REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

RUPERTO P. RODRIGUEZ,
Accused.

CTA Crim. No. O-028

For: **Violation of Section 255 in relation to Section 253 (d) and 256, TAX CODE OF 1997, as amended by RA 8424**

Members:

ACOSTA, *P.J.*
UY, and
FABON-VICTORINO, *JJ.*

Promulgated:

JUL 12 2011 ; 9:20 a.m.

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DECISION

UY, *J.*:

Accused Ruperto P. Rodriguez is charged before this Court with "Violation of Section 255 in relation to Section 253 (d) and 256 of the Tax Code of 1997, as amended by RA 8424, under an Information[1] which reads as follows:

"INFORMATION"

"The undersigned accuses **RUPERTO P. RODRIGUEZ** of a Violation of Sec. 255 in relation to Section 253 (d) and 256, Tax Code of 1997 as amended by Republic Act No. 8424, committed as follows:

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[1] Information filed on September 8, 2006, Docket, Volume 1, pp. 1-2.

That on or about February 23, 2004, in the City of Manila, Philippines, the said accused, being then the Vice-President-Finance/corporate secretary of Luzon Insurance Surety Company, Inc. located at 2F William Burke Street, Binondo, this City, having filed his internal revenue tax for the year 2000, and after an examination and audit of the same, it has been found that there is due and collectible from said Luzon Insurance Surety Company, Inc., the following amount:

Kind of Tax	Assessment No.	Year	Date	Amount
Def. Income Tax	30-2000	2000	January 23, 2004	P2,453,893.17
Comp. Penalty on Income Tax	30-2000	2000	January 23, 2004	25,000.00
Def. Value Added Tax	30-2000	2000	January 23, 2004	2,664,971.17
Comp. Penalty on VAT	30-2000	2000	January 23, 2004	25,000.00
Def. on Expanded Withholding Tax	30-2000	2000	January 23, 2004	415,215.19
Comp. Penalty on EWT	30-2000	2000	January 23, 2004	16,000.00
Def. On Documentary Tax	30-2000	2000	January 23, 2004	1,301,238.51
Comp. Penalty on Documentary Stamp Tax	30-2000	2000	January 23, 2004	20,000.00
Def. on Registration Fee	30-2000	2000	January 23, 2004	924.44
Comp. Penalty on Registration Fee	30-2000	2000	January 23, 2004	200.00
Def. on Compromise Penalty	30-2000	2000	January 23, 2004	3,000.00
				P6,925,442.48

for the said year, did then and there willfully and unlawfully fail, refuse or neglect to pay said taxes and without formally protesting against or appealing the same, despite due assessment notice and demand to do so, to the damage and prejudice of the Republic of the Philippines, in the total amount of P6,925,442.48, Philippine Currency.

Contrary to law."

Pursuant to the Resolution dated September 25, 2006[2] requiring the submission of the written approval of the Commissioner of Internal Revenue to file the instant case together with all the supporting documents as provided under Section 6, Rule 112 of the Revised Rules of Criminal Procedure, the prosecution filed a Compliance[3] on November 7, 2006 and submitted the required written approval to file this case of then Commissioner of Internal Revenue, Jose Mario C. Buñag, together with the required documents. Thus, after due deliberation, the

[2] Docket, Volume 1, pp. 29-30.
[3] Docket, Volume 1, pp. 31-59.

Court found the existence of probable cause to criminally charge accused and correspondingly directed the issuance of Warrant for the arrest against him in the Resolution dated November 17, 2006.[4] On February 13, 2007, accused voluntarily surrendered and submitted himself to the jurisdiction of this Court and filed the required bailbond in the form of cash bond for his provisional liberty.

The initial arraignment of accused set on February 21, 2007[5] was reset due to absence of the public prosecutor despite due notice, and the filing of defense counsel, Atty. Kenneth C. Radaza of an "Urgent Motion to Postpone Arraignment and for Re-investigation"[6] on February 19, 2007 with Comment/Opposition[7] filed by the prosecution on March 29, 2007. Finding that accused was not duly notified of the preliminary investigation, the Court granted the motion in the Resolution dated April 13, 2007.[8]

On July 19, 2007, the prosecution filed a "Manifestation/Motion To Set Case For Trial"[9] praying that this case be set for hearing due to existence of sufficient evidence to sustain the allegations in the information against accused for the charge of violation of Section 255 in relation to Section 253 (d) and 256 of the Tax Code of 1997, as amended. As prayed for, the Court granted the motion to set case for trial in the Resolution dated July 30, 2007[10] and the arraignment of accused was set on

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[4] Docket, Volume 1, pp. 62-63.
[5] Resolution dated February 13, 2007, Docket, Volume 1, p. 69.
[6] The motion for reinvestigation was due to alleged failure of accused to participate in the preliminary investigation conducted by the City Prosecutor's Office of Manila, Docket, pp. 70-72.
[7] The Comment/Opposition alleges that accused was seeking to settle the instant case through a reinvestigation, but considering that this case was already pending before this Court, an offer to compromise or settle before the Office of the City Prosecutor of Manila would run counter to Revenue Regulations No. 6-2000, Docket, Volume 1, pp. 84-87.
[8] Docket, Volume 1, pp. 88-89.
[9] Docket, Volume 1, pp. 100-101. Attached thereto was the "Resolution (on Reinvestigation) issued by the investigating prosecutor, Maria Gene Z. Julianda-Sarmiento Docket, Volume 1, pp. 102-106.
[10] Docket, Volume 1, p. 108.

August 15, 2007. However, an "Urgent Motion to Defer Arraignment" was filed by accused in view of the filing of a Motion for Reconsideration[11] of the prosecution's Resolution (on Reinvestigation) before the Office of the City Prosecutor of Manila. Thus, the Court granted said motion.

On December 28, 2007, the prosecution again filed an "Ex-Parte Motion To Set Case for Trial" attaching thereto a "Resolution (Motion for Reconsideration)[12] praying that this case be set for trial on the ground that the Motion for Reconsideration filed by respondent (herein accused) has already been denied for lack of merit. However, accused filed a Petition for Review before the Department of Justice on January 22, 2008[13] questioning the resolution of the prosecutor finding probable cause against him. Without objection from the public prosecutor, the Court granted accused's Urgent Motion to Defer Arraignment.[14]

After several resettings,[15] accused was arraigned on September 22, 2008, in accordance with law and he pleaded "Not Guilty" with the assistance of defense counsel de parte. Accused admitted that he is the same person charged in the information in this case. The Preliminary Conference set on October 27, 2008 was reset to November 5, 2008 due to confinement of accused in the hospital from October 24 to 28, 2008. On November 17, 2008, the Court terminated the pre-trial, and the prosecution presented its evidence.

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[11] Docket, Volume 1, pp. 117-120.
[12] Docket, Volume 1, pp.130-132.
[13] Docket, Volume 1, pp.137-145.
[14] Docket, Volume 1, pp. 134-136.
[15] The hearing on March 24, 2008 was reset to June 2, 2008 (because accused was confined at De Los Santos Hospital for liver and gallbladder operation); then to August 18, 2008 to give the Department of Justice additional time to resolve accused's Petition for Review. However, August 18, 2008 was declared a non-working holiday pursuant to Proclamation No. 1463[15] and arraignment was again reset to September 10, 2008. During the hearing held on September 10, 2008, defense counsel moved to reset hearing because accused was hospitalized. Without objection from the public prosecutor, the Court reset hearing to September 22, 2008.

Seven (7) witnesses were presented by the prosecution to establish accused's culpability, and thereafter, rested its case upon the admission of its evidence.[16]

On June 24, 2009, accused filed a "Motion for Leave to File Attached Demurrer to Evidence" [17] seeking leave to file the attached Demurrer on the fact that the prosecution absolutely failed to adduce evidence of specific acts on the part of the accused tending to prove that accused "willfully" failed to pay the tax sought to be collected. Said motion was granted in the Resolution dated June 29, 2009[18] and the attached Demurrer to Evidence was admitted. Correspondingly, the prosecution filed its Comment thereto on July 15, 2009.[19] Finding that accused is a responsible corporate officer of Luzon Insurance & Surety Company, Inc. (Luzon), being its Vice-President for Finance and Corporate Secretary, a position which had something to do with the finances of the corporation, the Court denied accused's Demurrer to Evidence in the Resolution dated August 17, 2009[20].

Thus, accused proceeded to present four (4) witnesses for the defense and rested his case upon admission of his evidence. Both parties were ordered to file their respective memorandum within thirty (30) days from notice.[21] On November 22, 2010, the prosecution filed its Memorandum[22], while accused filed his

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[16] Exhibits "A" to "XX-1", inclusive, Resolution dated June 15, 2009, Docket, Volume 2, pp. 514-515.
[17] Docket, Volume 2, pp. 516-532.
[18] Docket, Volume 2, p. 533.
[19] Docket, Volume 2, pp. 537-542.
[20] Docket, Volume 2, pp.551-559.
[21] Docket, Volume 3, pp. 730-731.
[22] Docket, Volume 3, pp. 754-765.

Memorandum on November 30, 2010.[23] This case was thereafter deemed submitted for decision on December 6, 2010.[24]

Hence, this Decision.

ISSUES

The stipulated issues in the Pre-trial Order are as follows:

A. Factual Issues

a. Whether or not Luzon received notices of assessment and demand letters from the BIR relative the tax that said government agency is seeking to collect;

b. Whether or not there was willful non-payment of tax on the part of the accused, assuming that the taxes being collected are in fact due to the government which consists of deficiency income tax, EWT, VAT, DST and Registration Fee tax liabilities of P2,453,893.17, P415,215.19, P2,664,971.17, P1,301,238.51, P924.00, respectively, for taxable year 2000;

c. Assuming that the subject taxes are due, whether or not accused was responsible for non-payment thereof; and

d. Whether or not Luzon was placed under conservatorship and liquidation by the Insurance Commission, and if so, whether or not, the claim for deficiency taxes by the BIR should have been brought before the appointed conservator or liquidator.

B. Legal Issues

a. Whether or not accused is criminally liable;

b. Whether or not Luzon is liable to pay deficiency to the BIR;

c. Whether or not the right of the BIR to assess the subject deficiency taxes has already prescribed;

d. Whether or not there was violation of the accused's right to due to process; and

e. Whether or not the 2000 deficiency income tax, EWT, VAT, DST & Registration Fee tax liabilities of P2,453,893.17, P415,215.19,

[23] Docket, Volume 3, pp. 772-790.
[24] Resolution dated December 6, 2010, Docket, Volume 3, p. 791.

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> P2,664,971.17, P1,301,238.51, P924.00, respectively, issued by the BIR against LUZON INSURANCE & Co., INC. have become final, executory, and demandable.

The resolution of the first and second factual issues are very material because it will determine the culpability of herein accused. Thus, these two issues will be considered as the core issues in this case. However, all the other stipulated factual and legal issues will be jointly discussed and considered thereafter.

Evidence of the Prosecution

The prosecution presented seven (7) witnesses to prove its case against accused, namely: Edna Ortalla, Ma. Celerina D. Jugo, Teresita Maglunog, Leo S. Castillo, Jefferson T. Ocampo, Ma. Paz L. Arcilla, and Josefina T. Agapinan. They testified as follows:

Edna Ortalla, testified that she was the Revenue Reviewer of the Assessment Division of BIR-Manila in the year 2003 up to the present, and as part of her duties, she reviews tax cases assigned to her and prepares pre-assessment notices reflecting the necessary deficiency internal revenue taxes. She said that she was assigned to review the unprotested 2000 tax case of Luzon Insurance and Surety Co., Inc. (Luzon) on June 20, 2003 through an assignment slip of the Assessment Division, BIR-Manila.[25] She said she studied the case to know what transpired during the audit/investigation of the case at RDO No. 30, BIR-Manila and identified the following documents: (1) Letter of Authority (LOA) No. 00020936 dated July 4, 2002[26], which was allegedly duly received by Luzon on July 10, 2002; (2) BIR

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[25] Exhibit "L".

[26] Letter of Authority issued by then Regional Director Ruperto Somera, authorizing in effect, Revenue Officer Rodolfo Mendoza and Group Supervisor Myrna Querubin of RDO No. 30, BIR-Manila to examine the books of accounts and other accounting records of Luzon for taxable year 2000 for the purpose of determining possible deficiency internal revenue taxes, Exhibit "A".

First, Second, and Final Notices[27] sent to Luzon requiring it to submit its books of accounts and other accounting records for taxable year 2000; (3) BIR notice for an Informal Conference[28]; (4) Audit Reports prepared by RO Rodolfo Mendoza and Group Supervisor Myrna Querubin[29]; (5) Memorandum Report dated May 26, 2003 prepared by RO Rodolfo Mendoza and Group Supervisor Myrna Querubin,[30]; (6) Revised Audit Reports on VAT and income tax[31]; (7) Pre-Assessment Notice against Luzon[32]; and (8) Final Assessment Notices and Demand Letters.[33]

According to her, as the assigned reviewer, she checked whether or not Luzon received the final notices from the Revenue Officer; if there was compliance with the procedures enforced by BIR-Manila; and then, she prepared the pre-assessment notice (PAN) and based on this. She claims that she has personal knowledge of the final assessment notice (FAN), although she did not prepare the same. However, as it is not part of her duties and responsibilities to send letter and notices to taxpayers, she is not in a position to say whether accused or Luzon received the notices of assessment.

Ma. Celerina Jugo, testified that she is currently a Computer Operator of the Billing Section of the Assessment Division of BIR-Manila with the primary duty to prepare FAN and Demand Letters, including Demand Letters for compromise penalties, and to transmit these final notices of assessment/demand letters to the Administrative Division for mailing. In the instant case, she personally prepared and

[27] Exhibits “C”, “D”, and “E”.
[28] Exhibit “F”.
[29] Exhibits “G”, “H”, “I”, and “J”.
[30] Memorandum Report containing the details of audit investigation, with information that there was no response to the ten-day notice sent to Luzon giving them an opportunity to present its objections to the proposed amendments, Exhibit “K”.
[31] Exhibits “M and N”.
[32] Exhibit “O”.
[33] Exhibits “P” to “Z”, “AA” to “EE”, inclusive.

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transmitted the final notices and demand letters[34] against Luzon for taxable year 2000 based on the PAN dated January 7, 2004[35] to the Administrative Division for mailing as evidenced by a transmittal slip.[36] As per records of the case, the Administrative Division mailed the said notices and letters on January 3, 2004 under Registry Receipt No. 803582; that the FAN was not stamped "DISPUTED" since no protest was filed; and that the docket of the case was then forwarded to the Collection Division for enforcement and collection. She clarified that her duties and responsibilities is limited to encoding into the computer the information given to her; that she does not belong to the mailing Section; that she does not know the accused personally nor does she have any personal knowledge about the Compromise Penalty in the Demand Letter (Exhibit "P") and all the other documents she identified in her affidavit as these were based only on the Pre-Assessment Notices.

Teresita Maglunog, testified that she is the OIC-Assistant Chief of the Administrative Division, BIR-Manila with the primary duty to personally check the orderly sending of final notices of assessment and their corresponding demand letters and to keep returned Registry Return Receipt received by the Records Section as proof of receipt of those final notices of assessments and demand letters. She testified that the notices of assessments and demand letters for income tax, EWT, VAT, and DST for taxable year 2000 issued by the BIR against Luzon were transmitted to her office for mailing by Celerina Jugo of Assessment Division, BIR-Manila, and that after examining the documents, the said notices and letters were mailed through registered mail in the Post Office of Manila by Armando Macatangay

[34] Ibid.
[35] Supra, see note 32.
[36] Exhibit "QQ".

with Registry Receipt No. 803582 dated January 23, 2004[37] and that said Registry Receipt was attached to the Assessment Division's transmittal slip.

She also testified that sometime in 2004, she was the Chief of the Records Division which keeps all the records of the region and that she had three (3) subordinates under her who actually did the mailing and preparation of transmittal slips of documents. In this case, her Division sent and mailed the Assessment Notice together with Demand Letters for EWT, DST, income and penalties to herein accused, and her subordinate, Armando Macatangay, wrote the name of Luzon Insurance and Surety Company on the registry return card and it appears that Luzon received the mailed document on January 27, 2004 as evidenced by the unreadable signature on the registry return card and that several documents, sixteen (16) in all, consisting of final assessment notices for Registration Fee, EWT, DST, VAT and income tax, together with corresponding Demand Letters and their compromise penalties for taxable year 2000[38], were all contained in one envelope and sent to the accused all together. She assumed that the signature on the right portion of the registry return receipt, back portion, is the signature of the representative of Luzon who received the final assessment notice.

Leo S. Castillo, testified that in 2004, he was then a Collection Enforcement Officer assigned at the Collection Unit of RDO No. 30, BIR-Manila and his primary duty was to send collection notices, final notice before seizure notices, and serve warrant of distraint and/or levy to delinquent taxpayers and warrant of garnishments before banks and/or tax lien notice before Registry of Deeds. According to him, he

[37] Exhibit "PP".
[38] Exhibits "P" to "EE", inclusive.

was the one who prepared the final notice before seizure dated June 1, 2004[39] to effect collection of deficiency tax liabilities of Luzon for taxable year 2000 amounting to P6,925,532.48 for deficiency income tax, EWT, VAT, DST, and Registration Fee for taxable year 2000, but confirmed that he did not participate in the establishment of the tax liability of Luzon. He admitted that he failed to send collection notices to Luzon due to oversight but Luzon was allegedly duly notified of its tax deficiencies through its accountant Johnny Talaña on June 1, 2004, and in fact, Luzon wrote a letter-reply requesting for a reinvestigation citing non-receipt of various notices sent by BIR-Manila. However, the investigative jurisdiction of this case was transferred to RDO No. 34 on August 5, 2004 as it had jurisdiction over non-large insurance companies.

Jefferson Ocampo, testified that he was assigned as a Collection Enforcement Officer of Collection Section of RDO No. 34, BIR-Manila, in charge of sending collection notices, final notice before seizure, and service of warrant of distraint/levy to taxpayers with delinquent accounts payable before RDO No. 34; that the tax assessment case of Luzon originated from RDO No. 30 and was referred to RDO No. 34 for enforcement of collection due to jurisdictional concerns.[40] He said that RDO David Alarcon of RDO No. 34, through a letter dated September 23, 2004, invited Luzon's accountant Benito Talaña, Jr. for an informal conference; that due to failure of Luzon to attend the informal conference, he sent final notice before seizure dated October 19, 2004 to Luzon to effect collection and that Luzon again failed to appear before RDO No. 34. Thus, a warrant of distraint and/or levy dated December 13, 2004 was issued against Luzon (Exhibit "LL") which was served constructively to

[39] Exhibit "GG".
[40] Exhibit "JJ".

Luzon in the presence of two (2) witnesses at Luzon's business premises due to refusal of Luzon's authorized representative, Benito Talaña, to acknowledge the service of the warrant. Thereafter, the case was indorsed to the Legal Division. He also said that he was not part of the investigation team as his participation in this case pertains only to the enforcement of the tax liability of Luzon.

Ma. Paz Arcilla, testified that she is the Section Chief of the Billing Section of Assessment Division, BIR-Manila, with primary duty to instruct her subordinates to prepare final notices of assessments and demand letters, and review the same before its transmittal to the Administrative Division for mailing; that in this case, there was no protest against the final assessments as evidenced by Final Notice Assessments; that she was the one who computed the 20% interest on each type of taxes and then instructed Ma. Celerina Jugo to prepare the final notices of assessments and demand letters for deficiency taxes of Luzon and transmit the same to the Administrative Division. Then, the Assessment Division forwarded the docket to Collection Division for enforcement of collection. However, she said that her knowledge as regards the tax liability of Luzon is based on the information relayed to her by Ms. Ortalla.

Josefina Agapinan, testified that she is the legal officer of the Legal Division of BIR-Manila in 2005 up to the present, and her primary duty is to determine the propriety of filing a criminal complaint against taxpayers or responsible officers in case of corporate taxpayers for violations of the Tax Code. In this case, she was instructed by her supervisor, Atty. Arthur Carandang, to prepare the BIR demand letter dated June 21, 2005[41] to enforce collection of income tax, EWT, VAT, DST,

[41] Exhibit "NN".

and Registration Fee liabilities of Luzon for taxable year 2000. She allegedly ascertained the responsible officer of Luzon Insurance and Surety Company, Inc. for taxable year 2000 through its Income Tax Return[42] for said year, and saw the name of accused appearing therein as follows: Ruperto Rodriquez, VP-Finance/Corporate Secretary. However, she also noticed that the signature above the name was not accused's signature because the 2000 ITR was signed for and in behalf of Ruperto P. Rodriguez, Jr. Thus, she called the accountant of Luzon, Benito Talaña, Jr., and the latter confirmed that accused was still occupying the same position for the year 2005. She also verified the proof of receipt of the assessments issued by the BIR to Luzon for taxable year 2000 and was furnished by the Administrative Division with the Transmittal Slip of Assessment Notices/Demand Letters and corresponding Postal Registry Return Card. Then she returned the tax docket of the case to Atty. Carandang who instructed her to prepare the referral letter to the City Prosecutor of Manila, and complaint-affidavit[43] against Ruperto Rodriguez for violation of Section 255 of the 1997 Tax Code.

Evidence of the Defense

The defense presented four (4) witnesses, namely: accused himself, Benito Talania, Jr., Gerry Manapsal, and Atty. John Apatan, to disprove the culpability of accused for the offense charged herein. They testified as follows:

Accused, Ruperto Rodriguez, testified that he is one of the owners of Luzon Insurance and Surety Co., Inc., which is now bankrupt and was ordered to cease and desist from its operations by the Insurance Commission in September 2002.[44]

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[42] Exhibit "B".
[43] Exhibit "OO".
[44] Letter from Insurance Commissioner and Circular letter, Exhibits "1" and "2", respectively.

That on December 22, 2004, Luzon was placed under conservatorship by the same commission,[45] under receivership on April 17, 2006,[46] and then under liquidation on July 28, 2006.[47] He said that he was VP for Finance and Corporate Secretary of Luzon, but sometime in 1998 to 1999, he allegedly started to disengage from the company as he had some other business to attend to. This necessitated him to allow his trusted personnel, Ferry Manapsal and Benito Talania, to represent him in the company. But on paper, he remained to be holding such position up to now. He said that when he left, the company was no longer a viable business.

According to him, he did not authorize anybody to sign, for and in his behalf, in the ITR of Luzon for taxable year 2000, and the signature appearing thereon is not his signature.[48] He said he is not familiar with the Letter dated June 21, 2005, marked as Exhibit "NN" by the prosecution, addressed to him, and that the same contains an incorrect address of Luzon based on a barangay certification indicating the correct address of Luzon.[49] The Central Post Office of Manila issued a Certification that it can no longer establish beyond doubt that the said letter (Exhibit "NN") was received at Luzon's office and he pointed out that the address in the letter indicating: "2F William Burke Street, Binondo, Manila", was wrong because the company's correct address is LUZCO Building, 360 William Burket Street, Escolta, Manila. The letter did not allegedly state the building where they hold office as well as the number of the same. Hence, he said that such letter must have been lost,

[45] Letter dated December 22, 2004, Exhibit "3".
[46] Letter dated April 17, 2006, Exhibit "4".
[47] Letter dated July 28, 2006, Exhibit "5".
[48] Income Tax Return of Luzon for taxable year 2000, Common Exhibit with the prosecution, Exhibit "B" and for the defense, Exhibit "6".
[49] Exhibit "7".

and did not reach the company. Moreover, at the time the letter was written, the company was already under conservatorship, it being bankrupt already.

Further, he testified that after the 2002-2003 retrenchment of Luzon, only two employees were left, Mr. Manapsal and Mr. Talania; that he is also not familiar with the demand letters and assessment notices marked as Exhibits "O" to "EE"; that at the time the said letters and notices were made, Luzon was already not in good financial situation and that he tried to resort to compromise in order to settle the said tax deficiencies only because he wants to have a peace of mind.

Benito Talania, Jr., testified that he used to work with Luzon's Accounting Department, but Luzon is now under liquidation pursuant to an Order from the Insurance Commission. The accused is a part owner of Luzon but disengaged himself sometime in 1998 to 1999 to attend to his construction business in Iligan City. Thus, accused left certain activities, duties, and responsibilities to him and Gerry Manapsal. He admitted that he signed the 2000 ITR of Luzon prepared by its external accountant/auditor, Guzman Bocaling & Co., on top of the name of accused, based only on a general instruction of the auditing firm; and that accused was not notified nor did he have any knowledge about this matter. He said that he is also not familiar with the letter marked as Exhibit "NN" which contains a different address from that of Luzon's actual address.

Gerry Manapsal, testified that he used to work as a Cashier at Luzon and he knows that accused is a part owner; that the other officers of Luzon are Isidro Rodriguez, Jr., Constancio Rodriguez, and Eulogio Rodriguez III. Accused is allegedly no longer actively participating in the management of Luzon when the transaction subject matter of this case took place; that the BIR did not file any criminal case against the other officers of Luzon, and at present, he is coordinating with the Insurance Commission only as regards Luzon's liquidation. He said that accused did not officially resign from Luzon but left the other officers with his duties and responsibilities and it was the other officers who were giving instructions to him for the business and not the accused; and that he did not know about any offer of compromise with the Legal Division, BIR Region No. 6.

Atty. John Apatan, the designated liquidator of Luzon by the Insurance Commission, testified that Luzon was not complying with the minimum capitalization requirements and it was not considered financially sound to undertake the insurance business, thus, the Insurance Commission placed Luzon under the state of liquidation until the present. He said that he is an Officer in Charge of Companies under CRL; that he was the one who certified the letters issued to the Board of Directors of Luzon; and that they are still collating records of Luzon and will still do audit in order to know the financial standing of the company. As liquidator, he is authorized to evaluate the claims including tax claims, and he will include the claims of the BIR in the liquidation process of Luzon. According to him, even before September 30, 2002 (effectivity of the Cease and Desist Order), Luzon was already insolvent based on the examination conducted for the purpose of knowing the financial position of Luzon.

THE COURT'S FINDINGS AND RULING

The corporate taxpayer in this case is Luzon Insurance and Surety Company, Inc. (Luzon), whereas accused Ruperto P. Rodriquez, is the Vice-President for Finance/Corporate Secretary of Luzon. Accused is criminally charged in this case as a responsible officer of Luzon, for his supposed willful and unlawful failure, refusal or neglect to pay the corporate taxes enumerated in the information in the total amount of P6,925,442.48, thus constituting a violation of *Section 255, in relation to Sections 253 (d) and 256 of the National Internal Revenue Code (NIRC) of 1997.* Said provisions read, as follows:

> "**Section 255.** *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* – Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any records, 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.
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> 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 officer 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." *(Emphasis supplied)*
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> "**Section 253.** *General Provisions.* –
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> 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**." *(Emphasis supplied)*
>
> "**Section 256.** *Penal Liability of Corporations.* – Any **corporation**, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the

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> 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, "Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation" by any person required to do so within the time or times required by law or rules and regulations, is a criminal offense punishable by a fine of not less than Ten thousand pesos (P10,000) and imprisonment of not less than one (1) year but not more than ten (10) years, in addition to the other penalties provided by law, upon conviction thereof.

As mentioned earlier, the taxpayer involved herein is a corporate taxpayer, Luzon Insurance Surety Company, Inc. (Luzon). And on the basis of Section 253 (d) of the NIRC of 1997, as amended, stating that: "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**", accused Ruperto P. Rodriquez is charged herein for being the "employee responsible for the violation".

Taking the foregoing into consideration, the prosecution has the *onus probandi* to prove the following beyond reasonable doubt, to wit:

1. That the corporate taxpayer, is required under the NIRC of 1997, as amended, **to pay any tax**, make a return, keep any record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or regulations, and the corporation failed to pay the required tax, make a return or keep the required record, or supply the correct and accurate information; and

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2. 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 regulations.

Required to pay any tax and Failure to pay the required taxes

The first element of the offense has been clearly established.

Undisputedly, Luzon Surety and Insurance Company, Inc. (Luzon), as a corporation engaged in business and duly registered with the BIR as a taxpayer, is required to pay certain taxes in accordance with the nature and functions of its business, and it has allegedly failed to pay the same. These supposed taxes are as follows:

Def. Income Tax	P2,453,893.17
Comp. Penalty on Income Tax	25,000.00
Def. Value Added Tax	2,664,971.17
Comp. Penalty on VAT	25,000.00
Def. on Expanded Withholding Tax	415,215.19
Comp. Penalty on EWT	16,000.00
Def. On Documentary Tax	1,301,238.51
Comp. Penalty on Documentary Stamp Tax	20,000.00
Def. on Registration Fee	924.44
Comp. Penalty on Registration Fee	200.00
Def. on Compromise Penalty	3,000.00
Total :	**P6,925,442.48**

A responsible employee who willfully failed to pay the required taxes

Accused as the company's Vice President for Finance and Corporate Secretary, is undoubtedly an accountable or responsible officer of Luzon as he is presumed to have something to do with the finances of the corporation. And it is for this very reason that he is criminally charged herein pursuant to the provisions of Section 255, in relation with Sections 253 (d) and 256 of the NIRC of 1997, as amended.

The Court finds accused's vehement assertion that he is no longer an officer of Luzon as he "disengaged" with company as early as 1998, due to his construction business in Iligan City, as a mere alibi considering that he failed to substantiate this claim with a more concrete and definitive evidence, other than the oral testimonies of defense witnesses, Gerry Manapsal and Benito Talania, Jr.. In fact, witness Gerry Manapsal testified that accused did not officially resign from Luzon, but allegedly left the performance of his duties and responsibilities with the other officers of the corporation. Being therefore a financial officer of Luzon, accused may be held criminally liable for the failure of the corporation to pay the tax due and demandable from it, if any.

Material to the conviction of accused in this case however is the existence of proof beyond reasonable doubt that he willfully failed, refused or neglected to pay the required corporate taxes of Luzon. We look into the meaning of **Willfulness**.

As defined in Black's Law Dictionary:

> ***"Act is 'willful'*** within meaning of section of Internal Revenue Code imposing penalty for willful failure to pay federal income and social security taxes withheld from employees ***if it is voluntary, conscious and intentional; no bad motive or intent to defraud the United States need be shown, and a 'reasonable cause' or 'justifiable excuse' element has no part in definition.*** Harrington v. U.S., C.A.R.I., 504 F.2d 1306, 1315."[50] *(Emphasis Ours)*

[50] Black's Law Dictionary, 6th Edition, p. 1599.

Further, it is also stated therein that **"willfulness"** is a state of mind that may be inferred from the circumstances of the case.[51] Proof of willfulness may be, and usually is, shown by circumstantial evidence alone.[52]

Applying the foregoing definition to the instant case, to convict accused for the offense charged in this case, it must be definitively shown that accused, as the employee supposedly responsible for the failure or omission to pay the required taxes of Luzon, did so, **knowingly, intentionally, and with the specific intent not to pay** the said tax liability. In other words, it must be shown that accused was aware of the obligation to pay the tax liability of Luzon, being the VP for Finance thereof, but nevertheless, he voluntarily, knowingly and intentionally failed, neglected or refused to pay the subject tax liabilities. And to be able to impute knowledge of the corporate obligation to pay tax upon accused, there must be a clear showing that he was duly notified of the assessments properly issued against Luzon for deficiency taxes. Bad motive or intent to defraud the government need not be shown.

We scrutinize the evidence adduced by both parties.

It is established from the records that a Letter of Authority No. 2000-00020936 dated July 4, 2002 was issued to Revenue Officer Rodolfo Mendoza and Group Supervisor Myrna V. Querubin, to audit and /or examine the books of accounts and other accounting records of Luzon for taxable year 2000[53], and said revenue officers accordingly submitted their Memorandum Report dated May 26,

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[51] Ibid.
[52] *United States v. Grumka, 728 F.2d 794, 796-97 (6th Cir. 1984); United States v. Gleason, 726 F.2d 385, 388 (8th Cir. 1984); United States v. Marabelles, 724 F.2d 1374, 1379 (9th Cir. 1984).*
[53] Exhibit "A", Docket, p. 430.

2003[54] to the Revenue District Officer of RDO No. 30 explaining in detail the results of their audit investigation. Upon review by Revenue Officer Edna Ortalla, she issued a Revised Revenue Officer's Audit Report, and Pre-Assessment Notice[55] for deficiency income tax, EWT, VAT, DST, and Registration Fee against Luzon, sent by the Assessment Division to said company. As the pre-assessment was not allegedly refuted by Luzon, Final Assessment Notices on Registration Fee[56], EWT[57], DST[58], VAT[59] and income tax[60], together with corresponding Demand Letters were sent to Luzon. Thereafter, the docket was forwarded to the Collection Division for enforcement of collection of deficiency taxes due to the failure of Luzon to file administrative protest prescribed under Section 228 of the *NIRC of 1997, as amended*.

Consequently, the Letter dated June 21, 2005[61] was prepared by prosecution witness, Josefina T. Agapinan, addressed to accused Ruperto P. Rodriquez as VP-Finance and Corporate Secretary of Luzon, upon instruction of her immediate supervisor, Atty. Arthur Carandang of the Legal Division of Manila, requesting for the payment of supposed tax liabilities for the year 2000 within ten (10) days from receipt thereof. She also testified that she saw the name of accused: "Ruperto P. Rodriguez, Jr., VP-Finance/ Corporate Secretary" as the signatory in the Income Tax Return (ITR) of Luzon for taxable year 2000.[62] As no payment was made by

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[54] Exhibit "K", Docket, pp. 443-445.
[55] Exhibit "O", Docket, pp. 449-450.
[56] Exhibit "R", Docket, p. 453.
[57] Exhibit "Y", Docket, p. 460.
[58] Exhibit "V", Docket, p. 457.
[59] Exhibit "BB", Docket, p. 463.
[60] Exhibit "EE", Docket, p. 466.
[61] Letter was signed by the Chief of the Legal Division of Revenue Region No. 6 of Manila, Mario A. Saldevar, Exhibit "NN", Docket, p. 475.
[62] Exhibit "B", Docket, p. 432.

accused or Luzon, a Warrant of Distraint and/or Levy[63] for the total amount of P6,925,532.48 was subsequently issued to enforce the collection of the subject taxes. Subsequently, the instant criminal case was filed against herein accused.

It was also established that Luzon was placed under conservatorship on December 22, 2004; then, under receivership on April 17, 2006, and now under liquidation since July 28, 2006 because Luzon had been declared as insolvent by the Insurance Commission; and that the true address of Luzon is 2nd Floor, LUZCO Building, 360 William Burke St., Escolta, Manila.

Although it is apparent from the records that Luzon was informed about the examination conducted and the initial findings of the BIR as regards the subject deficiency taxes, however, there appears to be a gap in the series of the required due notice to the taxpayer. The prosecution failed to prove that the accused, or any of the representatives of Luzon, was duly notified of the Preliminary Assessment Notice (PAN) dated January 7, 2004. There is no evidence adduced by the prosecution to prove that the PAN was duly served to the accused, or to any of the authorized representatives of Luzon. The prosecution tried to show service of the Final Assessment Notice (FAN) and the corresponding demand letters when it presented the BIR's Document Locator, with Registry Receipt Number 803582 (Exhibit "QQ") which was mailed on January 23, 2004 and a Registry Return Card (Exhibit "PP"). However, both documents failed to clearly establish that one of the documents served under said registered mail is the PAN. Furthermore, even if this Court considers the BIR's Document Locator and Registry Return Card as proof of

[63] Exhibit "LL", Docket, p. 473.

due notice of the aforesaid documents to Luzon, the same falls short of the due notice requirement provided under Section 228 of the NIRC of 1997, as amended.

The Supreme Court, in the case of ***CIR vs. Metro Star Superama, Inc.***[64], clarified the "due notice" requirement provided under Section 228 of the NIRC of 1997, as amended, as follows:

> "SEC. 228. Protesting of Assessment. - **When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings**: provided, however, that a preassessment notice shall not be required in the following cases:
>
> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
>
> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
>
> (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
>
> (d) When the excise tax due on exciseable articles has not been paid; or
>
> (e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.
>
> **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

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

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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.

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 supplied).

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.

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 Officer's submitted report of

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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 deficiency tax liability, inclusive of the applicable penalties.

3.1.3 Exceptions to Prior Notice of the Assessment. — The notice for informal conference and the preliminary assessment notice shall not be required in any of the following cases, in which case, issuance of the formal assessment notice for the payment of the taxpayer's deficiency tax liability shall be sufficient:

(i) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax appearing on the face of the tax return filed by the taxpayer; or

(ii) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(iii) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(iv) When the excise tax due on excisable articles has not been paid; or

(v) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

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.

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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**

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> **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.**"

Evidently, the BIR's failure to establish that it was able to serve the required PAN and to give Luzon fifteen (15) days to respond thereto, show that it fell short of the due process requirements under the law. The BIR failed to properly notify the accused or any of Luzon's authorized representative about the assessed deficiency taxes. Thus, without such proper notification, there can be no willful failure to pay on the part of the accused in this case.

The doctrine enunciated in the landmark case of ***Ungab vs. Cusi***[65] that a formal assessment is not required for a criminal prosecution to proceed, is not applicable in this case because in said case, accused Quiricio P. Ungab was charged in his personal capacity for tax evasion, whereas, the accused in this case, is charged in his capacity as a responsible officer of the corporation. More importantly, it was not shown that accused was aware of the deficiency taxes being imputed upon Luzon. And without clear showing of accused's actual knowledge of the corporate liability for deficiency taxes, he cannot be said to have willfully evaded paying the required taxes of the corporation.

The Court notes that the Registry Return Card presented by the prosecution and marked as Exhibit "QQ" failed to establish the person who actually signed and

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[65] G.R. No. L-41919-24, May 30, 1980, 97 SCRA 877.

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received the mail matters attached thereto, and to show that the same refers to Registry Receipt No. 803582. The transmittal list or the BIR Document Locator likewise failed to state the nature of the mail matter or document supposedly mailed to Luzon.

While it is true that when an assessment notice is released and mailed by the BIR to the taxpayer and the original is not returned to the BIR, the presumption is that the taxpayer received it, such presumption however, is merely a disputable one. The same is subject to controversion and a direct denial by the taxpayer of the receipt of the assessment notice shifts the burden upon the party favored by the presumption (the BIR) to prove that the mailed letter was actually received by the taxpayer.[66]

In this regard, the records of this case negate compliance with the rudiments on procedural due process. The mere presentation of transmittal records by the prosecution is insufficient to establish that indeed, the preliminary assessment notice (PAN) and assessment notice, and letter of demand were sent to, and were duly received by Luzon's authorized representative, because transmittal records, by its very nature, do not clearly indicate or specify the nature of the document being mailed or sent out. Uncorroborated by other evidence to definitely identify, not only the nature of the mail matter sought to be proven as having been delivered, but also, the authority of the person who supposedly received said mail matter, have little probative value to establish notice to Luzon to pay its subject corporate tax liabilities.

It must be remembered that in case of a civil action to collect unpaid taxes, the law requires a convincing proof to show that indeed preliminary assessment

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[66] *Republic of the Philippines vs. Court of Appeals, et al.*, G.R. No. L-38540, 30 April 1987.

notice (PAN), assessment notice, and letter of demand were actually sent to and received by the taxpayer. Such requirement goes up to the level of proof beyond reasonable doubt on notice and demand in case of a criminal action such as the instant case.

Hence, for accused to be criminally liable under Section 255 of the NIRC of 1997, in relation to Sections 253 (d) and 256 of the same Code, the prosecution must establish beyond reasonable doubt that notices of preliminary assessment and final assessment were indeed issued and received by the accused. This must be so because it is only when the assessment is served upon the taxpayer that the obligation to pay the amount assessed and demanded arises.[67] Failing in this regard, accused is entitled to his constitutional and statutory rights to be presumed innocent until the contrary is proved.

This Court cannot turn a blind eye on the importance of such notices. For in the absence of due notice of PAN, the FAN and demand letters are consequently void. And, without proper notice, accused cannot be held criminally and civilly liable for the failure of the corporation to pay its subject unpaid corporate taxes.

The presumption of regularity in the performance of official functions cannot preponderate over the presumption of innocence that prevails, if not overthrown by proof beyond reasonable doubt.[68] Thus, considering that the guilt of accused has not been proven beyond reasonable doubt, the presumption of his innocence must, therefore, prevail.

Aside from the foregoing considerations, it bears mentioning that the absence of the essential element of willfulness to pay corporate taxes on the part of accused

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[67] See *Antonio P. Callanta, et al. vs. Office of the Ombudsman, et al.*, G.R. Nos. 115253-74, January 30, 1998.
[68] *People vs. Tan, 382 SCRA 419 (2002).*

is bolstered by the fact that the said corporation was already insolvent during the time it was being assessed by the BIR for its supposed corporate tax liabilities, as it was in fact ordered to cease and desist from its operations by the Insurance Commission on September 2002. Eventually, it was further placed under conservatorship on December 22, 2004, then under receivership on April 17, 2006, and finally under liquidation on July 28, 2006 by the same Commission. Consequently, granting that Luzon would have been willing to pay its supposed corporate taxes, it would have been legally powerless to act on the same.

The Court also notes that accused offered to compromise and settle Luzon's corporate tax deficiencies with his personal money, allegedly for his peace of mind, thereby negating any willfulness on his part to evade payment of Luzon's supposed tax liabilities.

By way of resume, the Court finds the prosecution's documentary and testimonial evidence insufficient to establish accused's guilt beyond reasonable doubt. It must be emphasized that the prosecution has the primordial duty not only to prove that a tax is due, but also to establish that the accused "willfully fails" to pay the tax due. In the instant case, the prosecution failed to establish both.

Hence, the Court finds insufficient evidence to hold accused guilty beyond reasonable doubt for the commission of the offense charged in this case for failure of the prosecution to establish due notice of PAN, FAN and Demand Letters. For without proper notice, accused cannot be held criminally and civilly liable for the failure of Luzon to pay its deficiency and unpaid corporate taxes.

WHEREFORE, premises considered, accused **RUPERTO P. RODRIGUEZ** is hereby **ACQUITTED** on reasonable doubt. The cash bond posted by accused is hereby **CANCELLED** and ordered **RELEASED** to its lawful owner upon presentation of proper documents, in accordance with usual accounting rules and regulations.

Moreover, the subject assessment against Luzon for taxable year 2000 is hereby **CANCELLED** and **SET ASIDE**, on procedural grounds.

No Costs.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CERTIFICATION

I hereby certify that the decision was reached after due consultation with the members of the division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice