

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, C.T.A. CRIM. CASE NO. O-105
Plaintiff, (I.S. No. 06J-20865)

For: Violation of Section 255
in relation to Section 253(d)
and 256, Republic Act No.
8424

- versus -

Members:
ACOSTA, *Chairperson*
UY, *and*
FABON-VICTORINO, *JJ*

DIVINO A. LOTA
c/o AML MARINE & Promulgated:
INDUSTRIAL CORPORATION,
Accused.

APR 19 2011 3:15 p.m.

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RESOLUTION

FABON-VICTORINO, J.:

Before the Court is the Demurrer to Evidence dated
October 29, 2010, filed by accused Divino A. Lota, praying for
the dismissal of the instant case for failure of the prosecution to
present sufficient evidence to sustain a conviction under the
Information filed against him for alleged violation of Section 255
in relation to Section 253(d) of Republic Act 8424. ✓

Accused claims that the burden of proving his guilt beyond reasonable doubt of the crime charged rests upon the shoulders of the prosecution. However, the latter failed to overcome such burden. The testimonies of its witnesses as well as the documentary evidence relied upon by the prosecution did not establish beyond moral certainty the elements of the crime charged, viz., (1) that the accused is a person required to pay the tax; (2) that the accused failed to pay such tax at the time required by law; and (3) that the failure to pay such tax was willful.

Accused believes that the evidence for the prosecution failed to establish that he is the person, who under the law, is required but failed to pay deficiency tax liabilities for the year 1998 amounting to P3,796,458.09 in violation of Section 255 of the National Internal Revenue Code (NIRC). The Assessment Notices for deficiency tax liabilities were addressed and sent to AML Marine & Industrial Corporation (AML) and not to him. Accused capitalizes on the principle that a corporation has a separate and distinct personality from the persons composing it. Thus, only AML can be made criminally liable for non-payment of the tax deficiency being the entity required by law to pay the alleged tax deficiencies. Moreover, the prosecution failed to



prove that he was the President or the responsible officer for AML, a defense he consistently invokes by denying such claim.

The prosecution also failed to prove his or AML receipt of the Assessment Notices and Demand Letters claimed to have been sent by the BIR for purposes of tax collection. Without such receipt, the taxpayer concerned cannot be held in default and liable for non-payment of taxes as he is deemed unaware of such liabilities. Prosecution witness Teresita D. Maglunog admitted that she merely presumed receipt of such documents by the addressee since they were not returned "unclaimed" or with indication that it should be "returned to sender". As there was no proof that the taxpayer actually received the Assessment Notices or Demand Letters, which is mandatory under Section 228 of the NIRC, no liability attaches either on his part or AML's.

While there is a disputable presumption that the mailed letter was received by the addressee in the ordinary course of mail, his categorical denial shifted the burden upon the prosecution favored by that presumption to prove such fact. In this regard, the prosecution allegedly failed. Additionally, the Transmittal Slip adduced by the prosecution established the name of the taxpayer, the document locator number, taxable

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year, kind of tax assessed, the registry receipt number, and the date of mailing, but not his or AML's receipt of relevant documents.

The Affidavit executed by Atty. Carandang, identified by Atty. Magsumbol suffers the same fate. At best, it recommends the filing of a criminal complaint on the basis of Atty. Carandang's conclusion that the subject taxpayer failed and refused to pay the deficiency taxes assessed by the BIR. Worse, it did not state the basis of the assessment or how the conclusion was reached. Besides, the content is hearsay there being no indication that Atty. Carandang personally conducted the investigation of the alleged deficiency taxes. Therefore, such affidavit should be rejected.

Finally, there can be no willful, voluntary and intentional disregard or violation of Section 255 of the NIRC, absent any knowledge on his part or AML's of the said tax deficiencies. There was no evidence presented that unmistakably shows their receipt of the Assessment Notices and Demand Letters from the BIR to make them aware of such tax liabilities. Without knowledge there can be no willful intention to infringe the law. In fact, according to accused, his right to due process was even ✓

violated as he was deprived of the opportunity to rebut the claim against him by the BIR.

By way of opposition, the prosecution avers that the Assessment upon which the criminal action is hinged has become final and executory as the taxpayer did not dispute the assessment administratively within 30 days from receipt thereof. Thus, the taxpayer can no longer question the assessment, by way of defense, in the instant criminal case filed against him.

Accused cannot also seek refuge in the separate personality of AML as a corporation. Sections 253(d) and 256 of the Tax Code specifically provide that criminal liability of a corporation for violation of tax laws shall be imposed upon its corporate officers since a corporation is a juridical entity which can act only through its officers and agents. Verification from the Securities and Exchange Commission revealed that AML has been delinquent in submitting information regarding its corporate affairs. Besides, from record of the Legal Department of the Revenue Region of Manila, which initiated the instant case, it appears that accused is the president and responsible officer of



AML. This is also stated in the Affidavit of Atty.Carandang.¹ Moreover, the Letter dated May 24, 2004,² informing AML of its deficiency income tax liabilities was addressed to accused as president of AML who was summoned for an informal conference.

As to the absence of proof of receipt of the Assessment Notices and demand letter, the prosecution invokes in its favor the presumption that mailed letters are deemed received by the addressees in the ordinary course of mail. In the instant case, the Assessment Notices were sent by registered mail, thus, they were deemed received by accused.

Assuming that the Assessment Notices were not received by accused, the letter in his name dated May 24, 2004, reiterating demand for payment of the tax deficiencies could be considered as an assessment notice.

To cap the objection, the prosecution remarks that denial of receipt by Assessment Notices by accused will not save the day for him as the Assessment Notices had the same address as the Letter of Authority which he received. ✓

¹ Exhibit A.

² Exhibit E.

Settled is the rule that in criminal cases the prosecution has the *onus probandi* in establishing the guilt of the accused. *Ei incumbit probatio qui dicit, non que negat*, i.e., he who asserts, not he who denies, must prove.³ It is therefore incumbent upon the prosecution to prove each and every element of the offense charged beyond reasonable doubt. Every fact or circumstance is determined by reference to the definition and the essentials of the specific crimes.⁴ In the instant case, the accusatory instrument for alleged violation of Section 255 in relation to Section 253(d) and 256 of Republic Act 8424 filed against accused reads as follows:

“That on or about September 28, 2001, in the City of Manila, Philippines, the said accused, being then the President and responsible officer of AML MARINE & INDUSTRIAL CORPORATION, did then and there wilfully and unlawfully fails, refuses and neglects, as he still fails, refuses and neglects to pay their deficiency internal revenue tax liabilities for the year 1998, to wit:

Kind of Tax	Amount
Def. Income	2,517,591.89
Compromise Penalty on Income Tax	25,000.00
Value Added Tax	1,217,866.20
Compromise Penalty	20,000.00
Compromise Penalty	16,000.00

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³ People vs. Quijano, Sr., G.R. Nos. 144523-26, June 10, 2003.

⁴ Ngo vs. People, G.R. No. 155815, July 14, 2004.

or in the total amount of P3,796,458.09, under Assessment Notice 32-1-98, despite notice and service of said assessment and Warrant of Dstraint and/or Levy dated February 20, 2003, without formally protesting against or appealing the same, and repeated demands made upon him to do so, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount of P3,796,458.09, Philippine Currency.

Contrary to law. "

To prove the commission of the offense, the prosecution presented the Assistant Chief of the Legal Division of the Bureau of Internal Revenue (BIR) **Atty. Yolanda C. Magsumbol**. She identified the Affidavit dated April 13, 2003 executed and sworn to before her by their Legal Officer Atty. Arthur C. Carandang⁵ for the purpose of lodging the criminal complaint against accused. Stated in the Affidavit that AML Marine and Industrial Corporation, represented by its President, fails and refuses to pay deficiency taxes in the amount of P3,796,458.09 despite repeated demands, in violation of Section 255 of the NIRC.

Revenue Officer **Josephine Gaerlan** of the BIR Large Taxpayers District Office, Makati, on the other hand testified that she merely took over the investigation on AML's tax liabilities

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⁵ Exhibit A.

when it was re-assigned to her as shown by the Referral Memo dated June 22, 2000,⁶ which in turn, was based on the Letter of Authority No. 00001613 dated October 5, 1999. She sent a copy of the said Referral Memo to the taxpayer company and it was received by its representative. Upon inspection of the taxpayer's books of account, particularly Cash Receipt Book, Cash Disbursement Book, and Sales Book, she discovered that the company was liable for tax deficiencies. Consequently, she issued a Memorandum dated February 28, 2001,⁷ addressed to the BIR Revenue District Officer, stating her findings and recommendation to issue an assessment notice informing the company to pay the deficiency tax for the year 1998 in the amount of P4,478,960.92.

The last to take the witness stand was **Teresita D. Maglunog**, who testified that she is presently the OIC Chief of the Administrative Division of the BIR and part of her duties is to mail assessment notices and demand letters to delinquent taxpayers. In this case, she mailed the Assessment Notices, together with the Demand Letters to AML as instructed in the Transmittal Slip⁸ sent to her by the BIR Assessment Division. ✓

⁶ Exhibit G.

⁷ Exhibit F.

⁸ Exhibit H.

The Assessment Division issues assessment notice to taxpayer with deficiency assessment and attached thereto is the transmittal slip instructing the mailing of the said documents by Administrative Division to which she belongs. With it is the document locator number which allows her to monitor the nature of the document for mailing. In this case, the locator number indicated in the Transmittal Slip⁹ was 32-1-98 assigned to the account of AML. Together with the Transmittal Slip were the following: (1) Assessment Notice dated September 26, 2001 for deficiency income tax in the amount of P2,517,591.89,¹⁰ (2) Demand Letter dated September 28, 2001 for the amount of P2,517,591.89,¹¹ (3) Demand Letter dated September 28, 2001 for the amount of P25,000.00 compromise penalty,¹² (4) Demand Letter dated September 28, 2001 for the amount of P16,000.00 compromise penalty¹³ (5) Assessment Notice dated September 28, 2001 for deficiency VAT in the amount of P1,217,866.20 for taxable year 1998,¹⁴ (6) Demand Letter dated September 28, 2001 for deficiency VAT in the amount of P1,217,866.20,¹⁵ and, (7) Demand Letter dated September 28,



⁹ Exhibit H.

¹⁰ Exhibit B.

¹¹ Exhibit B-1.

¹² Exhibit B-2.

¹³ Exhibit B-3.

¹⁴ Exhibit C.

¹⁵ Exhibit C-1.

2001 for the amount of P20,000.00 compromise penalty, all addressed to AML.¹⁶

She further testified that the BIR assumes that the mailed document was received by the addressee, if not returned by the Post Office as "unclaimed". The BIR also maintains a logbook that records the documents returned by the Post Office either "unclaimed" or with notation "return to sender". In this case, the logbook pages¹⁷ pertaining to the period when the Assessment Notices and Demand Letters were sent to AML, in particular on September 29, 2001, reflect no record of any mail matter that was returned by the Post Office. Thus, the BIR assumed that the subject mail matters sent were received by the addressee.

In addition, the Registry Return Card attached to the Notices mailed to AML was not returned by the Post Office to the BIR. Moreover, she was not able to ascertain from the Post Office if the said Assessment Notices were actually received by the addressee neither was she able to procure any certification to that effect. Upon inquiry, the Post Office informed her office that the records for the relevant year when the notices were sent to



¹⁶ Exhibit C-2.

¹⁷ Exhibits I, I-1, I-2, and I-3.

AML were no longer available as they have been disposed off two years from the date of mailing.

Accused claims that all the foregoing testimonies and the documents failed to prove his alleged culpability beyond reasonable doubt of the crime charged justifying the dismissal of the case via the instant Demurrer to Evidence.

A demurrer to evidence is "an objection by one of the parties in an action to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue". The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. In passing upon the sufficiency of the evidence raised in a demurrer, the court is merely required to ascertain whether there is competent or sufficient proof to sustain the indictment or to support a verdict of guilt.¹⁸

In criminal cases, a demurrer to evidence partakes of the nature of a motion to dismiss the case for failure of the prosecution to prove the guilt of accused beyond reasonable

¹⁸ Rivera vs. People, G.R. NO. 163996, June 09, 2005.

doubt.¹⁸ Under Section 23, Rule 119 of the Revised Rules of Criminal Procedure, as amended, the trial court may dismiss the action on the ground of insufficiency of evidence upon a demurrer to evidence filed by accused with or without leave of court.¹⁹

In the instant case, the prosecution indeed miserably failed to discharge the burden of proving its case against accused.

No one among the three witnesses categorically testified that accused Divino A. Lota is the person required under the law to pay the alleged tax deficiencies. Aside from the prosecution's self-serving allegation, no clear and convincing evidence - testimonial or documentary - was presented to show that accused is the president and the responsible officer of AML legally liable to pay the assessed tax liabilities. Despite contention that the prosecution made verification with the Securities and Exchange Commission (SEC) in connection with this case, no single document from the said Office was adduced during the trial to prove that accused is the president or responsible officer of AML upon whose shoulder rest the burden ✓

¹⁸ Salazar vs. People, G.R. No. 151931, September 23, 2003.

¹⁹ People vs. Sandiganbayan, G.R. No. 140633, February 04, 2002.

of paying the alleged deficiency taxes. The only but yet self-serving document offered suggesting that accused is the president of AML, albeit remotely, is the Affidavit of Atty. Carandang, which merely states that AML, represented by its president, Divino A. Lota, failed and refused to pay deficiency taxes, despite repeated demands.

But Atty. Carandang was never presented on the witness stand to identify his sworn statement and attest to the veracity of allegations stated therein. It was Atty. Yolanda C. Magsumbol who identified the said document and not the affiant. Thus, under the circumstances, the allegations therein are hearsay and inadmissible in evidence. Under Section 36 of Rule 130 of the Rules of Court, any evidence – whether oral or documentary – is hearsay if its probative value is not based on the personal knowledge of the witness but on that of some other person who is not on the witness stand.²⁰ Moreover, to admit the truth of the averments in the said sworn statement without the presentation of the affiant in court is to deprive accused of his constitutional right to meet face to face his accuser and cross-examine him on his alleged participation in the investigation and institution of the case against him. 

²⁰ Bayani v. People, 530 SCRA 84.

The appearance of Atty. Yolanda C. Magsumbol in court could not save the day for the prosecution insofar as the Affidavit of Atty. Carandang is concerned. The only essence of her testimony is her admission that she was the administering officer before whom the affidavit was sworn to. Put differently, she is not competent to testify on the affiant's alleged participation in the investigation and lodging of the complaint against accused for violation of Section 255 in relation to Section 253(d) of Republic Act 8424, for lack of personal knowledge.

The testimony of Revenue Officer Josephine Gaerlan also left much to be desired. Her admission that she only took over the examination of the alleged tax deficiencies from the first assigned examiner gives the impression that only half of the picture was laid bare for the appreciation of the Court. She entered into the frame when the investigation was already on-going and the claimed relevant documents upon which she based her recommendation for issuance of assessment notice were already in the possession of the BIR. The source and the manner of securing those documents were not clarified or even testified to by this witness polluting the flow of possession of evidence which is fatal to the prosecution. And just like the first witness, she never named or identified accused as the erring

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taxpayer. The Referral Memo dated June 22, 2000, which she identified in Court, is addressed to "The President, AML Marine & Industrial Corp." ²² She did not categorically say that the president of the company is the herein accused. The Memorandum dated February 28, 2001 ²³ in which she recommended the issuance of assessment notice likewise states that it pertains to the account of "AML Marine and Industrial Corporation" and to no other. In short, she never pinpointed accused in the documents she identified or in her testimony in open court as the person liable to pay the alleged deficiency tax liabilities subject of the complaint.

There is also nothing in the declaration of Teresita D. Maglunog that ignites interest except her admission that she caused the mailing of the subject Assessment Notices and Demand Letters as part of her official duty being the OIC Chief of the Administrative Division of the BIR. Since they were not returned by the Post Office "unclaimed" or with notation "return to sender", the BIR **assumed that they were received** by accused and/or AML. In addition, their logbook in which the mail matters sent during the relevant period were registered reflects ✓

²² Exhibit G.

²³ Exhibit F.

no record of any document returned to the BIR bolstering the presumption that they were received by the addressee. When inquired, she admitted that she is not in possession of the Registry Return Card pertaining to the subject mail matters as it was not returned by the Post Office to the BIR. She as well failed to secure any certification from the Post Office that the said mailed documents were actually received by accused and/or AML. In justification, she explained that she caused the mailing of the subject documents in 2001, however the Post Office keeps records of mailed documents for only two years. Thereafter, it disposes them.

According to the Supreme Court, when a taxpayer denies receipt of an assessment from the BIR, the **best evidence is the registry return card or a certification from the post office** and not the internal documentation made by BIR personnel, especially if unsupported by substantial evidence, as in this case. The pertinent portion of the said decision²⁴ states, thus: ✓

²⁴ Commissioner of Internal Revenue vs. Metro Star Superama, Inc., G.R. No. 185371, December 8, 2010 [citing *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 157064, August 07, 2006, 498 SCRA 126, 135-136].

"Jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The *onus probandi* was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail. The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the letter was indeed received by the addressee.
x x x

x x x. What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized representative. And if said documents cannot be located, Respondent at the very least, should have submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts. This Court does not put much credence to the self serving documentations made by the BIR personnel especially if they are unsupported by substantial evidence establishing the fact of mailing. Thus:

"While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration (Coll. of Int. Rev. vs. Bautista, L-12250 and L-12259, May 27, 1959), this ruling makes it the more imperative that the release, mailing or sending of the notice be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or control, without adequate supporting evidence cannot



suffice; otherwise the taxpayer would be at the mercy of the revenue offices, without adequate protection or defense." (Nava vs. CIR, 13 SCRA 104, January 30, 1965).

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The failure of the respondent to prove receipt of the assessment by the Petitioner leads to the conclusion that no assessment was issued. Consequently, the government's right to issue an assessment of the said period has already prescribed. (Industrial Textile Manufacturing Co. of the Phils., Inc. vs. CIR CTA Case 4885, August 22, 1996)."

Clear from the cited case that internal documentation of the BIR containing the name of the taxpayer, the kind of tax assessed, the registry receipt number and the date of mailing, such as the logbook²⁵ and Transmittal Slip,²⁶ as well as the testimony of the document custodian, Teresita D. Maglunog, are insufficient to establish receipt of the Assessment Notices and Demand Letters negating criminal liability on the part of accused.

To be sure, presumption is not hard evidence. While there is a presumption that mailed letter is deemed received by the addressee in the ordinary course of mail, still it is disputable especially where the accused vehemently denied receipt of alleged Assessment Notices and Demand Letters as in this case. ✓

²⁵ Exhibits I, I-1, I-2, and I-3.

²⁶ Exhibit H.

Such direct denial shifts the burden upon the party favored by the assumption to prove that the mail letter was indeed received by the addressee. Evidently, the People simply failed in this regard.

In *Barcelon, Roxas Securities vs. Commissioner of Internal Revenue*,²⁶ the accused also denied receipt of the assessment notice sent to him by the complainant and the Highest Tribunal ruled as follows:

"In the present case, petitioner denies receiving the assessment notice, and the respondent was unable to present substantial evidence that such notice was, indeed, mailed or sent by the respondent before the BIR's right to assess had prescribed and that said notice was received by the petitioner. The respondent presented the BIR record book where the name of the taxpayer, the kind of tax assessed, the registry receipt number and the date of mailing were noted. The BIR records custodian, Ingrid Versola, also testified that she made the entries therein. Respondent offered the entry in the BIR record book and the testimony of its record custodian as entries in official records in accordance with Section 44, Rule 130 of the Rules of Court x x x.

In this case, the entries made by Ingrid Versola were not based on her personal knowledge as she did not attest to the fact that she personally prepared and mailed the assessment notice. Nor was it



²⁶ G.R. No. 157064, August 07, 2006.

stated in the transcript of stenographic notes how and from whom she obtained the pertinent information. Moreover, she did not attest to the fact that she acquired the reports from persons under a legal duty to submit the same. Hence, Rule 130, Section 44 finds no application in the present case. Thus, the evidence offered by respondent does not qualify as an exception to the rule against hearsay evidence.

Furthermore, independent evidence, such as the registry receipt of the assessment notice, or a certification from the Bureau of Posts, could have easily been obtained. Yet respondent failed to present such evidence.

In the case of *Nava v. Commissioner of Internal Revenue*, this Court stressed on the importance of proving the release, mailing or sending of the notice.

'While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration (Coll. of Int. Rev. vs. Bautista, L-12250 and L-12259, May 27, 1959), this ruling makes it the more imperative that the release, mailing, or sending of the notice be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice, or control, without adequate supporting evidence, cannot suffice; otherwise, the taxpayer would be at the mercy of the revenue offices, without adequate protection or defense.'

In the present case, the evidence offered by the respondent fails to convince this Court that Formal Assessment Notice No. 

FAN-1-87-91-000649 was released, mailed, or sent before 15 April 1991, or before the lapse of the period of limitation upon assessment and collection prescribed by Section 203 of the NIRC. Such evidence, therefore, is insufficient to give rise to the presumption that the assessment notice was received in the regular course of mail. Consequently, the right of the government to assess and collect the alleged deficiency tax is barred by prescription."

Consequently, the prosecution's claim that the subject assessment has become final and executory because the accused did not dispute the same within thirty (30) days from receipt has no merit it appearing that accused never had the opportunity to do so, not having received the said assessment notices and demand letters.

On the claim that the Letter²⁷ dated May 24, 2004 may be considered a notice of assessment for purposes of holding accused liable for the offense charged, the same must likewise fail.

Again, there is no proof of receipt of such document to sustain the contention. Besides, Section 203 of the NIRC

²⁷ Exhibit E.



provides that internal revenue taxes must be assessed within three years reckoned from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. This mandate governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation. Accordingly, the government must assess internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time.²⁸

Assuming for the sake of argument that the Letter²⁹ dated May 24, 2004 may be considered a notice of assessment, it must be pointed out that the subject tax liabilities was for taxable year 1998 and the Letter³⁰ dated May 24, 2004 was mailed on June 02, 2004, or six (6) years after the taxable year 1998 thus, clearly beyond the three (3) year period for assessment. An assessment is deemed made only when the collector of internal revenue releases, mails or sends such notice to the taxpayer.³¹

²⁸ CIR vs. FMF Development Corporation, G.R. No. 167765, June 30, 2008.

²⁹ Exhibit E.

³⁰ Exhibit E.

³¹ CIR vs. Pascor Realty, G.R. No. 128315, June 29, 1999.

This brings to fore the more important issues of whether accused failed to pay the assessed tax deficiencies at the time required by law and that the failure was wilful. As discussed supra, the prosecution miserably failed to establish that accused and/or AML received the alleged two (2) Assessment Notices³² and Demand Letters.³³ Not having received them, neither accused and/or AML were aware of the claimed tax deficiencies. Receipt of Assessment Notice is not only a formal requirement and to proceed heedlessly with tax collection without first establishing a valid assessment, as in this case, is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence in support of their defense.³⁴ And that can only be possible when there is knowledge of such assessment evidenced by valid receipt of formal notice and demand for payment.

Without such knowledge or information to which accused and/or AML are entitled to, the alleged failure to pay the assessed tax deficiencies cannot be considered wilful as to constitute voluntary and intentional infraction of the law.

³² Exhibits B and C.

³³ Exhibits B-1 to B-3, C-1 to C-2.

³⁴ CIR vs. Reyes, G.R. NO. 159694, January 27, 2006; Reyes vs. CIR, G.R. NO. 163581.



As to the rest of the evidence presented by the prosecution, hardly any of them imputes liability on accused. Even the Warrant of Dstraint No. 032-036-02³⁵ dated September 18, 2002. If at all, it merely proves that the BIR exercised its option to collect from the subject taxpayer.

Article 3, Section 14(2) of the Constitution provides that in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved. Given this presumption, it is incumbent upon the prosecution to prove the guilt of the accused beyond reasonable doubt and this presumption prevails unless overturned by competent and credible proof. The state is required, in the discharge of the burden imposed upon it, to establish by proof all the essential elements of the crime with which the accused is charged. In the absence of such degree of proof of guilt, accused is entitled to an acquittal.³⁶

Proof beyond reasonable doubt means that all things given, the mind of the judge can rest at ease concerning its verdict.³⁷ Certainly, "reasonable doubt" is not a mere guess work whether or not the accused is guilty, but such uncertainty that "a

³⁵ Exhibit D.

³⁶ Constitution Annotated by Miriam Defensor Santiago, 1999, pp. 226 – 227.

³⁷ Pilares, Sr. v. People, 518 SCRa 143.

reasonable man may entertain after a fair review and consideration of the evidence. It is present when after the entire comparison and consideration of all evidence, leaves the mind of the judges in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge, a certainty that convinces and directs the understanding, and satisfies the reason and judgment of those who are bound to act conscientiously upon it.³⁸

As stated earlier, the prosecution, at all times, bears the burden of establishing the guilt of accused beyond reasonable doubt – no matter how weak the defense may be, it is not and cannot be the sole basis of conviction if, on the other hand, the evidence for the prosecution is even weaker,³⁹ as obviously obtaining in the case at bar.

In cases as this, the Court must acquit the accused because the evidence does not fulfil the test of moral certainty and therefore is insufficient to support a judgment of conviction.⁴⁰



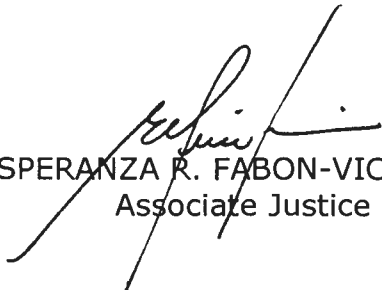
³⁸ Fernan, Jr. v. People, 531, SCRA 1.

³⁹ People v. Salidaga, 513 SCRA 306.

⁴⁰ People v. Cawaling, 293 SCRA 267.

WHEREFORE, finding merit, the Demurrer To Evidence dated October 29, 2010, filed by accused Divino A. Lota, is hereby GRANTED. Accordingly, Criminal Case No. O-105 is DISMISSED, for insufficiency of evidence. Consequently, accused Divino A. Lota, is hereby ACQUITTED.

SO ORDERED.



ESPERANZA R. FABON-VICTORINO
Associate Justice

WE CONCUR:



ERNESTO D. ACOSTA
Presiding Justice

(on leave)
ERLINDA P. UY
Associate Justice