial affidavit.[20] After which, the witness was subjected to cross, re-direct, and re-cross examinations.

(6) Revenue Officer Romualdo R. Cabubas[21] on August 1, 2018[22] to prove that the internal revenue tax case of Delbros, Inc. for taxable year 2008 was assigned to RO Cabubas for enforcement of collection; to prove that RO Cabubas served Warrant of Distraint and/or Levy to Delbros, Inc.; to prove that RO Cabubas served Warrant of Garnishment to different banks; to prove other material allegations in the Information; and, to

[12] Docket, Vol. I, Judicial Affidavit of Revenue Officer Dennis V. Ruelo, pp. 611-614.
[13] Docket, Vol. II, Order dated June 20, 2018, pp. 750-751.
[14] Docket, Vol. I, Submission, pp. 609-610.
[15] Docket, Vol. I, Judicial Affidavit of Edna A. Ortalla, pp. 630-632.
[16] Docket, Vol. II, Order dated July 4, 2018, pp. 754-755.
[17] Docket, Vol. I, Submission, pp. 628-629.
[18] Docket, Vol. II, Judicial Affidavit of Benhur C. Nacorda, pp. 681-684.
[19] Docket, Vol., II, Order dated July 11, 2018, pp. 758-759.
[20] Docket, Vol. II, Submission, pp. 678-680.
[21] Docket, Vol. II, Judicial Affidavit of Revenue Officer Romualdo R. Cabubas, pp. 693-698.
[22] Docket, Vol. II, Order dated August 1, 2018, pp. 764-765.

identify documents mentioned in his judicial affidavit.[23] After which, the witness was subjected to cross-examination.

The prosecution filed its "Plaintiff's Formal Offer of Evidence"[24] on August 13, 2018. All of the prosecution's documentary evidence were admitted.[25]

Accused filed their Demurrer to Evidence[26] which was denied on December 28, 2018.[27] Accused's Motion for Reconsideration (of the Resolution dated December 28, 2019)[28] was likewise denied.[29]

For the defense, accused presented the following witnesses:

(1) Atty. Arnel P. Kho[30] on February 13, 2019[31] to prove that accused Delbros, Inc. (Delbros) and accused Jose Eduardo C. Delgado (Delgado) cannot be held liable for the alleged violations of Section 255 in relation to Sections 253(d) and 256 of the NIRC because the purported subject assessments, supposedly based on best evidence obtainable, have no legal and factual basis, inapplicable, and clearly arbitrary; to prove that the Bureau of Internal Revenue Manila (BIR-Manila) filed a complaint against Delgado before the Office of the City Prosecutor of Manila (OCP-Manila) for alleged failure to obey the BIR-Manila's *subpoena* under Section 266 of the NIRC (Non-compliance case), which was eventually filed and assigned to the Metropolitan Trial Court of Manila, Branch 15 (MTC-Manila) as Delbros supposedly failed to submit its books of accounts, vouchers, returns and other documents for the taxable period 2008; to prove that on May 24, 2012, Delbros submitted to the BIR-Manila the subject documents as required by the BIR-Manila for the taxable period 2008; to prove that in view of the submission of the subject documents, the BIR-Manila, filed with the MTC-Manila and OCP-Manila a Manifestation with Motion to Withdraw Complaint dated May 28, 2012 in favor of Delgado; to prove that Delbros filed a Manifestation with Motion dated July 6, 2012 for the dismissal of the complaint against Delgado;

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[23] Docket, Vol. II, Submission, pp. 691-692.
[24] Docket, Vol. II, pp. 770-783.
[25] Docket, Vol. II, Resolution dated October 23, 2018, pp. 899-900.
[26] Docket, Vol. II, pp. 908-936.
[27] Docket, Vol. II, Resolution dated December 28, 2018, pp. 986-997.
[28] Docket, Vol. II, pp. 998-1016.
[29] Docket, Resolution dated January 29, 2019, pp. 1037-1040.
[30] Docket, Vol. II, Judicial Affidavit of Atty. Arnel P. Kho, pp. 1055-1070.
[31] Docket, Vol. II, Order dated February 13, 2019, p. 1154.

to prove that, in view of the Manifestation with Motion to Withdraw Complaint and Manifestation with Motion, MTC-Manila issued an Order dated August 31, 2012 dismissing the Non-compliance case; to prove that OCP-Manila did not conduct the proper preliminary investigation in connection with the present case; to prove that accused Delgado, through his undersigned counsel, filed a Motion to Re-Open the Preliminary Investigation Proceedings before the OCP-Manila; to prove that accused Delgado, through his counsel filed his Comment/Opposition (to the Motion for Reconsideration filed by BIR-Manila) before the OCP-Manila; to prove that OCP-Manila recommended the filing of the information of the present case without considering the (i) Comment/Opposition filed by accused to the Motion for Reconsideration dated October 4, 2017 filed by BIR-Manila of the earlier resolution dismissing the present case, and (ii) Counter-Affidavit submitted by the accused before the OCP-Manila in connection with the present case; to prove that the Motion for Reconsideration filed by Delbros before the Honorable BIR Commissioner *vis-à-vis* the assessments, has remained pending as of this date; and to identify relevant documents.[32]

(2) Accused Delgado[33] on February 20, 2019[34] to prove that accused Delbros and accused Delgado cannot be held liable for the alleged violations of Section 255 in relation to Sections 253(d) and 256 of the NIRC, because the purported subject assessments issued by the BIR-Manila supposedly based on Best Evidence Obtainable, have no legal and factual basis, inapplicable, and clearly arbitrary; to prove that BIR-Manila filed a complaint against Delgado before the Office of the City Prosecutor of Manila (OCP-Manila) for alleged failure to obey the BIR-Manila's *subpoena* under Section 266 of the NIRC (Non-Compliance Case), which was eventually filed and assigned to the Metropolitan Trial Court of Manila, Branch 15 (MTC-Manila) as Delbros supposedly failed to submit its books of accounts, vouchers, returns and other documents (Subject Documents) for the taxable period 2008 (Subject Taxable Period); to prove that on May 24, 2012, Delbros submitted to the BIR-Manila the Subject Documents as required by the BIR-Manila for the Subject Taxable Period; to prove that in view of the submission of the Subject Documents, the BIR-Manila, through Atty. Mario A. Saldevar and Atty. Leonardo B. Quanico, Jr., filed with the MTC-Manila and OCP-Manila a Manifestation with Motion to

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[32] Docket, Vol. II, pp. 1056-1057.
[33] Docket, Vol. II, Judicial Affidavit of Accused Jose Eduardo C. Delgado, pp. 1159-1173.
[34] Docket, Vol. II, Order dated February 20, 2019, pp. 1250-1251.

Withdraw Complaint dated May 28, 2012, in favor of Delgado; to prove that Delgado filed a Manifestation with Motion dated July 6, 2012 for the dismissal of the complaint against him; and, to prove that, in view of the Manifestation with Motion to Withdraw Complaint and Manifestation with Motion, the MTC-Manila issued an Order dated August 31, 2012 dismissing the Non-Compliance Case.

Accused Delgado's testimony is also offered to prove that the OCP-Manila did not conduct the proper preliminary investigation in connection with the present case; to prove that Delgado, through Atty. Kho, filed a Motion to Re-Open the Preliminary Investigation Proceedings dated August 18, 2018 with the attached Counter-Affidavit of Delgado before the OCP-Manila; to prove that Delgado, through Atty. Kho, filed his Comment/Opposition (to the Motion for Reconsideration filed by BIR-Manila) dated August 18, 2017 before the OCP-Manila; to prove that the OCP-Manila recommended the filing of the Information of the present case without considering the (i) Comment/Opposition dated October 26, 2017 filed by Delgado to the Motion for Reconsideration dated October 4, 2017 filed by BIR-Manila of the earlier resolution dismissing the present case; and (ii) Counter-Affidavit submitted by Delgado before the OCP-Manila in connection with the present case.

Accused Delgado's testimony is further offered to prove that the Motion for Reconsideration dated February 18, 2014 filed by Delbros before the Honorable BIR Commissioner in connection with the denial of the Protest dated December 18, 2013 filed by Delbros with respect to the Preliminary Collection letter dated November 20, 2013 issued by the BIR-Manila, has remained pending as of this date; to prove that Delbros and Delgado did not receive any Letter of Authority, Request for Presentation of Records, Notice of Informal Conference, Preliminary Assessment Notice, Final Assessment Notice, Final Letter of Demand, Final Notice Before Seizure, Warrant of Levy and/or any other notices/assessments in connection with the Assessments from the BIR-Manila, except the Preliminary Collection Letter issued by Ms. Ceferinia M. Ong, Chief of the Collection Division BIR-Manila, which was received sometime in December 2013; to prove that the assessments are void for the three-year period to assess or audit the books and accounting records of Delbros by BIR-Manila for the Subject Taxable Period had already prescribed in the year 2011; to prove that Delgado did not execute any waiver of prescription with respect to the Subject Taxable Period; and to identify relevant documents.[35]

Accused's Formal Offer of Exhibits[36] was filed on March 5, 2019, and resolved by the Court on April 29, 2019,[37] with all of accused's evidence being admitted.

On July 10, 2019, the case was deemed submitted for decision.[38]

Issues[39]

1. Whether or not the accused is guilty beyond reasonable doubt of the crime as charged in the Information; and

2. Whether or not the accused is liable to pay the internal revenue taxes for the year 2008, as alleged in the Information.

Ruling of the Court

In the Information, accused are charged with violation of Section 255 of the NIRC, for alleged failure to pay deficiency income tax and deficiency VAT for taxable year 2008 despite notice and service of assessments and warrants of garnishment, without formally protesting against or appealing the same, and despite repeated demands made.

Section 255 of the NIRC provides:

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

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[35] Docket, Vol. II, pp. 1160-1162.
[36] Docket, Vol. II, pp. 1257-1267.
[37] Docket, Vol. II, Resolution dated April 29, 2019, pp. 1282-1283.
[38] Docket, Vol. II, Resolution dated July 10, 2019, pp. 1351-1353.
[39] Docket, Vol. II, PTO, p. 728.

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.

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From the foregoing, in order to sustain a conviction for **willfully failing to pay the correct tax** under Section 255 of the NIRC, the following elements must be established beyond reasonable doubt:

1. Accused are **required** under the NIRC or its rules and regulations **to pay any tax**;

2. Accused **failed to pay the required tax** at the time required by law or rules and regulations; and

3. Accused's **failure to pay the required tax** at the time required by law or rules and regulations **is willful**.

The Court will now determine if the foregoing elements have been sufficiently proven by the prosecution.

1st element: Required to pay the correct tax

Section 253(d) and 256 of the NIRC, provide as follows:

SEC. 253. *General Provisions.* –

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(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.

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

> hundred thousand pesos (P100,000). (*Emphasis supplied*)

Accused Delbros is a duly organized domestic corporation. It is undisputed that accused Delgado is the President of Delbros, Inc., as admitted and stipulated by the parties, as follows:

> 1. Identity of the accused as the same person charged in the Information;
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> 2. Accused Jose Eduardo C. Delgado is the President of Delbros, Inc. in 2008 and 2012;[40]

Furthermore, during the course of the proceedings, accused Delgado admitted in open court that he is the CEO of the corporation and he has overall management.[41]

As such, it is established that accused Delgado is a responsible officer of Delbros, Inc. for the years 2008 and 2012.

The requirement for the filing of returns is provided in Section 52(A) of the NIRC, as follows:

> SEC. 52. *Corporation Returns*. –
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> (A) *Requirements*. – Every corporation subject to the tax herein imposed, except foreign corporations not engaged in trade or business in the Philippines, shall render, in duplicate, a true and accurate quarterly income tax return and final or adjustment return in accordance with the provisions of Chapter XII of this Title. **The return shall be filed by the president, vice-president or other principal officer, and shall be sworn to by such officer and by the treasurer or assistant treasurer.** (*Emphasis supplied*)

Based on the foregoing, there is no doubt that accused Delbros is required by law to pay tax, thereby establishing the first element of the crime charged.

2nd element: Failure to pay the correct tax at the time required by law

[40] Docket, Vol. II, PTO, p. 728.
[41] Transcript of Stenographic Notes (TSN), Hearing dated February 20, 2019, p. 19.

The Information states that there is a willful and unlawful failure to pay internal revenue tax liabilities of (1) basic income tax in the amount of Php19,924,744.39, and (2) basic VAT in the amount of Php12,235,357.59, exclusive of interests and surcharges, for taxable year 2008. The relevant provisions for the filing and payment of income tax and VAT are as follows:

> SEC. 52. *Corporation Returns.* –
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> (B) *Taxable Year of Corporation.* – A corporation may employ either calendar year or fiscal year as a basis for filing its annual income tax return: *Provided,* That the corporation shall not change the accounting period employed without prior approval from the Commissioner in accordance with the provisions of Section 47 of this Code.
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> SEC. 77. *Place and Time of Filing and Payment of Quarterly Corporate Income Tax.* –
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> (A) *Place of Filing.* – Except as the Commissioner otherwise permits, the quarterly income tax declaration required in Section 75 and the final adjustment return required in Section 76 shall be filed with the authorized agent banks or Revenue District Officer or Collection Agent or duly authorized Treasurer of the city or municipality having jurisdiction over the location of the principal office of the corporation filing the return or place where its main books of accounts and other data from which the return is prepared are kept.
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> *(B) Time of Filing the Income Tax Return.* – The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.
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> *(C) Time of Payment of the Income Tax.* – The income tax due on the corporate quarterly returns and the final adjustment income tax returns computed in accordance with Sections 75 and 76 shall be paid at the time the declaration or return is filed in a manner prescribed by the Commissioner.
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> SEC. 114. *Return and Payment of Value-Added Tax.* –

> (A) *In General.* – Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis.

Generally, presentation of the income tax and VAT returns filed by accused Delbros for the subject year would show that accused Delbros filed the required return and paid the tax within the time required by law or rules and regulations. However, no VAT returns were submitted in evidence, albeit Delbros' 2008 Annual Income Tax Return[42] (ITR) forms part of the prosecution's evidence.

In addition, the prosecution presented the following notices with respect to the deficiency assessments for income tax and VAT against accused Delbros: Letter of Authority No. LOA-2007-00037796[43] dated July 24, 2009; various requests for presentation of records;[44] summons and/or *subpoena duces tecum*;[45] Notice of Informal Conference[46] dated April 7, 2011; Preliminary Assessment Notice (PAN)[47] dated May 30, 2012; assessment notices[48] dated June 28, 2012; Formal Letter of Demand (FLD) dated June 28, 2012 and Details of Discrepancies;[49] Preliminary Collection Letter (PCL);[50] Final Notice Before Seizure[51] dated February 12, 2014; Warrant of Distraint and/or Levy;[52] and various Warrants of Garnishment.[53]

On the other hand, accused did not present evidence to refute the assessments nor did accused present any evidence to show that the assessed deficiency income tax and VAT have been paid.

Accordingly, it has been sufficiently established that accused Delbros failed to pay the correct amount of deficiency

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[42] Docket, Vol. I, Exhibit "P-1", pp. 437-438.
[43] Docket, Vol. I, Exhibit "P-2", p. 441.
[44] Docket, Vol. I, Exhibits "P-4" and "P-5", pp. 443-444.
[45] Docket, Vol. I, Exhibit "P-9", p. 448.
[46] Docket, Vol. I, Exhibits "P-10" and "P-10-a", pp. 449-450.
[47] Docket, Vol. I, Exhibit "P-15" and sub-markings, pp. 455-457.
[48] Docket, Vol. I, Exhibits "P-17" and "P-18, pp. 459-460.
[49] Docket, Vol. I, Exhibit "P-19" and sub-markings, pp. 461-463.
[50] Docket, Vol. I, Exhibit "P-22", p. 466.
[51] Docket, Vol. I, Exhibit "P-25", p. 472.
[52] Docket, Vol. I, Exhibit "P-30", p. 479.
[53] Docket, Vol. I, Exhibit "P-35" and sub-markings, pp. 486-450.

income tax and VAT within the time prescribed in the assessment notices.

3rd element: Failure to pay the correct amount of tax was NOT willful

Under the 3rd element, the act of failing to pay the correct amount of tax or to supply correct and accurate information must be "willful".

The term "willful" is defined as voluntary and intentional. The element of willful failure to supply correct and accurate information must be fully established as a positive act or state of mind; it cannot be presumed nor attributed to mere inadvertent or negligent acts.[54]

In the instant case, there is no dispute that assessments were issued by the BIR against accused Delbros. However, both accused Delbros and Delgado deny receipt of the notices sent by the BIR.

According to the prosecution's evidence, the following notices were issued and sent to accused Delbros:

(1) Letter of Authority[55] and List of Audit Requirements Per Tax Type[56] dated July 24, 2009 – with address reflected as Delbros Bldg. Atlanta St. cor. 17th and 18th Sts., Port Area, Manila. These documents were personally received on August 17 with no year indicated.

(2) Second Request for Presentation of Records,[57] undated – with address reflected as #888 Delbros Ave., Pascor Drive, Bo. Sto. Niño, Parañaque City. This document was personally received with no date.

(3) Final Request for Presentation of Records,[58] undated – sent by registered mail to #888 Delbros Ave., Pascor Drive, Bo. Sto. Niño, Parañaque City on May 5, 2010[59].

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[54] *People of the Philippines v. Judy Anne Santos y Lumagui*, CTA Crim. Case No. O-012, January 16, 2013.
[55] Docket, Vol. I, Exhibit "P-2", p. 441.
[56] Docket, Vol. I, Exhibit "P-3", p. 442.
[57] Docket, Vol. I, Exhibit "P-4", p. 443.
[58] Docket, Vol. I, Exhibit "P-5", p. 444.
[59] Docket, Vol. I, Exhibit "P-8", p. 447.

(4) Summons and/or Subpoena Duces Tecum[60] dated October 11, 2010 - with address reflected as Delbros Bldg. Atlanta St. cor. 17th and 18th Sts., Port Area, Manila. This document was personally received on November 11, 2010.

(5) Notice of Informal Conference[61] dated April 7, 2011 - with address reflected as Delbros Bldg. Atlanta St. cor. 17th and 18th Sts., Port Area, Manila. This document was personally received on May 13, 2011.

(6) Preliminary Assessment Notice[62] dated May 30, 2012 - sent by registered mail to Delbros Bldg. Atlanta St. cor. 17th and 18th Sts., Port Area, Manila under Registry Receipt No. 919143.[63]

(7) Formal Letter of Demand[64] and Assessment Notices[65] dated June 28, 2012 - sent by registered mail to Delbros Bldg. Atlanta St. cor. 17th and 18th Sts., Port Area, Manila under Registry Receipt No. 921761.[66]

(8) Preliminary Collection Letter[67] - sent by registered mail to Delbros Bldg. Atlanta St. cor. 17th and 18th Sts., Port Area, Manila under Registry Receipt No. 912141.[68]

(9) Final Notice Before Seizure[69] - sent by registered mail to #888 Delbros Ave., Pascor Drive, Bo. Sto. Niño, Parañaque City under Registry Receipt No. R1412771247814.[70]

From the foregoing, among others, the PAN, and the FLD with assessment notices were sent via registered mail to Delbros Bldg. Atlanta St. cor. 17th and 18th Sts., Port Area, Manila.

Section 3(v), Rule 131 of the Rules of Court provides for the disputable presumption "that a letter duly directed and mailed was received in the regular course of the mail." But, in order to raise this presumption the following must be

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[60] Docket, Vol. I, Exhibit "P-9", p. 448.
[61] Docket, Vol. I, Exhibit "P-10" and sub-marking, pp. 449-450.
[62] Docket, Vol. I, Exhibit "P-15" and sub-markings, pp. 455-457.
[63] Docket, Vol. II, Exhibit "P-47" Judicial Affidavit of Benhur C. Nacorda, Q&A 4, p. 682.
[64] Docket, Vol. I, Exhibit "P-19" and sub-marking, pp. 461-463.
[65] Docket, Vol. I, Exhibits "P-17" and "P-18", pp. 459-460.
[66] Docket, Vol. II, Exhibit "P-47" Judicial Affidavit of Benhur C. Nacorda, Q&A 4, p. 682.
[67] Docket, Vol. I, Exhibit "P-22", p. 466.
[68] Docket, Vol. I, Exhibit "P-45" Judicial Affidavit of Revenue Officer Dennis V. Ruelo, Q&A 7, p. 612.
[69] Docket, Vol. I, Exhibit "P-25", p. 472.
[70] Docket, Vol. I, Exhibit "P-45" Judicial Affidavit of Revenue Officer Dennis V. Ruelo, Q&A 13, p. 613.

established: (1) that the letter was properly addressed with postage pre-paid; and (2) 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 course of mail.[71]

In the instant case, the accused allege that Delbros' address is no longer at Delbros Bldg. Atlanta St. cor. 17th and 18th Sts., Port Area, Manila but is instead at #888 Delbros Ave., Pascor Drive, Bo. Sto. Niño, Parañaque City.

There is no evidence presented that Delbros officially informed the BIR of its change of address during this period of investigation. Instead, the BIR was officially informed only on November 13, 2015 via a letter "Re: Notice of Change of Address for Delbros, Inc."[72]

However, despite the absence of a formal written notice of Delbros' change of address, the fact remains that the BIR became aware of Delbros' new address <u>even prior to the issuance of the PAN, FAN/FLD</u>, as shown by the various documents submitted by the prosecution wherein it reflected Delbros' address as #888 Delbros Ave., Pascor Drive, Bo. Sto. Niño, Parañaque City:

(1) Second Request for Presentation of Records;[73]

(2) Final Request for Presentation of Records;[74] and

(3) Memorandum dated May 28, 2012.[75]

Significantly, it has been held that if the BIR is already aware of the new location of the taxpayer, even in the absence of any formal application for change of address, the BIR cannot simply pretend lack of knowledge of the change of address and is bound to send any issuances or notice to such new location of the taxpayer.[76]

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[71] *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue*, G.R. No. 157064, August 7, 2006.
[72] Docket, Vol. I, Exhibit "P-37", p. 492.
[73] Docket, Vol. I, Exhibit "P-4", p. 443.
[74] Docket, Vol. I, Exhibit "P-5", p. 444.
[75] Docket, Vol. I, Exhibit "P-12", p. 452.
[76] *Commissioner of Internal Revenue v. Yukon General Manpower Services Corp.*, CTA EB No. 1444, July 24, 2017, citing *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014.

Based on the foregoing, it cannot be said that the PAN, FLD and assessment notices were "properly addressed" in order for the disputable presumption to arise.

On the other hand, even if the Court considered that the PAN, FLD and assessment notices were sent to the registered address at Delbros Bldg. Atlanta St. cor. 17th and 18th Sts., Port Area, Manila, the prosecution still failed to prove that accused Delbros received the foregoing notices. No registry return cards were offered in evidence and such fact was confirmed by the prosecution's own witness:

JUSTICE DEL ROSARIO

Just point of clarification Mr. Nacorda. Since you testified on the basis of records, would you know based on records whether the return card was actually received by your office? The return card of the mail matter that was sent to the Accused in this case.

MR. NACORDA

No return card bearing return by the Post Master, your Honors.

JUSTICE DEL ROSARIO

I see. So, let's clarify that. So, with respect to the Preliminary Assessment Notice that was sent to the Accused supposedly pertaining to registry receipt 921761, is that the number kindly check? Or is it 919143, you have your Judicial Affidavit? There's so many stamp mark here.

MR. NACORDA

Yes, your Honors.

JUSTICE DEL ROSARIO

The ones sent to Delbros is what particular registry receipt number in so far as the Preliminary Assessment Notice is concerned? Is it 919143?

MR. NACORDA

Yes, your Honors.

JUSTICE DEL ROSARIO

So, in so far as that mail matter is concerned, there was no registry return card that the BIR eventually received?

MR. NACORDA

Yes, your Honors.

JUSTICE DEL ROSARIO

Now, with respect to the Final Assessment Notice, this is your Exhibit "P-42", do I understand that there was also no registry return card that was eventually received by the BIR?

MR. NACORDA

Yes, your Honors.[77]

As shown by the foregoing discussion, the prosecution failed to prove that accused Delbros received the assessment notices. Thus, it cannot be concluded that the failure of the accused to pay the assessed deficiency taxes was willful.

Where there is reasonable doubt, the accused must be acquitted even though their innocence may not have been established. When guilt is not proven with moral certainty, it has been our policy of long standing that the presumption of innocence must be favored, and exoneration granted as a matter of right.[78]

With the foregoing documentary and testimonial evidence, the prosecution failed to establish the final element that accused willfully failed to pay the assessed deficiency taxes of Delbros.

WHEREFORE, accused Jose Eduardo C. Delgado and Delbros, Inc. are **ACQUITTED** in CTA Case No. O-660 for failure of the prosecution to establish the accused's guilt beyond reasonable doubt.

The cash bail bond posted by accused is hereby **CANCELLED** and **ORDERED RELEASED** to the accused upon

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[77] TSN, Hearing on July 11, 2018, pp. 11-12.

[78] *People of the Philippines v. Generosa P. Ortega, et al.*, CTA Crim. Case Nos. O-606 and O-607, February 20, 2019 citing *People v. Richard C. Santos, Instantaneous Fast Construction Services*, CTA Crim. Case No. O-171, June 10, 2015.

presentation of the proper documents, in accordance with usual accounting rules and regulations.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice