REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
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PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA Crim. Case No. O-304** **XV-07-INV-10I-07263**
	For: Violation of Sec. 255 in rel. to Sec. 253(d) and 256, Tax Reform Act of 1997 as amended by R.A. No. 8424
- versus -	***Members:***
	DEL ROSARIO, *Chairperson*, **UY,** and
BIENVENIDO S. DIMSON and GILBERT P. DIMSON, DIMSON (Manila) Inc., Couperville Mansions, 17 East Riverside, San Francisco Del Monte, Quezon City. Accused.	**MINDARO-GRULLA,** *JJ.*
	Promulgated:
	MAY 17 2016 ; 9:07 a.m.

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DECISION

UY, *J.*:

Accused Bienvenido S. Dimson and Gilbert P. Dimson are charged before this Court with "violation of Section 255 in relation to Section[*s*] 253(d) and 256 of the Tax Reform Act of 1997 as amended by Republic Act 8424" under the Information dated July 12, 2012 filed on November 5, 2012,[1] the accusatory portion of which reads:

> "That on or about October 19, 2005, in the City of Manila, Philippines, the said accused, Bienvenido S. Dimson, as President/General Manager and co-accused, Gilbert P. Dimson as Vice-President/Treasurer of

[1] Docket—Vol. I, p. 4.

> DIMSON (Manila) Inc., located at 1599 A. Maceda Street, Sampaloc, this City, did then and there willfully and unlawfully fails, refuses and neglects, as they still fails, refuses and neglects [*sic*] to pay their deficiency internal revenue tax liabilities for the year 2002 in the amount of P56,235,758.61 under Assessment Notices No. 32-2002, despite notice and service of said assessment, without formally protesting against or appealing the same, and repeated demands made upon them to do so, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount of P56,235,758.61, Philippine Currency.
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> Contrary to law."

After a careful examination of the Information and supporting documents, this Court found the existence of probable cause for the issuance of a warrant of arrest against both accused.[2] Thus, the Court issued a *Warrant of Arrest* on January 14, 2013.[3]

Accused Bienvenido S. Dimson ("accused Bienvenido" for brevity) voluntarily appeared before this Court and posted the required bail bond for his provisional liberty by way of cash bond in the amount of ₱24,000.00 on January 29, 2013. Accordingly, the Court lifted and recalled the *Warrant of Arrest* issued against accused Bienvenido.[4] Thereafter, accused Bienvenido filed a *Motion for Re-Investigation* on February 1, 2013.[5]

As regards accused Gilbert P. Dimson ("accused Gilbert" for brevity), a *Return of Warrant of Arrest* was filed by Police Chief Inspector Manolo Farinas Salvatierra of the Central Metro Manila Criminal Investigation and Detection Team, National Capital Region, Criminal Investigation and Detection Unit – Criminal Investigation and Detection Group (CMMCIDT, NCRCIDU-CIDG) on January 30, 2013, stating that accused Gilbert was no longer doing business at the above-mentioned address.[6] Thus, the Court issued an *Alias Warrant of Arrest* against accused Gilbert on February 7, 2013.[7]

Thereafter, in the Resolution dated February 8, 2013,[8] the Court

[2] Resolution dated November 19, 2012, Docket—Vol. I, pp. 27 to 28.
[3] Docket—Vol. I, pp. 29 to 30.
[4] Resolution dated January 31, 2013, Docket—Vol. I, p. 44.
[5] Docket—Vol. I, pp. 45 to 47.
[6] Resolution dated February 5, 2013, Docket—Vol. I, pp. 50 to 51.
[7] Docket—Vol. I, pp. 52 to 53.
[8] Docket—Vol. I, p. 56.

directed accused Bienvenido to secure the services of counsel to represent him for the hearing of the *Motion for Reinvestigation*. On February 13, 2013, Atty. Arnold E. Cacho from Cacho & Chua Law Offices formally entered his appearance as counsel of accused Bienvenido,[9] and the same was noted by this Court.[10]

On March 8, 2013, the prosecution filed its *Comment/Opposition (To Accused Motion for Reinvestigation).*[11]

In the Resolution dated March 22, 2013,[12] the Court denied the *Motion for Re-Investigation* for lack of merit.

On May 17, 2013, Atty. Arnold Cacho withdrew his appearance as counsel of accused Bienvenido with the conformity of the latter.[13]

During his arraignment on June 5, 2013, accused Bienvenido was assisted by defense counsel *de parte*, Atty. Allen Blair Boy, and entered a plea of "NOT GUILTY" to the offense charged.[14] Moreover, the Court ordered Atty. Leonardo Quanico, Jr. to submit his delegation of authority as legal counsel for the prosecution,[15] which the latter complied with on June 26, 2013.[16]

Thus, the Court set the Preliminary Conference on June 26, 2013, and Pre-Trial Conference on July 24, 2013.[17] However, a *Joint Motion to Reset* was filed on July 1, 2013[18] by the prosecution and accused Bienvenido, which the Court granted on July 8, 2013.[19] Hence, Preliminary Conference and Pre-Trial Conference were held on August 7, 2013[20] and on October 23, 2013,[21] respectively.

The parties submitted their *Joint Stipulation of Facts and Issues*

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[9] *Formal Entry of Appearance with Motion for Transfer of Hearing on the Motion for Re-Investigation*, Docket—Vol. I, pp. 57 to 58.
[10] Resolution dated February 13, 2013, Docket—Vol. I, p. 62.
[11] Docket—Vol. I, pp. 70 to 73.
[12] Resolution dated March 22, 2013, Docket, Vol. I, pp. 87 to 91.
[13] *Withdrawal of Appearance*, Docket—Vol. I, pp. 100 to 101.
[14] *Certificate of Arraignment*, Docket—Vol. I, p. 107; Resolution dated June 5, 2013, Docket—Vol. I, pp. 112 to 113.
[15] Resolution dated June 5, 2013, Docket—Vol. I, pp. 112 to 113.
[16] *Compliance*, Docket—Vol. I, pp. 114 to 116.
[17] Resolution dated June 5, 2013, Docket—Vol. I, pp. 112 to 113.
[18] Docket—Vol. I, pp. 121 to 123.
[19] Resolution dated July 8, 2013, Docket—Vol. I, pp. 125 to 126.
[20] *Minutes of the Preliminary Conference*, Docket—Vol. I, pp. 127 to 136.
[21] Minutes of the hearing held on October 23, 2013, Docket—Vol. I, pp. 364 to 365; Resolution dated October 23, 2013, Docket—Vol. I, pp. 444 to 445.

through their *Compliance* filed on November 7, 2013.[22] Subsequently, the Court approved the same on November 21, 2013.[23] As stated in the Pre-Trial Order dated January 7, 2014,[24] the parties stipulated on the following facts:

> "1. The identity of the accused Bienvenido S. Dimson as the same person charged in the Information;
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> 2. The jurisdiction of the Honorable Court over the case;
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> 3. Accused Bienvenido S. Dimson is the President of Dimson Manila, Inc.;
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> 4. Dimson Manila, Inc. filed its Annual Income Tax Return (ITR) for taxable year 2002 on April 15, 2003 at Revenue District Office No. 32, Bureau of Internal Revenue – Manila; and
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> 5. Dimson Manila, Inc. caused the amendment of its ITR for taxable year 2002 and filed an Amended Annual Income Tax Return on May 20, 2003 at Revenue District Office No. 32, Bureau of Internal Revenue – Manila."

To establish the culpability of accused Bienvenido, the prosecution presented the following witnesses, to wit: Remedios Del Rosario, Robert Inocando, Myla Gulle, Ma. Celerina Jugo, Armando Macatangay, Felicidad Dela Rosa, and Atty. Gerlo Cacatian. They respectively testified as follows.

The testimony of Remedios Del Rosario:

The first witness, **Remedios Del Rosario**, is a Group Supervisor presently assigned at BIR Revenue District Office (RDO) No. 39-South Quezon City, Revenue Region No. 7. She testified that she was the Group Supervisor who supervised and reviewed the audit investigation of Revenue Officer (RO) Agnes Tuason on the tax liability of Dimson Manila, Inc. ("DMI" for brevity) for taxable year (TY) 2002 by virtue of a *Letter of Authority* (LOA) dated November 10, 2003 that was issued by Regional Director Ruperto P. Somera of Revenue Region No. 6, BIR-Manila.

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[22] Docket—Vol. I, pp. 446 to 458.
[23] Resolution dated November 21, 2013, Docket, Vol. I, p. 460.
[24] Docket—Vol. I, pp. 463 to 473.

According to her, RO Agnes Tuason[25] personally served the original copy of the LOA together with the *First Request for Presentation of Records* to DMI, which accused Gilbert P. Dimson received on November 17, 2003. However, DMI failed to submit its books of accounts and documents listed in the said request despite due notice that prompted RO Tuason to prepare and serve personally the *Second Request for Presentation of Records* dated January 27, 2004, reiterating the request embodied in the *First Request.* DMI still failed to submit the pertinent documents requested, which constrained RO Tuason to prepare and to serve through registered mail to DMI the *Final Notice* dated March 1, 2004.

After DMI failed to comply with the *Final Notice*, Remedios Del Rosario recommended the issuance of a *subpoena duces tecum* against DMI, requiring it to submit its books of accounts and other related accounting records for TY 2002. Consequently, a *subpoena duces tecum* was issued by Regional Director Teodorica R. Arcega of Revenue Region No. 6, BIR-Manila, and was served personally by RO Tuason to DMI and received by a certain Romano Abanador on August 16, 2004.

On September 27, 2004, the tax investigation of DMI for TY 2002 was reassigned to RO Robert Inocando due to leave of absence of RO Tuason.

Remedios Del Rosario claimed that due to failure of DMI to submit its books of accounts and other accounting records, RO Inocando examined the tax docket of the same based on the best evidence obtainable. RO Inocando thereafter prepared and submitted his *Memorandum Report of Investigation* and *Revenue Officer's Audit Report on Income Tax.* RO Inocando also prepared a *Post Reporting Notice* which reflected the results of the audit/investigation of the internal revenue tax case of DMI for TY 2002 and set a schedule for an informal conference. The aforesaid *Post Reporting Notice* was served through registered mail to DMI.

Further, the tax docket of DMI for TY 2002 together with RO Inocando's *Memorandum Report of Investigation* were indorsed and forwarded by the Regional District Officer of RDO No. 32 to the Assessment Division of Revenue Region No. 6, BIR-Manila on

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[25] RO Agnes Tuason is referred to as "Agnes Tuason," "Agnes Baluyot," and "Agnes Tuason-Baluyot" interchangeably throughout the records. In the Transcript of Stenographic Notes (TSN) dated February 5. 2014 (at p. 13), she was referred to as "Agnes Tuason Baluyot."

February 14, 2005.[26]

On cross-examination, Remedios Del Rosario testified that she and RO Tuason personally served the *Letter of Authority* to DMI at 1599 A. Maceda Street, Sampaloc, Manila, but they were not able to examine the latter's books of accounts and other accounting records; that the *First Request for Presentation of Records* was personally served by RO Tuason to DMI; that the *Second Request for Presentation of Records* was served personally by her and RO Tuason; that the Final Notice was sent through registered mail and presumed received by DMI because the said notice did not return; that the *subpoena duces tecum* was personally served by RO Tuason, but Remedios Del Rosario admitted that she had no personal knowledge if it was received by DMI; that she did not know if Romano Abanador, who received the *subpoena duces tecum*, was an employee or officer of DMI; that the *Post Reporting Notice* was sent through registered mail at the above-mentioned address; and that she did not know DMI transferred its office in September 2004.[27]

She stated, during re-direct examination, that there is no other address indicated in the tax docket of DMI other than its registered address at 1599 A. Maceda Street, Sampaloc, Manila.[28]

On re-cross examination, she mentioned that she got the address of DMI from the latter's Annual Income Tax Return.[29]

However, when she was asked by the Court for clarification, she claimed that she could not remember if she had told accused Gilbert that she was there to examine the books of the corporation, although she was certain that she was authorized by the *Letter of Authority* to do so, and that there was no partial submission of the documents by DMI.[30]

The testimony of Robert Inocando:

The second witness is **Robert Inocando**, who is presently assigned at RDO No. 52, Revenue Region No. 8, as a Group Supervisor.

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[26] Exhibit "P-31", Docket—Vol. I, pp. 477 to 487.
[27] TSN dated February 5, 2014, pp. 10 to 27.
[28] TSN dated February 5, 2014, pp. 27 to 28.
[29] TSN dated February 5, 2014, pp. 28 to 29.
[30] TSN dated February 5, 2014, pp. 29 to 36.

He said that prior to his present assignment he was assigned at RDO No. 52, Revenue Region No. 6, BIR-Manila. He came across DMI when the latter's 2002 tax case was re-assigned to him by virtue of the *Memorandum of Assignment* dated September 27, 2004, due to the leave of absence of RO Agnes Tuason. He then conducted an investigation on the entire tax docket/records of DMI and found that the latter had an income tax deficiency for taxable year 2002 in the amount of ₱49,050,184.69. As such, he prepared/accomplished *Revenue Officer's Audit Report on Income Tax* (BIR Form No. 0500) and Report of Investigation/Audit. He likewise prepared a *Post Reporting Notice* with attached schedule of detailed computation of the tax liability of DMI for the latter to examine the findings of audit and to refute the same. However, DMI failed to appear in the informal conference despite due notice. As a consequence, he indorsed the tax dockets of DMI to the Assessment Division for review.[31]

On cross examination,[32] he maintained that he based his examination on the best obtainable evidence because DMI failed to submit its accounting records. Upon conferring with his supervisor, Remedios del Rosario, the latter instructed him to prepare the *Post Reporting Notice*. The amount indicated in the *Post Reporting Notice* was from the result of his audit. The *Post Reporting Notice* is not dated because sometimes he does not put any date on the documents he prepared. He clarified that the amount of discrepancy in the *Memorandum of Investigation* and *Post Reporting Notice* was due to the incurred interest as explained in the FAN. He then sent the *Post Reporting Notice* through registered mail at 1599 A. Maceda St., Sampaloc, Manila, but he could not remember if there was a return card. He had no knowledge if DMI actually received the *Post Reporting Notice* he prepared. Thereafter, the docket was endorsed to the Assessment Division, but he could not remember if there was an actual Informal Conference that took place.

He attested during re-direct examination[33] that he got the address of DMI from its tax return; thus, it is the registered address of the latter.

On re-cross examination,[34] he affirmed that his basis for the address of DMI was the latter's Income Tax Return for TY 2002; that he did not investigate whether DMI was still at its above-mentioned principal address, because the instruction to assess the case based on the best obtainable evidence was from the Legal Division so he

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[31] Exhibit "P-33," Docket—Vol. I, pp. 536 to 541.
[32] TSN dated September 17, 2014, pp. 9 to 34.
[33] TSN dated September 17, 2014, p. 35.
[34] TSN dated September 17, 2014, pp. 36 to 38.

presumed that DMI still had the same address.

Upon inquiry of the Court,[35] he said that the other source for the registered address of the taxpayer was the registration database of the BIR; and he would know if there was a notice of a change of address filed. He reiterated that his findings were based on the best obtainable evidence such as the Monthly Returns, ITR, and the Financial Statement.

The testimony of Myla Gulle:

The third witness, **Myla Gulle**, is presently designated as Revenue Officer III-Reviewer at the Assessment Division, Revenue Region No. 6, BIR-Manila.

She testified that she reviewed the *Memorandum Report of Investigation* and *Post Reporting Notice* with attached computation of deficiency tax prepared by RO Robert Inocando, and the tax records of DMI for TY 2002. She found that DMI had income tax deficiency in the amount of ₱56,235,758.61; thus, she prepared/accomplished a Revenue Officer's Audit Report on income tax (BIR Form No. 0500). She likewise prepared a *Preliminary Assessment Notice* (PAN) with attached Details of Discrepancies, which was transmitted by her office to the Administrative Division, BIR Manila for mailing to DMI.[36]

On cross-examination,[37] she admitted that she prepared the PAN on the basis of the *Post Reporting Notice* and the *Memorandum* prepared by RO Inocando; that she had no personal knowledge as to the aforesaid *Post Reporting Notice* and *Memorandum*, as well as if the PAN was sent to DMI; that as regards the PAN, there is no proof of receipt of such document.

Both on re-direct and re-cross examination, she confirmed that the Billing Section transmitted the PAN from Assessment Division to the Administrative Division after she prepared the same.[38] In other words, she had no personal knowledge if the PAN was really sent to DMI.[39]

When clarified by the Court, witness Gulle said that the regular

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[35] TSN dated September 17, 2014, pp. 39 to 43.
[36] Exhibit "P-32," Docket—Vol. I, pp. 338 to 342.
[37] TSN dated March 19, 2014, pp. 8 to 15.
[38] TSN dated March 19, 2014, pp. 16 and 17.
[39] TSN dated March 19, 2014, p. 18.

procedure of the transmittal of PAN is that after the PAN has been issued, the whole docket will be forwarded to the Billing Section of the Assessment Division; and the Billing Section will detach the original copy of the PAN and transmit the same to the Administrative Division for mailing. The whole docket would be retained by the Billing Section after the transmittal, and they would issue a *Final Assessment Notice* (FAN) after fifteen (15) days from such transmittal. She insisted that she followed the procedure for the transmittal of the PAN.[40]

The testimony of Ma. Celerina Jugo:

The fourth witness, **Ma. Celerina Jugo**, is presently an Administrative Assistant III assigned at the Assessment Division, Revenue Region No. 6, BIR-Manila.

According to her, she prepared the FAN and the *Formal Letter of Demand* (FLD) dated October 19, 2005 against DMI. Thereafter, she submitted the said documents for approval to Ma. Paz Arcilla - Chief of the Billing Section, Enriqueta Rodelles - Chief of the Assessment Division, and Regional Director Alfredo V. Misajon, all of whom approved the said FAN and FLD. Afterwards, she prepared a transmittal slip to forward the FAN to the Administrative Division for the purpose of mailing to DMI.

She dated the FAN on the day it was supposed to be mailed to DMI. Even though the FAN was dated October 19, 2005, she prepared it earlier than the said date. The FAN was intended for mailing on October 19, 2005 to DMI, thus, it was dated as such. However, when the FAN was transmitted to the Administrative Division on October 18, 2005 with an instruction on the transmittal slip that the same should be sent on October 19, 2005, the FAN was sent on October 18, 2005 despite such instruction.

After DMI failed to take appropriate action within the prescribed period from receipt of the FAN, the subject tax docket was forwarded to the Administrative Division for the purpose of microfilming the FAN and other relevant documents. Based on the office procedure, the tax docket would be transmitted to the Administrative Division two months after mailing the FAN to the taxpayer; then, the Administrative Division would forward the tax docket to the Collection Division for collection purposes.[41]

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[40] TSN dated March 19, 2014, pp. 18 to 21.
[41] Exhibit "P-34," Docket—Vol. I, pp. 370 to 376.

On cross-examination,[42] she explained that the only basis for the preparation and computation of the amount in the FAN was the PAN, but she had no personal knowledge as regards the PAN as well as the tax liabilities of DMI.

According to her, it is a fact that the document is prepared earlier than the date stated in the document because it takes days for the routing of the docket. The date of the document should also be the date of the transmittal; however, she did not know what happened in this case. She transmitted the FAN to the Administrative Section on October 18 with a note that it be mailed on October 19. She admitted that Ma. Paz Arcilla, her supervisor, told her when to prepare the FAN, and in this case, she was told by her Supervisor to date the FAN and FLD on October 19, 2005. She came to know of the address of DMI on the PAN, but did not know that DMI already left the registered address. Likewise, she had no idea if the PAN was actually received by DMI. She transmitted the FAN to the Administrative Division because they were the ones who sent it to the Post Office for mailing. Only the Administrative Division had the return card of the FAN and the FLD but the said return card was not attached in the tax records, and there was no report of the actual receipt of the FAN and FLD.

She reiterated on re-direct examination[43] that she prepared the FAN and the FLD earlier, but they were dated October 19 which was supposed to be the date of mailing; that the Administrative Division mailed it earlier despite the transmittal slip indicating an instruction that it should be "for mailing on October 19, 2005"; that it was the practice of her office to date the FAN on the date it was supposed to be mailed.

On re-cross examination,[44] she confirmed that the FAN being dated on the day it was supposed to be mailed was based on the instruction of her Supervisor; and the signature on the transmittal slip was not hers but of her Supervisor. She also did not know if the taxpayer actually received the FAN.

When questioned for clarification by the Court, Ma. Celerina Jugo admitted that she prepared the undated transmittal slip attached to the FAN, but did not sign it. She clarified that the document was dated October 19 because the interest was computed up to the said

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[42] TSN dated September 17, 2014, pp. 50 to 75.
[43] TSN dated September 17, 2014, pp. 75 to 79.
[44] TSN dated September 17, 2014, pp. 80 to 85.

date.[45]

The testimony of Armando Macatangay:

The fifth witness, **Armando Macatangay**, is the mailing custodian of the Administrative Division of Revenue Region No. 6, BIR-Manila.[46]

According to him, he was informed by the Legal Division that he would be testifying about the mailing of the FAN on income tax and demand letter for TY 2002 issued by the BIR against DMI. As such, he checked the Assessment Division's transmittal slip of the FAN and FLD issued to DMI, which is being kept at the Records Section of the Administrative Division, Revenue Region No. 6, BIR-Manila. He found out that the FAN and the FLD were mailed through registered mail on October 18, 2005 covered by Registry Receipt No. 218191 of the Manila Central Post Office.

He personally checked all the documents that were assigned to him for mailing. Accordingly, he checked the subject FAN and FLD issued by the BIR against DMI for mailing. After checking, he placed them in one envelope and sealed them, attaching thereto the registry return receipt/card and personally brought the same to the Manila Central Post Office. Then, he mailed them through registered mail on October 18, 2005 addressed to DMI under Registry Receipt No. 218191. Afterwards, he took the said registry receipt and gave it to the Chief of the Administrative Division to attach the same to the copy of the transmittal slip as proof of such mailing.[47]

On cross-examination,[48] he admitted that he served the *Final Notice* and the FAN through registered mail, and that the address was given to him by the Assessment Division. Allegedly, he had no personal knowledge if the stated address was indeed the address of DMI. He likewise did not see the persons he was serving with notices, because it was only served through registered mail. He did not have any specific instructions when the mail matters should be sent; however, he would usually receive the notices from the Assessment Division in the morning and would send them in the afternoon. He accidentally included the subject FAN with those mail matters for mailing on October 18, 2005. According to him, there is usually a return card attached to the documents, but in this instance,

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[45] TSN dated September 17, 2014, pp. 85 to 87.
[46] Judicial Affidavit dated August 23, 2016, Docket—Vol. I, pp. 266 to 269.
[47] Exhibit "P-35", Docket—Vol. I, pp. 266 to 269.
[48] TSN dated November 26, 2014, pp. 14 to 22.

he did not receive any return card. As such, he did not know if the notices were really received by the addressee and he had no personal knowledge whether it was returned to sender.

He reiterated during re-direct examination that the FAN and FLD were accidentally included for mailing on October 18, 2005, which was supposed to be mailed on October 19, 2005.[49] On re-cross examination, he mentioned that he forgot there was an instruction to mail the FAN and FLD on October 19, 2005. He usually received instruction in the transmittal slip sent to him.[50]

When clarified by the Court, Armando Macatangay said that he would usually put the date and the registry number of the registry receipts on the transmittal letter, but he mentioned that the registry receipts of the other items on the said letter were not attached.[51]

The testimony of Felicidad Dela Rosa:

The sixth witness, **Felicidad Dela Rosa**, is a Revenue Officer-Seizure Agent, presently assigned at the Collection Division of Revenue Region 6, BIR-Manila.

She said that she prepared a *First Notice* dated February 22, 2006 and served it personally to DMI at 1599 A. Maceda St., Sampaloc, Manila, when the latter's tax case for TY 2002 was assigned to her for enforcement of collection. After DMI failed to respond to the *First Notice*, she prepared a *Second Notice* dated March 8, 2006 and personally served it at the same address. Subsequently, she was informed that DMI changed its address to No. 17 East Riverside St., San Francisco Del Monte, Quezon City. When DMI still failed to respond to the *Second Notice*, she prepared a *Final Notice Before Seizure* dated May 3, 2006 and served it at the new address at 17 East Riverside St., San Francisco Del Monte, Quezon City.

When her office received a letter dated May 24, 2006 from DMI with reference to the *Final Notice Before Seizure*, she prepared a Memorandum to inform the Revenue District Officer of RDO No. 32 that DMI had changed its address to Quezon City, and to recommend referral of the case to the Legal Division for appropriate action. Thus, the tax docket of DMI was indorsed to the Legal Division on August 1,

[49] TSN dated November 26, 2014, pp. 22 to 24.
[50] TSN dated November 26, 2014, pp. 24 to 26.
[51] TSN dated November 26, 2014, pp. 26 to 29.

2006.[52]

On cross-examination,[53] she admitted that by virtue of the *Memorandum* issued by Wilfredo Narnola, DMI's tax case was assigned to her. She served personally the *First Notice* and *Second Notice*. She also sent the *First Notice* through registered mail but she did not have a registry receipt, return card, or transmittal slip. She served the *First Notice* and *Second Notice* at the registered address at 1599 A. Maceda St., Sampaloc, Manila. In both instances, the persons at the said place refused to receive the notices, and they turned their back at her. She did not ask their names because they were just bystanders. She left when the notices were refused. Nevertheless, she did not make any manifestation on the notice that it was refused to be received. Initially, she said that she was accompanied at that time by her officemate in the person of Alegria Dela Cruz, but later on, clarified that she was with Ms. Dela Cruz when serving the Second Notice. She usually gives the addressee ten (10) to twenty (20) days from date of service of the *First Notice* before she serves the *Second Notice*. She allegedly derived the amount indicated in the *First Notice* from the FAN.

She admitted that she was informed about DMI's change of address to 17 East Riverside. On the other hand, she confirmed that she saw the new address in the ITS. She already knew of the change of address of DMI prior to the service of First Notice; yet, she still sent the *First Notice* and *Second Notice* at the old registered address. Thereafter, she prepared and served personally the *Final Notice Before Seizure* at the new address at 17 East Riverside St., San Francisco Del Monte, Quezon City, but the person at the said place also refused to receive it. Despite the foregoing, there was still no notation of such refusal on the notice. She served personally the *Final Notice Before Seizure* and at the same time sent it through registered mail.

In her letter dated May 29, 2006, she informed the Revenue District Officer that DMI was no longer residing at the registered address and transferred to 37 Riverside. She could not remember if it was 37 or 17, but she was sure she went to Riverside. However, she did not see accused Bienvenido in person when she served those notices. Afterwards, she referred the tax case of DMI to the Legal Division for further legal action.

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[52] Exhibit "P-36", Docket—Vol. I, pp. 578 to 584.
[53] TSN dated November 26, 2014, pp. 36 to 77.

On re-direct examination,[54] she reiterated that when the case docket of DMI for TY 2002 was assigned to her in 2006, the registered address of the same was in Maceda; that she served personally the *First* and *Second Notices* to DMI at its registered address, but the *Final Notice* was served at 17 East Riverside, San Francisco Del Monte, Quezon City.

On re-cross examination,[55] she said that she served personally the *First Notice* at 1599 A. Maceda St., Sampaloc, Manila despite her knowledge that there was already a change of address, which was indicated in the tax docket of DMI for TY 1999. She just forgot the said transfer but she had personal knowledge of the same prior to the service of the *First Notice*.

When clarified by the Court, she said that there was communication from DMI regarding the latter's new address but she could not remember where she got the address of 37 or 17 Riverside. She also said that should she see the docket, she would remember. Subsequently however, she changed her statement and said that DMI had no communication as regards change of address, and that she just saw such transfer of address in DMI's reply letter.

Further, she confirmed that when a communication is mailed, there is registry return card to trace the documents that have been mailed. Allegedly, she made the inscription in the Second Notice of "17 East Riverside" after the President of DMI went to her office. However, prior to such visit, she already knew of such change of address. She could not remember when she received the case docket of DMI for TY 1999, but it was after the tax docket for TY 2002 was given to her.[56]

The testimony of Atty. Gerlo Cacaitan:

The seventh and last witness, **Atty. Gerlo Cacatian**, is presently holding the position of Attorney IV, assigned at the Legal Division, Revenue Region No. 5, BIR-Caloocan.

He testified that when he was still Attorney III at the Legal Division of Revenue Region No. 6, BIR-Manila, the tax case of DMI was assigned to him. As such, he evaluated DMI's BIR records for appropriate action. He then prepared the demand letter dated

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[54] TSN dated November 26, 2014, pp. 78 to 79.
[55] TSN dated November 26, 2014, pp. 80 to 85.
[56] TSN dated November 26, 2014, pp. 85 to 101.

October 11, 2006 addressed to the President of DMI, accused Bienvenido, demanding payment of DMI's deficiency income tax for TY 2002 in the amount of ₱56,235,758.61 under Assessment No. 32-2002 dated October 19, 2005.

Thereafter, he instructed a messenger to mail the demand letter to accused Bienvenido at his business address at Couperville Mansions, 17 East Riverside, San Francisco Del Monte, Quezon City, which was later sent through registered mail under Registry Receipt No. 804815 of the Manila Central Post Office dated October 18, 2006. DMI replied through a Letter dated November 8, 2006, but failed to pay its deficiency income tax. Thus, he recommended the filing of a criminal complaint for violation of Section 255 in relation to Section 253(d) and 256 of the NIRC of 1997, as amended, against accused Bienvenido and accused Gilbert as responsible officers of DMI.

He subsequently prepared a referral letter/complaint, which the Regional Director signed on September 3, 2010. He also executed an Affidavit dated September 3, 2010 in support of the complaint, and the same was filed with the Manila City Prosecutor's Office on September 9, 2010.[57]

On cross examination,[58] he admitted that he had no personal knowledge if accused Bienvenido personally received the above-mentioned demand letter; that the Legal Division resolves only legal issues and the factual issues were not within their jurisdiction to resolve.

When clarified by the Court,[59] he said that the filing of the criminal case was deemed a denial of DMI's reply letter dated November 8, 2006 and that there was no formal letter for such denial. He confirmed that the factual issue of DMI's tax case was already resolved by the Assessment Division, that whatever payment made by a joint venture cannot be considered as payment of DMI because the joint venture is not required to pay any taxes under the law. As part of the function of his office under the Revenue Administrative Order (RAO), he evaluates the cases forwarded to him for prosecution and recommends to the Regional Director the filing of appropriate action upon showing of a *prima facie* case.

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[57] Exhibit "P-37," Docket—Vol. I, pp. 597 to 600.
[58] TSN dated January 21, 2015, pp. 10 to 14.
[59] TSN dated January 21, 2015, pp. 15 to 25.

As directed by the Court, the prosecution formally offered[60] the following documentary exhibits, which were admitted by the Court on May 26, 2015, viz:[61]

EXHIBIT NO.	DESCRIPTION/PARTICULARS
Exhibit "P" with sub-markings "P-1-a" and "P-1-b"	Annual Income Tax Return of Dimson Manila, Inc. for taxable year 2002
Exhibit "P-2" with sub-markings "P-2-a" and "P-2-b"	Amended Annual Income Tax Return of Dimson Manila, Inc. with attachments for taxable year 2002
Exhibit "P-3"	Letter of Authority No. 00022864 dated November 10, 2003
Exhibit "P-4"	1st Request for Presentation of Records dated November 13, 2003
Exhibit "P-5"	Second Request for Presentation of Records dated January 27, 2004
Exhibit "P-6" with sub-marking "P-6-a"	Final Notice dated March 1, 2004 with attached Registry Receipt No. 811553 dated March 12, 2004
Exhibit "P-7" with sub-markings "P-7-a" and "P-7-b"	Memorandum dated July 12, 2004
Exhibit "P-8" with sub-markings "P-8-a", "P-8-b", "P-8-c", and "P-8-d"	Summons and/or Subpoena *Duces Tecum* dated July 26, 2004
Exhibit "P-9" with sub-marking "P-9-a"	Memorandum dated September 27, 2004
Exhibit "P-10" with sub-markings "P-10-a", "P-10-b", and "P-10-c"	Revenue Officer's Audit Report on Income Tax
Exhibit "P-11" with sub-markings "P-11-a" and "P-11-b"	Memorandum by Revenue Officer Robert Inocando
Exhibit "P-12" with sub-markings "P-12-a" and "P-12-b"	Post Reporting Notice signed by Revenue District Officer Benito B. Wong with attached Registry Receipt No. 20969 dated September 2, 2004 and Schedule of Detailed Computation
Exhibit "P-13" with sub-marking "P-13-a"	1st Indorsement dated February 14, 2005 signed by Revenue District Officer Benito B. Wong
Exhibit "P-14" with sub-markings "P-14-a", "P-14-b", and "P-14-c"	Revenue Officer's Audit Report on Income Tax by Revenue Officer Myla Gulle
Exhibit "P-15" with sub-marking "P-15-a"	Preliminary Assessment Notice dated September 13, 2005 with Details of Discrepancies
Exhibit "P-16" with sub-marking "P-16-a"	Assessment Notice with No. 32-2002 dated October 19, 2005
Exhibit "P-17" with sub-marking "P-17-a"	Demand Letter No. 32-2002 dated October 19, 2005
Exhibit "P-18" with sub-marking "P-18-a"	Memorandum for Felicidad dela Rosa by Revenue District Officer Wilfredo Z. Narnola
Exhibit "P-19" with sub-	1st Notice dated February 23, 2006 issued by Alegria

[60] Docket—Vol. I, pp. 630 to 641.
[61] Resolution dated May 26, 2015, Docket—Vol. I, pp. 673 to 675.

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marking "P-19-a"	dela Cruz, Chief, Collection Division
Exhibit "P-20" with sub-marking "P-20-a"	2nd Notice dated March 8, 2006 issued by Alegria dela Cruz, Chief, Collection Division
Exhibit "P-21" with sub-marking "P-21-a"	Memorandum for the Revenue District Officer by Revenue Officer Felicidad dela Rosa dated May 29, 2006
Exhibit "P-22" with sub-marking "P-22-a"	2nd Indorsement dated July 31, 2006 signed by Ceferina M. Ong, Chief, Collection Division
Exhibit "P-23" with sub-marking "P-23-a"	Final Notice Before Seizure dated May 3, 2006 issued by Alegria dela Cruz, OIC, Collection Section
Exhibit "P-24" with sub-marking "P-24-a"	Letter of Dimson Manila Inc. to BIR signed by Bienvenido Dimson, President and General Manager dated May 24, 2006
Exhibit "P-25" with sub-marking "P-25-a"	Letter of BIR to Dimson Manila, Inc. signed by Alfredo Misajon, Regional Director dated October 11, 2006
Exhibit "P-26" with sub-marking "P-26-a"	Dimson Manila, Inc.'s letter to BIR dated November 8, 2006 signed by Marian Mercado, Vice-President Finance
Exhibit "P-27" with sub-marking "P-27-a"	Complaint-Letter dated September 3, 2010 signed by Alfredo Misajon, Regional Director filed at the Office of the City Prosecutor-Manila on September 9, 2010
Exhibit "P-28" with sub-marking "P-28-a"	Affidavit of Atty. Gerlo C. Cacatian September 3, 2010
Exhibit "P-29" with sub-marking "P-29-a" and "P-29-b"	Resolution of the case entitled, BIR versus Bienvenido Dimson and Gilbert Dimson with Case No. XV-07-INV-10L-07263 dated July 12, 2012
Exhibit "P-30" with sub-marking "P-30-a" and "P-30-b"	Transmittal Letter prepared by Ma. Celerina D. Jugo
Exhibit "P-31" with sub-marking "P-31-a" and "P-31-b"	Judicial Affidavit of Group Supervisor Remedios del Rosario executed on January 27, 2014
Exhibit "P-32" with sub-markings "P-32-a" an "P-32-b"	Judicial Affidavit of Revenue Officer Myla Gulle executed on October 10, 2013
Exhibit "P-33" with sub-markings "P-33-a" and "P-33-b"	Judicial Affidavit of Robert Inocando executed on March 17, 2014
Exhibit "P-34" with sub-markings "P-34-a" and "P-34-b"	Judicial Affidavit of Celerina Jugo executed on October 19, 2013
Exhibit "P-35" with sub-marking "P-35-a"	Judicial Affidavit of Revenue Officer Armando Macatangay executed on August 23, 2013
Exhibit "P-36" with sub-marking "P-36-a"	Judicial Affidavit of Felicidad dela Rosa executed on November 19, 2014
Exhibit "P-37" with sub-marking "P-37-a" and "P-37-b"	Judicial Affidavit of Atty. Gerlo Cacatian

For the defense, two (2) witnesses were presented, namely: Amelia B. Lazaro and accused Bienvenido. They respectively testified as follows.

The testimony of Amelia B. Lazaro:

The first defense witness, **Amelia B. Lazaro**, was previously the accounting manager of R-II Builders from September 2006 to September 2013 before she became the Vice-President for Finance and Accounting of the said company.

She said that she was tasked to check and verify the request of DMI to issue a Certification stating that the latter did not receive any income from the Caloocan City Hall Park Project ("Caloocan project" for brevity). As such, she tried to find the pertinent documents and transactions of R-II Builders with DMI, *i.e.*, Certificates of Tax Withheld at Source and agreement with the latter. She was able to verify that DMI did not receive any income from the Caloocan project because R-II Builders exclusively constructed and developed the said project. Instead, it was only R-II Builders which received the income on the said project being the authorized managing officer of the joint venture, and paid the corresponding income tax. According to her, DMI was removed from the project on the ground that the latter failed to give its capital share before the start of the project. Thereafter, she drafted a Certification to that effect and it was signed by Atty. Jerome R. Canlas.[62]

On cross-examination,[63] she admitted that her personal knowledge of the transactions subject matter of the instant case was based on the records of R-II Builders because she was only employed by the same in 2006. Based on her verification of the records, R-II Builders was the sole recipient of the income from the Caloocan project and paid the corresponding income tax. Also based on records, DMI was removed from the joint venture. She confirmed that there was no indication in the Certificate of Withholding Tax at Source that the same referred to the joint venture.

She explained during re-direct examination[64] that she prepared a Certification in favor of DMI, stating that the latter was removed from the said venture due to its failure to pay R-II Builders for its capital share on the joint venture, and the Certification was signed by Atty. Jerome Canlas. She claimed that another Certification was issued by Atty. Canlas and she also issued a Certification on June 16. She admitted that under the Certificate of Creditable Tax Withheld at Source, the payee was solely R-II Builders, Inc. and the payor's name was Caloocan City Government.

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[62] Exhibit "A-45", Docket—Vol. I, pp. 743 to 751.
[63] TSN dated October 21, 2015, pp. 15 to 19.
[64] TSN dated October 21, 2015, pp. 19 to 23.

On re-cross examination, she confirmed that she had no personal knowledge of DMI's removal from the joint venture, but it was based on records. Accordingly, the Certifications that she and Atty. Canlas issued were based on records.

The testimony of accused Bienvenido Dimson:

The second and last defense witness, accused **Bienvenido S. Dimson**, testified that he is an engineer and the President of DMI.[65] He said that DMI entered into two joint venture projects, one was with R-II Builders for the Caloocan project, and the other was with C.M. Pancho Construction, Inc. and J.E. Manalo & Co., Inc. for the Infanta-Gen. Nakar Road Project. His company was removed from the joint venture for the Caloocan project because he failed to participate or contribute to the start-up capitalization requirements of the said project.

With respect to the Infanta-Gen. Nakar Road Project, he mentioned that DMI had only minor participation in the project and it received only ₱17,270,994.21 out of the total amount of the contract which was ₱119,000,000.00.

Upon his inquiry with the Authorized Managing Officer of the Infanta-Gen. Nakar Road Project whether the necessary taxes were paid, they sent him a letter dated November 25, 2004 with attached Quarterly Value-Added Tax Returns, Quarterly Income Tax Return, Withholding Tax Certificates, and Contractor's Withholding Tax Certificates. The said letter was signed by Architect Mathilda P. Brobio and noted by Engr. Gerardo V. Pancho. However, the original of the said letter was lost during typhoon Ondoy in 2009 and only a certified true photocopy of the same was found in his records. He also asked C.M. Pancho Construction, Inc. if the necessary taxes on the afore-mentioned project were paid. In the letter dated June 27, 2006, he was informed that the corresponding mandatory taxes relative to the joint venture were reported and paid with the RDO No. 25 in Bulacan. However, the original records of the same as well as the records of C.M. Pancho Contruction, Inc. were also lost during typhoon Ondoy.

According to accused Bienvenido, he did not receive the Notice of Informal Conference, PAN or Demand letter pertaining to the alleged tax deficiency. Upon his inquiry, he discovered that he failed

[65] Exhibit "A-26", Amended Judicial Affidavit dated October 21, 2015, Docket—Vol. I, pp. 824 to 836.

to receive those documents because they were sent to his former office at 1599 A. Maceda Street, Sampaloc, Manila. The PAN showed no proof of receipt, while the Demand Letter No. 32-2002 dated October 19, 2005 was sent to his former office in Manila. His transfer of place of business was proved by a Certification from the Office of the Punong Barangay of Barangay 500, Zone 49, District IV, Manila.[66]

On cross-examination,[67] he admitted that aside from the Certification or joint resolution stating that DMI was kicked out from the joint venture for the Caloocan project, there was no other document supporting such fact; that there was a gentleman's agreement among members of the joint venture that any member who could not put up a capital was automatically kicked-out, but there was no document or evidence to support the same; that there was no specific indication in the contract that DMI's participation in the Infanta-Gen. Nakar Road Project was only minor; that DMI's income in 2002 was ₱116,866,000 as reflected in its ITR and not ₱17,000,000 or ₱39,000,000; that the discrepancy of the said amounts was due to a verbal request from one of the members of the Bidding Committee to be transparent in reporting the income; that when he informed the said committee that DMI was kicked out from the joint venture, such committee, for purposes of the prequalification, suggested to indicate the unrealized income in DMI's ITR and explained it in its ITR; that it was just an honest mistake when DMI forgot to explain the same; and that DMI did not update its registration/information as to its change of business address, but filed its ITR every year indicating the current address.

During the re-direct examination,[68] he explained that all of DMI's records were lost when its office was flooded twice. According to him, DMI's Accountant divided ₱116,000,000 by three because there were no other records to consult, and DMI did not receive the said amount. After the flooding, DMI submitted its ITR for year 2003 and onwards indicating the correct address which was San Francisco Del Monte, Quezon City. DMI's new place was again flooded so it transferred to West Triangle.

He admitted during re-cross examination that he did not report its loss of documents to the BIR because it was already in the newspapers.[69]

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[66] Exhibit "A-26", Amended Judicial Affidavit dated October 21, 2015, Docket—Vol. I, pp. 824 to 836.
[67] TSN dated December 10, 2015, pp. 4 to 20.
[68] TSN dated December 10, 2015, pp. 21 to 23.
[69] TSN dated December 10, 2015, pp. 24 to 25.

Thereafter, accused Bienvenido formally offered[70] the following documentary exhibits, which were all admitted by the Court on March 17, 2016, to wit:[71]

EXHIBIT NO.	DESCRIPTION/PARTICULARS
"A", "A-1-a" to "A-1-b"	Joint Resolution between Dimson (Manila), Inc., and R-II Builders signed on August 8, 2000
"A-2" to "A-2-a"	Certification by the Executive Vice-President of R-II Builders dated September 6, 2012
"A-3" to "A-3-a"	Letter dated June 19, 2006
"A-4", "A-4-a" to "A-4-l"	Contract Agreement between DPWH and the Joint Venture of C.M. Pancho Const., Inc./J.E. Manalo & Co. Inc./Dimson Manila, Inc.
"A-5", "A-5-a" to "A-5-c"	Certificate of Creditable Tax Withheld at Source, September 2000
"A-6", "A-6-a" to "A-6-c"	Certificate of Creditable Tax Withheld at Source, October 2000
"A-7", "A-7-a" to "A-7-c"	Certificate of Creditable Tax Withheld at Source, November 2000
"A-8", "A-8-a" to "A-8-c"	Certificate of Creditable Tax Withheld at Source, January 2001
"A-9", "A-9-a"	Certificate of Creditable Tax Withheld at Source, April 2001
"A-10", "A-10-a"	Certificate of Creditable Tax Withheld at Source, June 2001
"A-11", "A-11-a"	Certificate of Creditable Tax Withheld at Source, July 2001
"A-12", "A-12-a"	Certificate of Creditable Tax Withheld at Source, August 2001
"A-13", "A-13-a" to "A-13-c"	Certificate of Creditable Tax Withheld at Source, September 2001
"A-14", "A-14-a" to "A-14-c"	Certificate of Creditable Tax Withheld at Source, December 2001
"A-15", "A-15-a"	Certificate of Creditable Tax Withheld at Source, March 2002
"A-16", "A-16-a"	Certificate of Creditable Tax Withheld at Source, April 2002
"A-17", "A-17-a" to "A-17-c"	Certificate of Creditable Tax Withheld at Source, June 2002
"A-18", "A-18-a" to "A-18-c"	Certificate of Creditable Tax Withheld at Source, October 2002
"A-19", "A-19-a" to "A-19-c"	Certificate of Creditable Tax Withheld at Source, December 2002
"A-20", "A-20-a" to "A-20-c"	Certificate of Creditable Tax Withheld at Source, April 2003
"A-21", "A-21-a" to "A-21-c"	Certificate of Creditable Tax Withheld at Source, August 2003
"A-22", "A-22-a" to "A-22-c"	Certificate of Creditable Tax Withheld at Source, October 2003
"A-23", "A-23-a" to "A-23-c"	Letter dated November 25, 2004

[70] *Formal Offer of Evidence*, Docket—Vol. II, pp. 802 to 823.
[71] Resolution dated March 17, 2016, Docket—Vol. I, pp. 880 to 881.

"A-24", "A-24-a"	Letter dated June 27, 2006 signed by Yolanda Gajonera, C.M Pancho Construction's Accounting Head
"A-25", "A-25-a" to "A-25-b"	Certification dated June 23, 2013 issued by the Office of the Punong Barangay
"A-26", "A-26-a" to "A-26-b"	Amended Judicial Affidavit of Bienvenido S. Dimson
"A-27"	Pre-Assessment Notice
"A-28"	Sub-Contract Agreement dated February 15, 2001 between C.M. Pancho Const./Dimson Manila/J.E. Manalo & Co., Inc.
"A-29"	Secretary's Certificate
"A-30", "A-30-a"	Certification of Amelia Lazaro
"A-31"	Certificate of Creditable Tax Withheld at Source, April 1, 2001-June 30, 2001
"A-32"	Certificate of Creditable Tax Withheld at Source, July 1, 2001-September 30, 2001
"A-33"	Certificate of Creditable Tax Withheld at Source, October 1, 2001-November 30, 2001
"A-34"	Certificate of Creditable Tax Withheld at Source, October 1, 2001-December 31, 2001
"A-35"	Certificate of Creditable Tax Withheld at Source, February 2002-May 2002
"A-36"	Certificate of Creditable Tax Withheld at Source with amount of ₱49,135,054.32 and tax withheld of ₱982,701.08
"A-37"	Certificate of Creditable Tax Withheld at Source with amount of ₱12,080,802.73 and tax withheld of ₱241,616.06
"A-38"	Certificate of Creditable Tax Withheld at Source with amount of ₱13,459,227.29 and tax withheld of ₱269,184.55
"A-39"	Certificate of Creditable Tax Withheld at Source, July 1, 2002-September 30, 2002
"A-40"	Certificate of Creditable Tax Withheld at Source, January 1, 2003-March 31, 2003
"A-41"	Certificate of Creditable Tax Withheld at Source, January 1, 2003-March 31, 2003
"A-42"	Certificate of Creditable Tax Withheld at Source, April 1, 2003-June 30, 2003
"A-43"	Certificate of Creditable Tax Withheld at Source, July 1, 2003-September 30, 2003
"A-44"	Certificate of Creditable Tax Withheld at Source, October 1, 2003-December 31, 2003
"A-45", "A-45-a"	Judicial Affidavit of Amelia Lazaro

In the Resolution dated March 17, 2016,[72] the Court directed the parties to file their respective Memorandum within thirty (30) days from notice.

[72] Docket—Vol. I, pp. 880 to 881.

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With the posting of the *Memorandum for the Plaintiff* on May 11, 2016,[73] and the *Memorandum [For the Accused Bienvenido Dimson]*[74] on May 20, 2016, the instant case was submitted for decision with respect to accused Bienvenido on May 31, 2016.[75]

Hence, this Decision.

THE ISSUE

The issue for the resolution of this Court is as follows:

> "Whether or not the accused Bienvenido S. Dimson is guilty of a violation of Section 255 in relation to Sections 253(d) and 256 of the Tax Reform Act of 1997, as amended."[76]

Prosecution's arguments:

The prosecution contends that it sufficiently proved the existence of the essential elements of the offense charged by the documentary and testimonial evidence presented.

According to the prosecution, DMI is a juridical entity required to pay its taxes. Allegedly, accused Bienvenido admitted that he is the President of DMI; thus, he is the officer responsible for the acts or omissions penalized under Section 255 of the NIRC of 1997, as amended.

The prosecution also claims that it sufficiently informed DMI of the latter's deficiency income tax for taxable year 2002 by sending the PAN, the FAN, and the FLD at its registered address at 1599 A. Maceda St., Sampaloc, Manila. As such, DMI has been afforded due process. However, despite such notice, DMI has neither refuted the assessment, which became final and demandable, nor paid the required tax on due date.

It is the theory of the prosecution that non-payment of the tax liabilities of DMI for TY 2002 was willful. Allegedly, the claim of

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[73] Docket, Vol. II, pp. 893 to 908.
[74] Docket, Vol. II, pp. 917 to 947.
[75] Resolution dated May 31, 2016; Docket—Vol. II, p. 950.
[76] Pre-Trial Order dated January 7, 2014, Docket—Vol. I, p. 464; *Compliance*, Docket—Vol. I, p. 447.

accused Bienvenido that DMI did not receive income from the joint venture projects it entered into, and that the income declared in the ITR was a mere statistical income for purposes of securing renewal of its accreditation with the DPWH, are self-serving and deserve scant consideration. If indeed it was a mere mistake and he had no intention to defraud the government, accused Bienvenido could have explained the situation upon filing of the ITR for TY 2002 and he should not have waited for the BIR to discover the unpaid taxes and collect the same. Allegedly, there is no documentary evidence to support that DMI did not receive income from the joint venture projects.

It is the prosecution's stand that DMI was under audit/investigation by the BIR for TY 2002, but despite receipt of the Letter of Authority, notices and subpoena *duces tecum* requiring the submission of books of accounts and other accounting records, DMI changed its office address without formally informing the BIR. For the prosecution, it is a clear indication that accused Bienvenido intended to avoid its obligation to pay the deficiency taxes.

Accused Bienvenido Dimson's counter-arguments:

For his part, accused Bienvenido alleges that all of the communications of the BIR except the Final Notice Before Seizure were sent to DMI's old address at A. Maceda Street, Sampaloc, Manila. As such, DMI has not received any request to inspect records, notice of informal conference, PAN, and Second Notice. Only the Final Notice Before Seizure was sent to the correct and current place of business of DMI so that it had no more chance to dispute the assessments. Accused Bienvenido asserts that DMI already transferred its principal place of business to 17 East Riverside, San Francisco Del Monte, Quezon City as early as 2004.

He further claims that even if DMI is still in its old address, the BIR did not have any proof that the above-mentioned documents were actually received. Allegedly, the notices that were served personally, were given to unnamed and unidentified persons in the vicinity, or those sent through registered mail had no registry receipt or return card to prove that the same were indeed mailed.

THE COURT'S RULING

The corporate taxpayer in this criminal case is DMI, while accused Bienvenido is the President/General Manager and co-accused Gilbert is the Vice-President/Treasurer of the said

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corporation.

As the responsible officers of DMI, accused Bienvenido and Gilbert are criminally charged in this case in their capacities as corporate officers of the said company, for their supposed willful and unlawful failure, refusal, and neglect to pay their deficiency internal revenue tax liabilities for the year 2002 in the amount of ₱56,235,758.61 under Assessment Notices No. 32-2002. Allegedly, no formal protest or appeal was filed to assail the same, despite due assessment, notice and demand to do so. Consequently, both accused are charged with a violation of Section 255, in relation to Section 253 (d) and 256 of the NIRC of 1997. The said provisions read as follows:

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

> (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 employees responsible for the violation."
>
> "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.)*

Based on the above-quoted provisions, the following elements must be established by the prosecution to secure the conviction of accused in the instant criminal case, to wit:

1. That a corporate taxpayer is **required under the NIRC of 1997 to pay any tax**, make a return keep any record, or supply correct and accurate information; and

2. That the corporate taxpayer **failed to pay the required tax**, make a return or keep the required record, or supply the 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; and

3. That accused, as the employee responsible for the violation, **willfully failed 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.

A careful reading of the foregoing would reveal that the *second* and *third* elements are dependent on the first element. Specifically, the showing of the failure to pay the pertinent tax and the willfulness of such failure rest on whether the corporate taxpayer is required to pay the said tax in the first place. Thus, it is only when the *first* element is established that the remaining elements must be determined to exist. In other words, there can be no willful failure to pay a tax if there is no requirement to pay the same.

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Thus, for the purpose of the *first* element, to determine whether DMI, the corporate taxpayer in this case, is required to pay the tax, this Court shall look into the validity of the subject tax assessment.

The prosecution contends that the accused are required to pay their deficiency internal revenue tax liabilities under Assessment Notices No. 32-2002, because they did not make a formal protest or appeal, despite due assessment, notice and demand to do so.

In support of this contention, the prosecution maintains that the PAN, the FAN, and the FLD were all sent to DMI's registered address at 1599 A. Maceda St., Sampaloc, Manila.

For his part, however, accused Bienvenido asserts that DMI already transferred its principal place of business to 17 East Riverside, San Francisco Del Monte, Quezon City as early as 2004. Purportedly, all of the communications of the BIR except the Final Notice Before Seizure were sent to DMI's old address at A. Maceda Street, Sampaloc, Manila; thus, the PAN, the FAN, and the FLD were not received by DMI, and they are not liable for the subject deficiency tax assessment.

To resolve the issue as to the proper address where the PAN, the FAN, and the FLD should have been sent, We refer to Section 11 of Revenue Regulations No. 12-85, which provides as follows:

> "SECTION 11. *Change of Address.* — In case of change of address, the taxpayer must give written notice thereof to the Revenue District Officer of the district having jurisdiction over his former legal residence and/or place of business, copy furnished the Revenue District Officer having jurisdiction over his new legal residence or place of business, the Revenue Computer Center and the Receivable Accounts Division, BIR, National Office, Quezon City, and **in case of failure to do so, any communication referred to in these regulations previously sent to his former legal residence or business address as appearing in his tax return for the period involved shall be considered valid and binding for purposes of the period within which to reply.**" *(Emphasis supplied)*

A careful evaluation of the evidence of accused Bienvenido S. Dimson would reveal that while he admits that DMI transferred to its new business address at 17 East Riverside, San Francisco Del

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Monte, Quezon City as early as 2004, there is no showing that it has complied with the above-quoted Section 11. It must be emphasized that the Certification dated June 23, 2013[77] issued by the Office of the Punong Barangay for Barangay 500 Zone 49, District IV, Manila, to the effect that DMI left its old address does not suffice, since it is not the notice contemplated in the same Section 11 of RR No. 12-85. Thus, the BIR is correct to use the address indicated in DMI's Income Tax Returns for the taxable year 2002,[78] *i.e.*, "1599 ANTONIO MACEDA STREET, SAMPALOC, MANILA".

Nevertheless, to determine whether or not the prosecution was able to discharge its burden of proving the *first* element of the crime charged, We are guided by the provisions of Section 228 of the NIRC of 1997, which mandates that a taxpayer should be informed, in writing, of the law and the facts on which the assessment is made; otherwise, such assessment shall be void, to wit:

> "SEC. 228. *Protesting of Assessment.*— **When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he <u>shall first notify</u> the taxpayer of his findings**: Provided, however, that a pre-assessment notice shall not be required in the following cases:
>
> x x x x
>
> **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. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

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[77] Exhibit "A-25", Docket—Vol. I, p. 149.
[78] Exhibits "P" and "P-2", Docket—Vol. I, pp. 184 and 187.

> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." *(Emphasis and underscoring supplied)*

In *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*,[79] the Supreme Court emphasized that the sending of a PAN to a taxpayer to inform him of the assessment made is part of the due process requirement in the issuance of a deficiency tax assessment, to wit:

> "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.
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> This is confirmed under the provisions R.R. No. 12-99 of the BIR which pertinently provide:
>
>> 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 Notice for informal conference. – The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said

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[79] G.R. No. 185371, December 8, 2010.

Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of 'Informal Conference,' in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

3.1.2 Preliminary Assessment Notice (PAN). – If after review and evaluation by the Assessment Division or 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, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing 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 assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's

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> deficiency tax liability, inclusive of the applicable penalties.
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> x x x x
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> 3.1.4 Formal Letter of Demand and Assessment Notice. – The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand 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 formal letter of demand and assessment notice shall be void (see illustration in ANNEX B hereof).
>
> The same shall be sent to the taxpayer only by registered mail or by personal delivery.
>
> If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.
>
> x x x x

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)*

This demand for rigid compliance with the law underscores the significance of due process in the collection of taxes. It ensures that taxpayers will be accorded due process by the BIR, before they can be held liable for deficiency tax assessments.

In this case, there is no showing that the subject PAN was received by DMI or its duly authorized representative. In fact, the prosecution witnesses are oblivious as to whether the said PAN was received by DMI after it was prepared, viz:

Testimony of Myla O. Gulle:

"ATTY. REGOSO

Q When did you prepare the Preliminary Assessment Notice, Question No. 9?

MS. GULLE

A I prepared it on September 13, 2005, Preliminary Assessment Notice.

ATTY. REGOSO

Q You prepare the Preliminary Assessment Notice on September 13, 2005 on the basis of the Post Reporting Notice and the Memorandum of Revenue Officer Robert Inocando?

MS. GULLE

A Yes, Ma'am.

ATTY. REGOSO

Q **Do you know if this Pre-Assessment Notice was sent to Dimson Manila, Inc.?**

MS. GULLE

A **I have no personal knowledge.**

ATTY. REGOSO

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Q **You do not know if this was sent to Dimson Manila, Inc.?**

MS. GULLE

A Yes.

ATTY. REGOSO

Q So, you just prepare the same?

MS. GULLE

A Yes, Ma'am.

ATTY. REGOSO

Q Because upon checking the Preliminary Assessment Notice, there is no show, there is no proof of receipt of either personally or by registered mail. **You do not have personal knowledge if it was sent?**

MS. GULLE

A **Yes, Ma'am.**

ATTY. REGOSO

Q Because according to your Judicial Affidavit Ms. Witness, you transmitted to the Administrative Division the Preliminary Assessment for mailing?

MS. GULLE *(sic)*

A So, it's not your Division who is handling that?

MS. GULLE

A Yes, Ma'am.

ATTY. REGOSO

Q The mailing?

MS. GULLE

A Yes, Ma'am.

ATTY. REGOSO

Q But can you look at the Preliminary Assessment Notice that you have prepared? **Can you examine the document if there is any proof of receipt of such document?**

MS. GULLE

A **None, Ma'am.**"[80] *(Emphases supplied)*

<u>Testimony of Ma. Celerina Jugo</u>:

"ATTY. REGOSO:

Q When you prepared this Assessment Notice, Ms. Witness, it is stated that the address is 1599 A. Maceda St., Sampaloc, Manila. Where did you get this address, Ms. Witness?

MS. JUGO:

A It was based on the Preliminary Assessment Notice.

ATTY. REGOSO:

Q Your basis was the Preliminary Assessment Notice. **Do you remember in that Preliminary Assessment Notice if it was received by the taxpayer?**

MS. JUGO:

A **No. I don't have any idea.**

ATTY. REGOSO:

Q **You do not remember, Ms. Witness? Again?**

MS. JUGO:

A **I don't have any idea.**

JUSTICE UY:

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[80] TSN at the hearing held on March 19, 2014, pp. 13 to 15.

Please speak louder. What is the answer? Would you know?

MS. JUGO:

A No, ma'am.

JUSTICE UY:

Q You don't know?

MS. JUGO:

A The Preliminary Assessment Notice.

JUSTICE UY:

If the PAN was received, you don't know. That's the answer?

MS. JUGO:

A **Yes, ma'am.** I only have the personal knowledge with the Final Assessment Notice.

JUSTICE UY:

Okay. Thank you."[81] *(Emphases supplied)*

Thus, there is no proof that the subject PAN was received by DMI. And even granting that We have the tendency to believe the testimony of Myla O. Gulle that after she prepared the said PAN, it was subsequently transmitted to the Administrative Division for mailing, the same is of no moment.

In *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*,[82] the Supreme Court said:

"xxx. It has been settled that while a mailed letter is deemed received by the addressee in the course of the mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden

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[81] TSN at the hearing held on September 17, 2014, pp. 55 to 57.
[82] G.R. No. 202695, February 29, 2016.

> 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 document executed with its intervention. xxx."

Thus, since the prosecution failed to present the registry receipt issued by the Bureau of Posts or the Registry return card in connection with the mailing of the subject PAN, or a Bureau of Posts Certification to the effect that the same PAN was mailed, there can be no other conclusion than that the said PAN was not mailed and hence, has not been received by DMI.

Considering that the prosecution failed to prove that the PAN was indeed served to the taxpayer, either personally or through registered mail, the subject deficiency tax assessment must be declared *void,* in accordance with the doctrine laid out in the aforequoted case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*

Correspondingly, it becomes futile to discuss whether DMI had actually received the FAN[83] and the FLD,[84] which were allegedly covered by Registry Receipt No. 218191,[85] because a void assessment bears no valid fruit.[86]

Since the corporate taxpayer, *i.e.*, DMI, cannot be treated as one required to pay tax as there is no valid assessment to speak of, the *first* element of the crime charged is not present, and there is no basis to sustain the charges against the accused Bienvenido S. Dimson. As such, it becomes unnecessary to discuss the existence of the *second* and *third* elements of the crime charged.

WHEREFORE, in light of the foregoing considerations, accused **BIENVENIDO S. DIMSON** is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt.

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[83] Exhibit "P-16", Docket—Vol. I, p. 215.
[84] Exhibit "P-17", Docket—Vol. I, p. 216.
[85] Exhibit "P-30-b," Docket—Vol. I, p. 254.
[86] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc., supra.*

Insofar as the case against accused **GILBERT P. DIMSON**, who, to date, remains at large, let the same be sent to the ARCHIVES, to be revived upon his arrest.

Further, the Assessment Notice No. 32-2002 dated October 19, 2005, the Demand Letter No. 32-2002 dated October 19, 2005, and the Final Notice Before Seizure dated May 3, 2006 are declared **VOID**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
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
Chairperson
Presiding Justice