REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

STEVEN GO LO,
Petitioner,

-versus-

PEOPLE OF THE PHILIPPINES,
Respondent.

CTA *EB* CRIM NO. 049
[Crim. Case No. 16-331587 (477439-CR)]

Members:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ*

Promulgated:
OCT 02 2020 2:18 p.m.

x -- x

RESOLUTION

MODESTO-SAN PEDRO, J.:

For resolution is petitioner's Memorandum *cum* Motion for Reconsideration (hereinafter referred to as "Motion"),[1] filed on 13 December 2019, *sans* comment from respondent.[2]

In his Motion, petitioner questions the Decision rendered by this Court, promulgated on 22 November 2019, affirming with modification the Decision, dated 24 July 2017, and Order, dated 1 February 2018, of the Regional Trial Court ("RTC") of Manila, Branch 21, finding petitioner guilty beyond reasonable doubt for violation of Sections 5 and 14, in relation to Sections 266, 253, and 256 of the National Internal Revenue Code of 1997, as amended ("NIRC"). The dispositive portion is hereby quoted, to wit:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the assailed July 24, 2017 *Decision* and February 1, 2018 *Order* rendered by RTC-Branch 21, City of

[1] Memorandum, EB Docket, pp. 204-235.
[2] Records Verification Report, EB Docket, p. 248.

Manila, are hereby **AFFIRMED** with **MODIFICATION**. The fine imposed on SITC amounting to Php50,000.00 is hereby **NULLIFIED** and **CANCELLED**.

SO ORDERED."

After a careful examination of the Motion, the CTA *En Banc* finds that the issues and arguments raised by the petitioner have already been sufficiently passed upon and fully discussed by this Court and, therefore, finds no merit to overturn the assailed Decision.

Petitioner argues that he cannot be made liable for the crime allegedly committed since the *subpoena duces tecum* was improperly served. To support his contention, he reiterates two (2) grounds: (1) that the person who received the *subpoena duces tecum*, Ms. Cita Angeles, was not authorized; and (2) that the respondent effected substituted service without exhausting personal service in violation of Rule 14 of the Rules of Court which is the rule governing summons.

A perusal of the factual findings of this Court, however, disproves petitioner's contention that Ms. Cita Angeles had no authority to receive petitioner's communications from the Bureau of Internal Revenue ("BIR").

The relevant portion of the assailed Decision is hereby quoted, to wit:

"As culled from the assailed Decision of RTC-Branch 21 and MTC-Branch VIII, on February 7, 2013, **a certain Cita Angeles handed to the accused-petitioner a letter for Stevemar International Trading Co. (SITC) denominated as Letter Notice (LN) No. 029-RLF-11-00-00222 dated February 6, 2013**, together with Details of Taxpayer's Customers Record and Computation Sheet under Relief and Third Party Matching.

On February 19, 2013, **Cita Angeles handed to the accused-petitioner a Follow Up Letter dated February 18, 2013 from a certain Rosemarie Ramos-Ragasa, a Revenue District Officer of Revenue District Office (RDO) No. 29, Bureau of Internal Revenue (BIR)-Manila. <u>In response to said letters, the accused-petitioner's mother, Elina G. Lo, sent a letter to said revenue officer on February 28, 2013</u>**.

On July 12, 2013, **Cita Angeles handed to the accused-petitioner a Letter of Authority (LOA) with SN No. eLA201100031153 (LOA-029-2013-0000369) dated July 10, 2013 together with a Checklist of Requirements dated July 11, 2013**. Said LOA authorized Andrew Delos Santos, a Revenue Officer (RO) in BIR-RDO No. 29, Revenue Region (RR) No. 6, Manila to audit/investigate all internal taxes for taxable year (TY) 2011 of SITC which is engaged in trading of hardware and with registered address at 532 Moriones St., Tondo Manila. The accused-petitioner is admittedly one of the partners in SITC.

After two weeks from receipt of said LOA, **accused-petitioner received from Cita Angeles a First Notice dated July 25, 2013** which was received by a certain Nick Tacadena on July 26, 2013.

> Likewise, on August 30, 2013, **accused-petitioner received a Second and Final Notice dated August 28, 2013, which was received by Cita Angeles on the same day**.
>
> On October 9, 2013, upon failure of the accused-petitioner to submit the documents required in the LOA and checklist despite due notice, RO Delos Santos sent a memorandum to the Regional Director, RR No. 6 recommending the issuance of a subpoena duces tecum for SITC.
>
> Thus, a subpoena duces tecum with SDT No. RR6-2013-0447 was issued to SITC directing the accused-petitioner, the partners, and owners to bring and submit SITC's Books of Account, and other accounting records for TY 2011 on November 5, 2013 at 10:00 a.m.
>
> **On October 24, 2013, said subpoena duces tecum was received by Cita Angeles and was also given by the latter to the accused-petitioner on the same day**. However, accused-petitioner failed to submit the required documents subject of said subpoena duces tecum."[3]

As can be gleaned from the above-quoted portions of the assailed Decision, it is clear that it was Ms. Cita Angeles who had been consistently receiving communications from the BIR on behalf of the petitioner. In fact, it was on account of the Follow-up Letter, dated 18 February 2013, which was received by Ms. Cita Angeles that petitioner's mother, Elina G. Lo, was prompted to send a letter to the BIR, on 28 February 2013, contesting the latter's allegation that petitioner made any sales transaction to Europrince Corporation.

If indeed Ms. Cita Angeles was not clothed with authority to receive communications from the BIR, it behooved petitioner to instruct the BIR early on to stop serving notices to her or to ask Ms. Cita Angeles not to receive correspondence from the same. However, petitioner was only able to instruct Ms. Cita Angeles not to receive communications from the BIR **after** the service of the *subpoena duces tecum.* This is evident in this Court's assailed Decision, to wit:

> "The MeTC found that the service of said subpoena and other notices to Ms. Cita Angeles was proper as the BIR could not be faulted in serving such to Ms. Angeles, since she was found in the same business address provided by the accused-petitioner in all his official dealings with the BIR. These were the same findings by the RTC during the appeal of the instant case.
>
> However, what was not emphasized by the lower courts is the admission made by the accused-petitioner during his cross-examination wherein he said that he only instructed Ms. Angeles not to receive communications from the BIR after receiving the subpoena from her.
>
> Putting such statement in another context, it means that the accused-petitioner allowed Ms. Angeles to receive any communication prior to the receipt of said subpoena. **There was no indication from the factual**

[3] Emphasis supplied.

> **findings of the lower court that he instructed Ms. Angeles to tell the revenue officer to stop serving any communication to her on his behalf prior to the service of the subject subpoena.**
>
> The testimony made by the accused-petitioner during the cross-examination was an indication of his implied ratification of the action of Ms. Angeles in receiving the BIR notices and the subject subpoena. xxx"[4]

Clearly, the act of the petitioner constitutes his implied ratification of the action of Ms. Cita Angeles, specifically, her receipt of the BIR notices and the *subpoena duces tecum.*

Furthermore, even assuming that this Court subscribes to the arguments of the petitioner, the fact remains that he had already admitted actual receipt of the *subpoena duces tecum.* The fact of his actual receipt is evident in the Order[5] of the RTC citing petitioner's judicial affidavit, to wit:

> "It is uncontroverted that Cita Angeles received the subject subpoena duces tecum at the registered place of business of Stevemar International Trading Co. **<u>and the accused-appellant admitted in his Judicial Affidavit that Cita Angeles gave to him the Subpoena Duces Tecum from the BIR</u>**. As correctly argued by the prosecution, it is sufficient that substituted service of summons may be effected by leaving the copies at the defendant's office or regular place of business with some competent person in charge."[6]

and in the assailed Decision citing the Metropolitan Trial Court and RTC Decisions,[7] to wit:

> "Thus, a *subpoena duces tecum* with SDT No. RR6-2013-0447 was issued to SITC directing the accused-petitioner, the partners, and owners to bring and submit SITC's Books of Account, and other accounting records for TY 2011 on November 5, 2013 at 10:00 a.m.
>
> **<u>On October 24, 2013, said *subpoena duces tecum* was received by Cita Angeles and was given by the latter to the accused-petitioner on the same day</u>. However, accused-petitioner failed to submit the required documents subject of said *subpoena duces tecum*.**"[8]

Considering that petitioner had already admitted actual receipt of the *subpoena duces tecum*, petitioner was accorded his right to due process, which is the right the rules on personal and substituted service aim to protect.

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[4] Emphasis supplied.
[5] Order dated 1 February 2018, EB Docket, pp. 57-59.
[6] Emphasis supplied.
[7] Decision dated 22 November 2019, EB Docket pp. 181-197.
[8] Emphasis supplied.

In the case of ***Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.***,[9] the Supreme Court discussed the significance of administrative due process, to wit:

> "Administrative due process is anchored on fairness and equity in procedure. **It is satisfied if the party is properly notified of the charge against it and is given a fair and reasonable opportunity to explain or defend itself.** Moreover, it demands that the party's defenses be considered by the administrative body in making its conclusions, and that **the party be sufficiently informed of the reasons for its conclusions.**"[10]

Applying the foregoing jurisprudence in the case at bar, there is no denying that petitioner was properly apprised of the existence of the *subpoena duces tecum*. In fact, petitioner even received his copy of the *subpoena duces tecum* from Ms. Cita Angeles the same day as she received the said document from the BIR. This means that he had more than enough opportunity and time to comply with the *subpoena duces tecum* which he chose to ignore. Therefore, even assuming there is a procedural defect in the service of the *subpoena duces tecum*, this fact is already considered cured since petitioner's right to due process was not violated.

Furthermore, even if the CTA *En Banc* considers the rules on summons under Rule 14 of the Rules of Court in resolving this case, our conclusion would still be the same, since the Supreme Court in the case of ***Oaminal v. Castillo, et. al.***,[11] had already ruled that improper service of summons is considered cured upon proof of its actual receipt, to wit:

> "In the present case, the Sheriff's Return failed to state that efforts had been made to personally serve the summons on respondents. Neither did the Return indicate that it was impossible to do so within a reasonable time. It simply stated:
>
> > "THIS IS TO CERTIFY that on the 30th day of May 2000, copies of the summons together with the complaint and annexes attached thereto were served upon the defendants Pablito M. Castillo and Guia B. Castillo at their place of business at No. 7, 21st Avenue, Cubao, Quezon City thru MS. ESTER FREGINAL, secretary, who is authorized to receive such kind of process. She signed in receipt of the original as evidenced by her signature appearing on the original summons.
> >
> > "That this return is submitted to inform the Honorable x x x Court that the same was duly served."
>
> **<u>Nonetheless, nothing in the records shows that respondents denied actual receipt of the summons through their secretary, Ester Fraginal</u>. Their "Urgent Motion to Declare Service of Summons Improper and Legally Defective" did not deny receipt thereof; it**

[9] G.R. Nos. 201398-99, 201398-99 & 201418-19, 3 October 2018.
[10] Emphasis supplied.
[11] G.R. No. 152776, 8 October 2003.

> **merely assailed the manner of its service.** In fact, they admitted in their Motion that the "summons, together with the complaint, was served by the Sheriff on Ester Fraginal, secretary of the defendants at No. 7, 21st Avenue, Cubao, Quezon City on 30 May 2000."
>
> **That the defendants' actual receipt of the summons satisfied the requirements of procedural due process had previously been upheld by the Court** thus:
>
>> "x x x [T]here is no question that summons was timely issued and received by private respondent. In fact, he never denied actual receipt of such summons but confined himself to the argument that the Sheriff should prove that personal service was first made before resorting to substituted service.
>>
>> "This brings to the fore the question of procedural due process. In Montalban v. Maximo (22 SCRA 1077 [1968]) the Court ruled that **'The constitutional requirement of due process exacts that the service be such as may be reasonably expected to give the notice desired. Once the service provided by the rules reasonably accomplishes that end, the requirement of justice is answered; the traditional notions of fair play are satisfied; due process is served.'"**[12]

Hence, given the foregoing reasons, this Court upholds the assailed Decision finding that the *subpoena duces tecum* was properly served.

Aside from the issues mentioned, petitioner, likewise, argues that the prosecution failed to prove that his non-compliance with the *subpoena duces tecum* was intentional, which he alleges is an element in criminal cases.

However, as established by the CTA *En Banc,* violations punishable under the NIRC are *mala prohibita,* a type of crime which is wrong because of a positive law that prohibits the accomplishment of a certain act. Since the act is not inherently wrong, the intent of the offender is not material in order to be held liable for such crimes. It is enough for the prosecution to establish that the law was violated.[13]

In this case, it is clear that petitioner was aware that a *subpoena duces tecum* was served against his person requiring him to produce documents at a particular time and date, but despite said notice, he failed to comply with the same. Clearly, this fact, alone, makes him liable under Section 266 of the NIRC, regardless of his intent to commit the same.

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[12] Emphasis supplied.
[13] Tan v. Ballena, et. al., G.R. No. 168111, 4 July 2008.

Finally, petitioner contends that the CTA *En Banc* erred when it ruled that the relevance of the documents enumerated in the *subpoena duces tecum* does not affect its validity. He argues that the Court's ruling is contrary to the mandate of Section 5 of the NIRC. He insists that this Court should have invalidated the *subpoena duces tecum* for requiring the petitioner to produce non-existing documents which in this case are the sales invoices he allegedly issued to Europrince Corporation.

This Court agrees with the petitioner in so far as he argues that the *subpoena duces tecum* should only require the production of documents that are material and relevant to its inquiry. In this case, the *subpoena duces tecum* was issued pursuant to Letter of Authority No. eLA201100031153, which authorized Revenue Officer Andrew Delos Santos to investigate all internal taxes of petitioner for taxable year 2011; and the First and Second Notices requiring petitioner to submit documents in relation to the audit. Hence, it follows that the *subpoena duces tecum* should only cover documents that are relevant and material to petitioners audit for taxable year 2011.

Applying the same, this Court finds that the documents indicated on the *subpoena duces tecum* are not irrelevant nor immaterial. As ruled by the CTA *En Banc* in the assailed Decision, the BIR merely required petitioner to produce its Books of Account and other accounting records pertaining to taxable year 2011. which are the documents the BIR needed to conduct its audit pursuant to the Letter of Authority issued against petitioner. Hence, we disagree with the petitioner that the *subpoena duces tecum* is defective on account of being irrelevant.

Considering the foregoing discussions, the CTA *En Banc* sees no justifiable reason to overturn the assailed Decision.

WHEREFORE, premises considered, the Memorandum *cum* Motion for Reconsideration filed by the petitioner is hereby **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

(with due respect, I join the D.O. of J. CTM)
ERLINDA P. UY
Associate Justice

Ma. Belen
(with due respect, I join the Dissenting Opinion of J. CTM)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
(with due respect, pls. see my Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

STEVEN GO LO
Petitioner,

-*versus*-

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Respondent.

CTA *EB* CRIM NO. 049
(Crim. Case No. 16-331587)
(477439-CR)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

OCT 02 2020 2:18 p.m.

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DISSENTING OPINION

MANAHAN, *J.:*

With due respect to my esteemed colleague, I respectfully disagree with the opinion of the majority that there was a valid service of summons or subpoena which is an element of the crime charged under Section 266 in relation to Sections 253 and 256, all of the 1997 National Internal Revenue Code (NIRC), as amended.

After a second hard look, it was proven that the first element for the violation of Section 266 (in relation to Sections 253 and 256) of the 1997 NIRC, as amended, was not present (i.e., the offender must be duly summoned).

The *subpoena duces tecum* was not validly served.

As culled from the decision of the Metropolitan Trial Court (MTC)-Branch 8, City of Manila, the Revenue Officer (RO), Andrew Delos Santos, testified that he served the electronic Letter of Authority (eLOA) as well other notices including the subject *subpoena duces tecum*, except the First Notice which he alleged to have been served to and received by a certain Nick Tadena, to Ms. Cita Angeles, which he alleged was an employee of Stevemar International Trading Co. (SITC).[1]

Petitioner, during trial, denied that Ms. Cita Angeles was an employee of his company and referred to her as an employee of his mother, who is an agent of an insurance company, Reliance Surety and Insurance Co. Said BIR notices received by Ms. Angeles were eventually handed to the petitioner.[2]

Ms. Angeles, on the other hand, testified on her status as an employee of Ms. Elina Lo, petitioner's mother[3], and the circumstances surrounding the early attempts of the BIR RO to serve those notices. In the course of her testimony, she attested that she told Mr. Delos Santos that she is not an employee of SITC but that of Elina Lo and that she is not authorized by petitioner to receive letters from the BIR. However, as testified by Ms. Angeles, Mr. Delos Santos initially coerced her to receive the Checklist of Requirements and the Second Notice since she already received the eLOA, and subsequently threatened her to receive the subject subpoena since there was already a lawsuit. She was also asked to affix the word "secretary" despite informing him that she was the secretary of Ms. Lo and not of SITC.[4] It appears from the MTC decision that the prosecution did not oppose this overt testimony of Ms. Angeles.

Another noteworthy observation is the manner by which the subpoena was served. Mr. Delos Santos did not effect personal service of this subpoena to petitioner but instead immediately resorted to substituted service. *In Ma. Imelda M. Manotoc v. Honorable Court of Appeals, et al.*[5], which was cited also in petitioner's motion, the Supreme Court laid down the requirements for substituted service of notices, to wit:

> "Section 8 of Rule 14 of the old Revised Rules of Court which applies to this case provides:
>
> > **SEC. 8. Substituted service**. – <u>If the defendant cannot be served within a reasonable time</u> as provided in the preceding section [personal service on defendant], service may be effected (a) by

[1] *Id.*, MTC- Branch 8 Decision dated September 6, 2016, pp. 61-62.
[2] *Id.* at pp. 62-63.
[3] *Id.* at p. 63.
[4] *Id.* at p. 64.
[5] G.R. NO. 130974, August 16, 2006.

> leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

We can break down this section into the following requirements to effect a valid substituted service:

(1) Impossibility of Prompt Personal Service

The party relying on substituted service or the sheriff must show that defendant cannot be served promptly or there is impossibility of prompt service. Section 8, Rule 14 provides that the plaintiff or the sheriff is given a "reasonable time" to serve the summons to the defendant in person, but no specific time frame is mentioned. **"Reasonable time" is defined as "so much time as is necessary under the circumstances for a reasonably prudent and diligent man to do, conveniently, what the contract or duty requires that should be done, having a regard for the rights and possibility of loss, if any[,] to the other party."** Under the Rules, the service of summons has no set period. However, when the court, clerk of court, or the plaintiff asks the sheriff to make the return of the summons and the latter submits the return of summons, then the validity of the summons lapses. The plaintiff may then ask for an alias summons if the service of summons has failed. What then is a reasonable time for the sheriff to effect a personal service in order to demonstrate impossibility of prompt service? To the plaintiff, "reasonable time" means no more than seven (7) days since an expeditious processing of a complaint is what a plaintiff wants. To the sheriff, "reasonable time" means 15 to 30 days because at the end of the month, it is a practice for the branch clerk of court to require the sheriff to submit a return of the summons assigned to the sheriff for service. The Sheriff's Return provides data to the Clerk of Court, which the clerk uses in the Monthly Report of Cases to be submitted to the Office of the Court Administrator within the first ten (10) days of the succeeding month. Thus, one month from the issuance of summons can be considered "reasonable time" with regard to personal service on the defendant.

Sheriffs are asked to discharge their duties on the service of summons with due care, utmost diligence, and reasonable promptness and speed so as not to prejudice the expeditious dispensation of justice. Thus, they are enjoined to try their best efforts to accomplish personal service on defendant. On the other hand, since the defendant is expected to try to avoid and evade service of summons, the sheriff must be resourceful, persevering, canny, and diligent in serving the process on the defendant. For substituted service of summons to be available, there must be several attempts by the sheriff to personally serve the summons within a reasonable period [of one month] which eventually resulted in failure to prove impossibility of prompt service. "Several attempts" means at least three (3) tries, preferably on at least two different dates. In addition, the sheriff must cite why such efforts were unsuccessful. It is only then that impossibility of service can be confirmed or accepted.

(2) Specific Details in the Return

The sheriff must describe in the Return of Summons the facts and circumstances surrounding the attempted personal service. The efforts made to find the defendant and the reasons behind the failure must be clearly narrated in detail in the Return. The date and time of the attempts on personal service, the inquiries made to locate the defendant, the name/s of the occupants of the alleged residence or house of defendant and all other acts done, though futile, to serve the summons on defendant must be specified in the Return to justify substituted service. The form on Sheriff's Return of Summons on Substituted Service prescribed in the Handbook for Sheriffs published by the Philippine Judicial Academy requires a narration of the efforts made to find the defendant personally and the fact of failure. Supreme Court Administrative Circular No. 5 dated November 9, 1989 requires that "impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the failure of such efforts," which should be made in the proof of service.

(3) A Person of Suitable Age and Discretion

If the substituted service will be effected at defendant's house or residence, it should be left with a person of "suitable age and discretion then residing therein." A person of suitable age and discretion is one who has attained the age of full legal capacity (18 years old) and is considered to have enough discernment to understand the importance of a summons. "Discretion" is defined as "the ability to make decisions which represent a responsible choice and for which an understanding of what is lawful, right or wise may be presupposed". Thus, to be of sufficient discretion, such person must know how to read and understand English to comprehend the import of the summons, and fully realize the need to deliver the summons and complaint to the defendant at the earliest possible time for the person to take appropriate action. Thus, the person must have the "relation of confidence" to the defendant, ensuring that the latter would receive or at least be notified of the receipt of the summons. The sheriff must therefore determine if the person found in the alleged dwelling or residence of defendant is of legal age, what the recipient's relationship with the defendant is, and whether said person comprehends the significance of the receipt of the summons and his duty to immediately deliver it to the defendant or at least notify the defendant of said receipt of summons. These matters must be clearly and specifically described in the Return of Summons.

(4) A Competent Person in Charge

If the substituted service will be done at defendant's office or regular place of business, then it should be served on a competent person in charge of the place. Thus, **the person on whom the substituted service will be made must be the one managing the office or business of defendant, such as the president or manager; and such individual must have sufficient knowledge to understand the obligation of the defendant in the summons, its importance, and the prejudicial effects arising from inaction on the summons**. Again, these details must be contained in the Return." (*Additional boldfacing and underscoring are ours*)

Parenthetically, in *Allen A. Macasaet, et al. v. Francisco R. Co, Jr.*[6], the Supreme Court explains the importance of personal service and due observance of its requirements prior to resorting to substituted service, to wit:

> "To warrant the substituted service of the summons and copy of the complaint, the serving officer must first attempt to effect the same upon the defendant in person. **Only after the attempt at personal service has become futile or impossible within a reasonable time may the officer resort to substituted service**.
>
> xxx xxx xxx
>
> Under the *Rules of Court*, the service of the summons should firstly be effected on the defendant himself *whenever practicable*. Such personal service consists either in handing a copy of the summons to the defendant in person, or, if the defendant refuses to receive and sign for it, in tendering it to him. The rule on personal service is to be rigidly enforced in order to ensure the realization of the two fundamental objectives earlier mentioned. If, for justifiable reasons, the defendant cannot be served in person within a reasonable time, the service of the summons may then be effected either (*a*) by leaving a copy of the summons at his residence with some person of suitable age and discretion then residing therein, or (*b*) by leaving the copy at his office or regular place of business with some competent person in charge thereof. The latter mode of service is known as substituted service because the service of the summons on the defendant is made through his substitute.
>
> **It is no longer debatable that the statutory requirements of substituted service must be followed strictly, faithfully and fully, and any substituted service other than that authorized by statute is considered ineffective**. This is because substituted service, being in derogation of the usual method of service, is extraordinary in character and may be used only as prescribed and in the circumstances authorized by statute. **Only when the defendant cannot be served personally within a reasonable time may substituted service be resorted to. Hence, the impossibility of prompt**

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[6] G.R. No. 156759, June 05, 2013.

> **personal service should be shown by stating the efforts made to find the defendant himself and the fact that such efforts failed, which statement should be found in the proof of service** or sheriff's return. Nonetheless, the requisite showing of the impossibility of prompt personal service as basis for resorting to substituted service may be waived by the defendant either expressly or impliedly." (*Emphases supplied*)

The rationale of the immediately preceding requirement is also explained in the said *Macasaet case*, to wit:

> The significance of the proper service of the summons on the defendant in an action *in personam* cannot be overemphasized. The service of the summons fulfills two fundamental objectives, namely: (*a*) to vest in the court jurisdiction over the person of the defendant; and (*b*) to afford to the defendant the opportunity to be heard on the claim brought against him. As to the former, when jurisdiction *in personam* is not acquired in a civil action through the proper service of the summons or upon a valid waiver of such proper service, the ensuing trial and judgment are void. If the defendant knowingly does an act inconsistent with the right to object to the lack of personal jurisdiction as to him, like voluntarily appearing in the action, he is deemed to have submitted himself to the jurisdiction of the court. As to the latter, the essence of due process lies in the reasonable opportunity to be heard and to submit any evidence the defendant may have in support of his defense. With the proper service of the summons being intended to afford to him the opportunity to be heard on the claim against him, he may also waive the process. In other words, **compliance with the rules regarding the service of the summons is as much an issue of due process as it is of jurisdiction**. (*Emphasis supplied*)

Thus, a violation of the abovementioned requisites in the proper service of summons/subpoena is not just an issue of jurisdiction but equally an issue of due process.

In the instant case, nowhere in the factual findings of the MTC-Branch 8, City of Manila, did it establish that Mr. Delos Santos exerted all efforts to personally serve the notices including the subject subpoena to the petitioner but instead gave said notices and subpoena to a person not connected directly to the latter. Based on his Affidavit of Service of Subpoena Duces Tecum[7], no mention was made of his initial attempt to serve the subpoena personally to petitioner. Instead, it mentioned directly of "substituted service". This was in total violation of BIR's own guidelines in serving *subpoena duces tecum* under Revenue Memorandum Order (RMO) No. 10-2013, as amended by RMO No. 8-2014, to wit:

> 3.13 The SDT shall be served through personal service by delivering personally a copy of the SDT to the party at his registered or known address or wherever he may be found. A known address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.
>
> a. In case personal service is not practicable, the SDT shall be served by substituted service or by mail.
>
> b. Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:
>
> i. The SDT may be left at the party's registered address, with his clerk or with a person having charge thereof.
>
> ii. If the known address is a place where business activities of the party are conducted, the SDT may be left with his clerk or with a person having charge thereof.
>
> iii. If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.
>
> iv. If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The SDT shall then be given to said barangay

[7] *Rollo*, Petition for Review, p. 30.

official. Such facts shall be contained in the bottom portion of the SDT, as well as the names, official position and signatures of the witnesses.

v. Should the party be found at his registered or known address or any other place but refuse to receive the SDT, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The SDT shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the SDT, as well as the names, official position and signatures of the witnesses.

vi. "Disinterested witnesses" refers to persons of legal age other than employees of the Bureau of Internal Revenue.

c. Service by mail is done by sending a copy of the SDT by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the SDT may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.

Hence, as discussed in the abovementioned jurisprudence, such is a violation of petitioner's right to due process.

Further, another requisite in *Manotoc case* is that the person receiving the communication is "a competent person in charge." In the instant case, the definition or requisite for said person does not fit the profile of Ms. Angeles. Neither is she the one managing the SITC's office or its business nor a person with sufficient knowledge to understand the obligation of the petitioner in said notices.

As mentioned in the MTC decision, Ms. Angeles testified that the reason she received said notices and the subject subpoena was because of the coercive and threatening actuations of Mr. Delos Santos which, apparently in the MTC decision, was not challenged or opposed by the prosecution.

Ms. Angeles was also asked to affix the word "secretary" despite informing Mr. Delos Santos that she was the secretary of petitioner's mother, and not the company of petitioner. This overt testimony was not opposed by the prosecution as shown in the MTC decision.

Thus, such facts do not merely cast doubt on the validity of the service of the subpoena but are conclusive of the violation of petitioner's right to due process.

Lastly, the silent acquiescence of petitioner to the acts of Ms. Angeles is not equivalent to an implied ratification, in the face of the direct avowal by petitioner of Ms. Angeles' lack of authority, coupled by questionable circumstances surrounding the serving of said notices and the *subpoena duces tecum*.

WHEREFORE, I shall vote to **GRANT** petitioner's *Memorandum cum Motion for Reconsideration* and **VACATE** the assailed *Decision* of the Court *En Banc* dated November 22, 2019 thereby **REVERSING** and **SETTING ASIDE** the appealed Decision dated July 24, 2017 and Order dated February 1, 2018 promulgated by the RTC-Branch 21, City of Manila in Criminal Case No. 16-331587, as well as the Decision dated September 6, 2016 and Order dated November 14, 2016 of the MTC-Branch 8, City of Manila in Criminal Case No. 477439-CR.

CATHERINE T. MANAHAN
Associate Justice