REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA Crim. Case No. O-196** **I.S. No. 06B-03333**
	For: Violation of Sec. 255 in rel. to Sec. 253(d) and 256, Tax Code of 1997 as amended by RA 8424
- versus -	**Members:**
	UY, *Chairperson,* and **FABON-VICTORINO,** *JJ.*
EDMUNDO T. ONGSIAKO, JR., **H. Tambunting Pawnshop, Inc.,** **822 M. Dela Fuente St.,** **Sampaloc, Manila,** Accused.	**Promulgated:** FEB 26 2014 ; 10:10 AM

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DECISION

UY, J.:

Accused Edmundo T. Ongsiako, Jr. is charged before this Court with "Violation of Section 255 in relation to Sections 253(d) and 256 of the National Internal Revenue Code (NIRC) of 1997, as amended by R.A. No. 8424," under the Information[1] dated July 6, 2009, the accusatory portion of which reads:

> "That on or about **February 24, 2003**, in the City of Manila, Philippines, the said accused, being then the President of H. Tambunting Pawnshop, Inc. located at No. 822 M. Dela Fuente St., Sampaloc, this City, having filed their Internal Revenue Tax for the year 1999 and after an examination and audit of the same, it has been found that

[1] Information filed on February 14, 2011; Docket, pp. 1 to 2.

there is due and collectible from said H. Tambunting Pawnshop, Inc., the following amounts, to wit:

AMOUNT	KIND OF TAX
P2,786,862.57	Deficiency VAT
2,610,478.21	Deficiency DST

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 P5,397,340.88, Philippine Currency.

Contrary to law." *(Emphasis in the original.)*

In the Resolution[2] dated February 18, 2011, this Court ordered the submission of the written approval of the Commissioner of the Bureau of Internal Revenue (BIR) to file the instant case pursuant to Section 220 of the NIRC of 1997, as amended, as well as the counter-affidavit of the accused during the preliminary investigation. Pursuant thereto, the prosecution filed its "Entry of Appearance and Compliance"[3] on March 1, 2011, and submitted the requisite written approval from the Commissioner of the BIR, together with the minutes of the preliminary investigation and the Resolution of the Investigating Prosecutor, showing that the accused failed to submit his counter-affidavit to controvert the charges against him.

After careful review of the Information and the supporting documents submitted by the State Prosecutor, this Court found the existence of probable cause and directed the issuance of a Warrant of Arrest against the accused.[4]

In view of the voluntary appearance of the accused, who posted bail for his provisional liberty by way of cash bail bond in the amount of ₱ 40,000.00, the Warrant of Arrest against the accused was lifted and recalled in the Resolution dated May 11, 2011 and the arraignment of accused was set on May 24, 2011. [5]

Prior thereto however, accused filed a "Motion for Leave of

[2] Docket, pp. 24 to 26.
[3] Docket, pp. 27 to 32.
[4] Resolution dated March 18, 2011, Docket, pp. 34 to 35; the Warrant of Arrest was issued on March 21, 2011, Docket, p. 36.
[5] Docket, pp. 44 to 45.

Court to File Motion for Reinvestigation (with Motion for Reinvestigation herein attached)",'[6] as well as a "Motion to Cancel Arraignment."[7] This Court resolved to grant the "Motion for Leave of Court to File Motion for Reinvestigation" and the "Motion to Cancel Arraignment" in the Resolution dated May 30, 2011.[8]

As directed by the Court, the prosecution filed its "Comment/Opposition (To Accused Motion Reinvestigation)"[9] on June 8, 2011. Accused filed his "Motion to Admit Reply (with Reply attached),"[10] and "Reply to the Comment/Opposition (to Accused's Motion for Reinvestigation)."[11] For lack of merit, this Court denied accused's "Motion for Reinvestigation" in the Resolution dated July 14, 2011.[12]

Upon arraignment on August 24, 2011, accused, assisted by counsel *de parte*, Atty. Alejandro M. Tupaz, III, entered a plea of "Not Guilty" to the offense charged.[13] Thereafter, Preliminary Conference was held on September 9, 2011.[14]

During Pre-Trial held on September 28, 2011, the parties stipulated on the following, to wit:

> "A. Facts:
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> 1. The identity of the accused as the same person charged in the Information;
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> 2. The jurisdiction of the Honorable Court over the case;
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> 3. Accused Edmundo T. Ongsiako, Jr. is the President of H. Tambunting Pawnshop, Inc.;
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> 4. H. Tambunting Pawnshop, Inc. filed its Income Tax Return for taxable year 1999 on April 12, 2000, at Metrobank UST-España Branch;
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> 5. On September 22, 2000, the Commissioner of

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[6] The Motion was filed on May 11, 2011, Docket, pp. 64 to 84.
[7] The Motion was filed on May 17, 2011, Docket, pp. 90 to 94.
[8] Resolution dated May 30, 2011, Docket, pp. 97 to 98.
[9] Docket, pp. 99 to 101.
[10] Docket, pp. 111 to 114.
[11] Docket, pp. 115 to 123.
[12] Docket, pp. 125 to 132.
[13] Certificate of Arraignment, p. 143; Resolution dated August 24, 2011, Docket, pp. 147 to 148.
[14] Minutes of the Preliminary Conference, September 9, 2011, Docket, pp. 149-154.

Internal Revenue, through the Regional Director, Revenue Region No. 6, Manila, issued a Letter of Authority (LOA 1999 00019227) to Revenue Officer Cristeta Banihit and Group Supervisor Herminia R. Castillo to examine the books of accounts and other accounting records of H. Tambunting Pawnshop, Inc. for taxable year 1999 and the same was duly received by H. Tambunting Pawnshop, Inc.;

6. On October 21, 2002, the Bureau of Internal Revenue issued to H. Tambunting Pawnshop, Inc. a Pre-Assessment Notice on the deficiency VAT and DST tax liability of the corporation for taxable year 1999 in the amount of P5,397,340.78;

7. On November 22, 2002, H. Tambunting Pawnshop, Inc., through counsel, sent a letter dated November 18, 2002, addressed to the Bureau of Internal Revenue, Revenue Region No. 6, Assessment Division; and

8. The existence and promulgation of the Supreme Court's decision in (a) First Planters Pawnshop, Inc. v. Commissioner of Internal Revenue (G.R. No. 174134, July 30, 2008), (b) Michel *(sic)* Lhuiller Pawnshop, Inc. v. Commissioner of Internal Revenue (G.R. No. 166786, September 11, 2006), (c) Tambunting Pawnshop, Inc. v. Commissioner of Internal Revenue (G.R. No. 179085, January 21, 2010)."[15]

To establish the accused's culpability, the following prosecution witnesses testified during trial, to wit: Revenue Officer Cristeta S.P. Banihit[16] and Revenue Officer Eleuteria B. Sagun. [17]

First prosecution witness, Cristeta S.P. Banihit, previously assigned as Revenue Officer of Revenue District Office (RDO) No. 32, Revenue Region No. 6, BIR-Manila. testified on direct examination by way of Judicial Affidavit, [18] as follows:

She said that she was assigned to investigate the

[15] Pre-Trial Order dated September 28, 2011, Docket, pp. 241 to 242.
[16] Judicial Affidavit dated October 10, 2011, Docket, pp. 259 to 265; Transcript of Stenographic Notes (TSN) dated October 12, 2011.
[17] Judicial Affidavit dated November 4, 2011, Docket, pp. 272 to 274; TSN dated November 9, 2011.
[18] Exhibit "OO," Docket, pp. 259 to 265.

books of accounts and other accounting records of H. Tambunting Pawnshop, Inc. for taxable year 1999, by virtue of a Letter of Authority[19] validly issued by Regional Director Teodorica R. Arcega of Revenue Region No. 6, BIR-Manila.

According to her, she personally served the original copy of the Letter of Authority together with the First Request for Presentation of Records/Checklist of Requirements[20] to H. Tambunting Pawnshop, Inc., through the corporate taxpayer's authorized representative, Alex Barbaso, on October 3, 2000, but H. Tambunting Pawnshop, Inc. failed to present and submit the books of accounts and documents listed in the First Request for Presentation of Records/Checklist of Requirements despite receipt thereof.

Thus, this prompted her to prepare and personally serve to H. Tambunting Pawnshop, Inc. the Second Request for Presentation of Records[21] dated October 16, 2000, reiterating the request embodied in the First Request. And because H. Tambunting Pawnshop Inc. still failed to present and submit the books of accounts and documents listed in the request, she prepared and sent to H. Tambunting Pawnshop Inc., by registered mail, the Final Notice/Final Request for Presentation of Records.[22] After the service of the Final Notice/Final Request for Presentation of Records, she examined the documents submitted by H. Tambunting Pawnshop, Inc. for taxable year 1999.

On May 8, 2002, she informed H. Tambunting Pawnshop, Inc. of the preliminary findings of her audit, by serving a Notice of Informal Conference[23] dated April 25, 2002.

Considering that H. Tambunting Pawnshop, Inc. failed to respond to the Notice of Informal Conference, she prepared a Memorandum Report[24] dated July 26, 2002 on the findings of the original investigation on the internal revenue tax liabilities of H. Tambunting Pawnshop, Inc. for taxable year 1999, together with the audit reports on deficiency value-added tax (VAT) and documentary stamp

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[19] Exhibit "C," Docket, p. 168.
[20] Exhibit "D," Docket, p. 169.
[21] Exhibit "E," Docket, p. 170.
[22] Exhibits "F" to "F-1," Docket, pp. 171 to 172.
[23] Exhibit "G," Docket, p. 173.
[24] Exhibit "J," Docket, pp. 176 to 177.

tax (DST).[25] Thereafter, she forwarded the tax docket to the Assessment Division for review, as supported by the Indorsement Letter[26] of Revenue District Officer Benito B. Wong of RDO No. 32 to the Regional Director, through the Chief Assessment Division of Revenue Region No. 6, BIR-Manila.

Second witness for the prosecution, Eleuteria B. Sagun, Revenue Officer-Reviewer of the BIR, presently assigned at the Assessment Division of Revenue Region No. 6, BIR-Manila, testified on direct examination, also by way of Judicial Affidavit,[27] as follows:

> Sometime in 2002, the 1999 internal revenue tax docket of H. Tambunting Pawnshop, Inc. was assigned to her for review. After a review of the tax docket of H. Tambunting Pawnshop, Inc., she prepared the Pre-Assessment Notice[28] dated October 21, 2002, with details of the discrepancies, which was duly signed by the Regional Director, and sent to H. Tambunting Pawnshop, Inc., by mail.
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> On November 22, 2002, their office received a protest letter[29] dated November 18, 2002 from H. Tambunting Pawnshop, Inc., through counsel, requesting the cancellation of the proposed assessments for deficiency VAT, DST and compromise penalty for lack of legal basis.
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> On January 24, 2003, the Assessment Division of BIR-Manila issued to H. Tambunting Pawnshop, Inc. Assessment Notice No. 32-99 with accompanying Demand Letters for deficiency VAT, including increments, and compromise penalty in the amounts of P2,786,862.57, P25,000.00 and P12,000.00, respectively, and Assessment Notice No. 32-99 with accompanying Demand Letters for deficiency DST, including increments, and compromise penalty in the amounts of P2,610,478.21 and P25,000.00, respectively.[30] The said Assessment Notices and Demand Letters, duly signed by the Regional Director of BIR-Manila, were sent to H. Tambunting Pawnshop, Inc. by the Billing Section of the Assessment Division, through the Administrative Division, demanding the payment of the said deficiency taxes not later than February 24, 2003.

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[25] Exhibits "H" and "I," Docket, pp. 174 to 175.
[26] Exhibit "K," Docket, p. 178.
[27] Exhibit "PP," Docket, pp. 272 to 274.
[28] Exhibits "L" to "L-1," Docket, pp. 179 to 180.
[29] Exhibit "M," Docket, pp. 181 to 186.
[30] Exhibits "O" to "U," Docket, pp. 188 to 194.

In the letter[31] dated February 4, 2003, addressed to H. Tambunting Pawnshop, Inc., the BIR, through the Regional Director, informed H. Tambunting Pawnshop, Inc. that its protest letter dated November 18, 2002 was forwarded to the Revenue District Officer of RDO No. 32.

In the 1st Indorsement[32] dated February 4, 2003, the 1999 tax docket of H. Tambunting Pawnshop, Inc. was forwarded to the Revenue District Officer of RDO No. 32. Based on records of the BIR, the Memorandum[33] of Revenue Officer Editha R. Sabado and 1st Indorsement[34] dated April 14, 2003 of RDO No. 32, BIR-Manila, the 1999 tax case of H. Tambunting Pawnshop, Inc. was returned to the Assessment Division by the Revenue District Officer of RDO No. 32. The reason cited by Revenue Officer Sabado was that the issues raised by the counsel of H. Tambunting Pawnshop, Inc. in its protest only involved the legality of the taxes assessed, and no additional requirements were submitted to support their request for reinvestigation. Thus, considering the opinion of the Chief of the Legal Division, Revenue Officer Sabado recommended that the findings/assessment of Revenue Officer Cristeta Banihit be given due course.

In the 2nd Indorsement[35] dated May 19, 2003, the 1999 tax docket of H. Tambunting Pawnshop, Inc. was forwarded to the Chief of the Collection Division of BIR-Manila to effect the collection of its deficiency tax.

As regards the presentation of other prosecution witnesses, Special Prosecutor Christopher Eugenio manifested during the hearing held on December 7, 2011[36], that he will no longer present the prosecution's next witness Editha Sabado, considering that her testimony will pertain only to the conduct of her investigation, that the protest of accused boils down only to a legal issue and no documents were allegedly submitted. He also manifested that he was informed that his other supposed witness, Vangie Moncada, has resigned from the service and is presently residing in the United States. In substitution, he was supposed to present Elizabeth Ginete, a revenue officer who issued the Warrant of Distraint and Levy (WDL). However, upon his motion, defense counsel agreed to dispense with

31 Exhibit "V," Docket, p. 195.
32 Exhibit "W," Docket, p. 196.
33 Exhibit "BB," Docket, p. 201.
34 Exhibit "CC," Docket, p. 202.
35 Exhibit "DD," Docket, p. 203.
36 Minutes of hearing held on December 7, 2011, Docket, pp. 278 to 279.

the oral testimony of said witness, BIR Revenue Officer Elizabeth F. Ginete and instead stipulated as follows:

> "1. That Ms Ginete will testify as to the fact that the records of H. Tambunting Pawnshop, Inc. for 1999 was forwarded to the Collection Section of RDO No. 32 on June 6, 2003 to enforce collection. The Third Indorsement was pre-marked as Exh. EE [Admitted];
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> 2. That prior to the issuance of the Warrant of Distraint and Levy (WDL), demand letters were issued. The first notice was issued on June 20, 2003, pre-marked as Exh. FF and the signature of Ms. Edna F. Tesorero, Chief, Collection Section, pre-marked as Exh. FF-1 [Admitted];
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> 3. A second notice dated July 3, 2003 was issued, pre-marked as Exh. GG and the signature of Ms. Edna F. Tesorero, Chief, Collection Section, pre-marked as Exh. GG-1 [Admitted];
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> 4. A final notice before seizure was issued to H. Tambunting Pawnshop, Inc., dated July 10, 2003, pre-marked as Exh. HH and the signature of Ms. Edna F. Tesorero, Chief, Collection Section, pre-marked as Exh. HH-1 [Admitted];
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> 5. A Warrant of Distraint and Levy was issued and served to H. Tambunting Pawnshop, Inc. on October 19, 2005, pre-marked as Exh. II and the signature of Benito B. Wong, Revenue District Officer, was pre-marked as Exh. II-1, and the signature of Elizabeth F. Ginete, Revenue Officer, marked as Exh. II-2 [Admitted]; and
>
> 6. The Collection Division forwarded the docket to the Legal Division, pre-marked as Exh. JJ [Admitted]."[37]

Upon completion of the presentation of prosecution's evidence, the prosecution filed its "Plaintiff's Formal Offer of Evidence"[38] dated February 1, 2012, with "Comment (To the Formal Offer of Evidence)"[39] dated March 8, 2012 filed by accused. In the Resolution[40] dated March 20, 2012, this Court admitted the prosecution's documentary evidence marked as Exhibits "A" to "PP-

[37] Docket, pp. 278 to 279; TSN dated December 7, 2011, pp. 8 to 19.
[38] Docket, pp. 287 to 294.
[39] Docket, pp. 299 to 305.
[40] Docket, pp. 307 to 308.

1," with the exception of Exhibit "B," which was denied admission for being a mere photocopy of the purported document. With the admission of its documentary exhibits, the prosecution rested its case.

In the Resolution dated May 17, 2012,[41] the Court granted the Motion for Leave of Court to File Demurrer to Evidence[42] filed by accused on April 2, 2012, wherein a "Comment/Opposition (To Accused Motion for Leave of Court to File Demurrer to Evidence)[43] was filed by the plaintiff on April 24, 2012.

On June 8, 2012, accused filed his "Demurrer to Evidence,"[44] praying that this Court find the evidence of the prosecution to be insufficient to prove that accused is guilty of the crime charged beyond reasonable doubt, and to consequently order the acquittal of the accused. A "Comment/Opposition (To Accused Demurrer to Evidence)"[45] was filed by the prosecution on July 3, 2012 praying for the denial of accused's Demurrer to Evidence.

In the Resolution dated July 31, 2012, the Court partly granted the Demurrer to Evidence filed by accused. The dispositive portion thereof reads thus:

> "**WHEREFORE,** the criminal case against the accused for violation of Section 255 in relation to Sections 253 (d) and 256 of the Tax Code, as amended, <u>pertaining only to the alleged non-payment of Value-Added Tax (VAT) for the year 1999</u> is hereby **DISMISSED.**
>
> On the other hand, the case for violation of Section 255 in relation to Sections 253 (d) and 256 of the Tax Code pertaining to alleged non-payment of deficiency Documentary Stamp Tax (DST) for the year 1999 subsists. As previously scheduled, set this case for the initial presentation of evidence for the defense on August 08, 2012, at 9:00 a.m.
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> SO ORDERED."[46]

During the initial presentation of defense evidence on October

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[41] Docket, pp. 325 to 328.
[42] Docket, pp. 309 to 315.
[43] Docket, pp. 321 to 323.
[44] Docket, pp. 336 to 355.
[45] Docket, pp. 363 to 367.
[46] Docket, pp. 369 to 387.

24, 2012[47], accused Edmundo T. Ongsiako, Jr. testified as follows:

> Accused Ongsiako testified that he was the President of H. Tambunting Pawnshop, Inc. at the time the alleged assessment for Deficiency Documentary Stamp Tax (DST) for the taxable year 1999. According to him, during the time of the assessment, the prevailing ruling was BIR Ruling No. 325-88 dated July 13, 1988 (provisionally marked as Exhibit "1" for being a mere photocopy), and it was clearly stated therein that pawn tickets are not subject to documentary stamp tax for taxable year 1999. His lawyers (Siguion Reyna Montecillo and Ongsiako Law Firm) explained to him that pawnshops and/or pawnshop tickets are not subject to DST and that the BIR Ruling stated that "it is neither a security nor a printed evidence of indebtedness," under Section 3 of Presidential Decree (PD) No. 114 of the Pawnshop Regulation Act. Allegedly, he relied in good faith on such prevailing ruling.
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> He further testified that this ruling was reversed in the case of their sister company on April 7, 2009, by the Supreme Court in the case of *H. Tambunting Pawnshop, Inc. vs. Commissioner of Internal Revenue,* GR No. 171138 (Exhibit "2") and he discovered that pawnshops are now liable for DST. He clarified that from the time of the effectivity of the BIR Ruling in 1988 until the Supreme Court's decision in 2009, he believed that the company was not liable for DST. He also said that there was a similar decision in *H. Tambunting Pawnshop Inc. v. Commissioner of Internal Revenue* (GR 179085 dated January 21, 2010, Exhibit "3") where the Supreme Court ruled that "it is settled that good faith and honest believe (should be belief) that one is not subject to tax on the basis of previous interpretation of government agencies. Thus, to implement the tax laws are sufficient justification to delete the imposition of surcharges and interest." [48]
>
> On cross-examination he testified that it was his honest belief based on the BIR ruling that they are not subject to Documentary Stamp Taxes and that's what they followed. Thus, although an assessment of the company for DST, a Letter of Authority for taxable year 1999 was issued, he deliberately refused to pay the said assessment because

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[47] Minutes of hearing held on October 24, 2012, Docket, pp. 408 to 409.
[48] TSN dated October 24, 2012, pp. 9 to 26.

of his reliance on that BIR ruling.[49]

During the continuation of the presentation of defense evidence on November 14, 2012[50], the parties, upon motion of defense counsel, stipulated that Exhibit "1" is a faithful reproduction of the certified true copy of BIR Ruling No. 325-88 dated July 13, 1988 secured by accused from the BIR Records Division. With the foregoing stipulation, defense counsel moved for a period of ten (10) to file Formal Offer of Defense Evidence.

On November 23, 2012, accused filed his "Formal Offer of Evidence,"[51] to which the prosecution filed its "Comment/Opposition (To Petitioner's Formal Offer of Evidence)."[52] In the Resolution[53] dated January 4, 2013, this Court admitted Exhibits "1," "2," and "3" as part of defense evidence.

In the Resolution dated on March 13, 2013[54] this case was considered submitted for decision taking into consideration the "Memorandum (for the Accused)"[55] filed on February 18, 2013 and the "Plaintiff's Memorandum"[56] filed on March 1, 2013.

Hence, this Decision.

THE ISSUES

In the Pre-trial Order dated September 28, 2011, the parties stipulated several issues for this Court's resolution. Considering however that this Court ruled in the Resolution dated July 31, 2012 that accused is not liable to pay the assessed deficiency VAT for taxable year 1999, the remaining pertinent issues are as follows:

> "B. Issues:
>
> 1. Whether or not accused is guilty as charged
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>   1.1 x x x x
>
>   1.2 Whether or not accused willfully and intentionally evaded payment of DST

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[49] Ibid, at pp. 26 to 32.
[50] Minutes of hearing held on November 14, 2012, Docket, pp. 445 to 446.
[51] Docket, pp. 455 to 459.
[52] Docket, pp. 494 to 495.
[53] Docket, p. 497.
[54] Resolution dated March 13, 2013, Docket, p. 533.
[55] Docket, pp. 501 to 514.
[56] Docket, pp. 516 to 531.

1.3 x x x x

1.3 Whether or not pawnshops were liable for DST during taxable year 1999."[57]

Otherwise stated, the main issue to be resolved in this case is whether or not the accused is guilty of violating the first paragraph of Section 255 in relation to Sections 253 (d) and 256 of the National Internal Revenue Code of 1997, as amended, for failure to pay DST for taxable year 1999.

Prosecution's Arguments

The prosecution contends that all the elements of the crime charged are present.

First, the accused was required to pay DST on pledges/mortgages of pawned jewelry pursuant to Section 195, in relation to Section 200 of the NIRC of 1997, as amended. In support thereof, the prosecution cites BIR Ruling Nos. 221-91 and UN-242-95, which stated that since the pawnshop ticket virtually evidences the pledge, it is subject to DST under Section 195 of the Tax Code. Likewise, it also refers to the case of *Michel J. Lhuillier Pawnshop, Inc. vs. Commissioner of Internal Revenue (G.R. No. 166786, May 3, 2006),* which ruled that BIR Ruling No. 325-88 is inconsistent with the provisions of Section 195 of the NIRC, and that pawnshop tickets are subject to DST.

Second, the accused failed to pay such tax at the time required by law. In this case, despite the Letter of Authority, requests, assessment notices, demand letters, Warrant of Distraint and/or Levy served upon him, accused still failed to pay the tax due. In fact, during cross-examination, accused admitted having received the assessment notices and the demand letters sent by the BIR, but intentionally refused to pay the said assessments, reasoning that the corporation was not subject to DST, based on BIR Ruling No. 325-88.

Finally, the failure of the accused to pay the tax due was willful. As the president, accused was charged with the overall management of the corporation and responsible for setting policies, guidelines, and direction of the corporation. He attempted to escape liability by invoking and relying heavily on BIR Ruling No. 325-88, when the same has already been revoked as early as October 30, 1991, by BIR Ruling No. 221-91.

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[57] Docket, p. 244.

Moreover, his reliance on *Michel J. Lhuillier Pawnshop, Inc. vs. CIR (CTA Case No. 6141, October 24, 2001)* is misplaced, considering that the ruling in said case was reversed by the Court of Appeals in *CIR vs. Michel J. Lhuillier Pawnshop, Inc. (CA-G.R. SP No. 67667, June 29, 2004)*. Thereafter, the said ruling of the Court of Appeals was affirmed by the Supreme Court in *Michel J. Lhuillier Pawnshop, Inc. vs. CIR (G.R. No. 166786, May 3, 2006)*, and made final and executory with the denial of its Motion for Reconsideration on September 11, 2006. Thus, Michel J. Lhuillier Pawnshop, Inc. was ordered to pay DST, with the modification in that the surcharges and the interest imposed were deleted. As for the case of *CIR vs. Hon. Andres Reyes, Jr., et. al., (CA G.R. SP No. 28824, December 23, 1993)*, the reliance of accused on the ruling in said case was likewise misplaced, as it particularly applies to Revenue Circular Nos. 15-91 and 43-91, and not to BIR Ruling Nos. 221-91 and UN-242-95.

Accused's Counter-arguments

The accused submits that in 1999, the taxable year for which the criminal action is based, the prevailing rule was BIR Ruling No. 325-88, which provides that pawn tickets issued by pawnshops are not subject to DST. Thus, the BIR did not have any legal basis to assess documentary stamp taxes on pawn tickets issued by pawnshops.

Moreover, the prosecution failed to establish the element of willful failure to pay the deficiency DST for taxable year 1999, for the following reasons: 1) the prosecution failed to defeat the presumption of good faith on the part of the accused; 2) the prosecution relied on dubious findings and failed to adduce proof controverting the evidence of good faith presented by the accused during trial; and 3) the Supreme Court, being cognizant of the BIR's changing policies concerning the implementation of DST laws, can only ascribe good faith upon taxpayers who rely upon previous rulings of the BIR that declared them to be free from tax liability.

The protest to the PAN filed by accused shows that he made a full disclosure of the circumstances to his attorney, who in turn, advised him that he was not liable for any deficiency DST for taxable year 1999, based on well-researched legal bases *[BIR Ruling No. 325-88, Michel J. Lhuillier Pawnshop, Inc. vs. CIR (CTA Case No. 6141, October 24, 2001), and CIR vs. Hon. Andres Reyes, Jr., et. al., (CA G.R. SP No. 28824, December 23, 1993)]*. He alleges that he would have paid the alleged deficiency DST had his attorney advised him to do so at that time.

Accused likewise maintains that the purported audit findings of Revenue Officer Cristeta S.P. Banihit are dubious and improbable. He contends that there seems to be a contradiction between the finding that the alleged deficiency DST was based on 70,575 pawn tickets used, and the repeated requests for presentation of records, showing that she had difficulty investigating the tax liabilities of the accused. There also appears to be no basis for the figure of 70,575 pawn tickets, when not a single one was presented during trial. Finally, if the amount was to be believed, it would result to a highly unrealistic estimate of 193 transactions per day.

Finally, accused contends that it is improper to hold the taxpayer liable for surcharges and penalties if the same resulted from constantly changing BIR rules. His good faith reliance on the BIR's changing positions with regard to DST laws negates any finding of willfulness to evade payment of the tax, which would have justified the surcharge and penalties.

THE COURT'S RULING

The corporate taxpayer in this criminal case is H. Tambunting Pawnshop, Inc., while accused Edmundo T. Ongsiako, Jr. is the President of said company during taxable year 1999.[58]

As a responsible officer of H. Tambunting Pawnshop, Inc., accused, Edmundo T. Ongsiako, is criminally charged in this case in his capacity as then President of said company, for his supposed wilful and unlawful failure, refusal or neglect to pay the taxes enumerated in the Information dated July 6, 2009, without formally protesting against or appealing the same, and despite due assessment, notice and demand to do so. Thus, accused is being charged with a violation of Section 255, in relation to Section 253 (d) and 256 of the NIRC of 1997. The said provisions read as follows:

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

[58] TSN dated October 24, 2012, pp. 10 to 11.

rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of an internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years."

"SEC. 253. *General Provisions.* –

xxx xxx xxx

(d) In the case of associations, partnerships or corporations, **the penalty shall be imposed on the** partner, **president**, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation."

"SEC. 256. *Penal Liabilities of Corporations.* – Any corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, **in addition to the penalties imposed herein upon the responsible corporate officers**, partners, or employees, shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000)." *(Emphasis supplied.)*

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

1. That a corporate taxpayer is **required under the NIRC of 1997 to pay any tax**, make a return keep any record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at

the time or times required by law or rules and regulations; and

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

3. That **accused, as the employee responsible for the violation, willfully failed to pay such tax,** make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations.

H. Tambunting Pawnshop, Inc. is required under the NIRC of 1997 to pay documentary stamp tax (DST).

Anent the first element, the prosecution is correct in alleging that the corporate taxpayer, H. Tambunting Pawnshop, Inc., is required to pay documentary stamp tax on pledges/mortgages of pawned jewelry as provided under Sections 173 and 195 of Title VII of the NIRC of 1997, to wit:

> "TITLE VII – DOCUMENTARY STAMP TAX
>
> SEC. 173. *Stamp Taxes Upon Documents, Loan Agreements, Instruments and Papers.*— Upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following Sections of this Title, by the person making, signing, issuing, accepting, or transferring the same whenever the document is made, signed, issued, accepted or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines, and at the same time such act is done or transaction had: xxx.
>
> xxx xxx xxx
>
> SEC. 195. *Stamp Tax on Mortgages, Pledges and Deeds of Trust.*— On every mortgage or pledge of lands, estate, or property, real or personal, heritable or movable, whatsoever, where the same shall be made as a security

for the payment of any definite and certain sum of money lent at the time or previously due and owing or forborne to be paid, being payable and on any conveyance of land, estate, or property whatsoever, in trust or to be sold, or otherwise converted into money which shall be and intended only as security, either by express stipulation or otherwise, there shall be collected a documentary stamp tax at the following rates:

(a) When the amount secured does not exceed Five thousand pesos (P5,000), Twenty pesos (P20.00).

(b) On each Five thousand pesos (P5,000), or fractional part thereof in excess of Five thousand pesos (P5,000), an additional tax of Ten pesos (P10.00).

On any mortgage, pledge, or deed of trust, where the same shall be made as a security for the payment of a fluctuating account or future advances without fixed limit, the documentary stamp tax on such mortgage, pledge or deed of trust shall be computed on the amount actually loaned or given at the time of the execution of the mortgage, pledge or deed of trust. However, if subsequent advances are made on such mortgage, pledge or deed of trust, additional documentary stamp tax shall be paid which shall be computed on the basis of the amount advanced or loaned at the rates specified above: *Provided, however*, That if the full amount of the loan or credit, granted under the mortgage, pledge or deed of trust is specified in such mortgage, pledge or deed of trust, the documentary stamp tax prescribed in this Section shall be paid and computed on the full amount of the loan or credit granted."

In *Michel J. Lhuillier Pawnshop, Inc. vs. Commissioner of Internal Revenue,*[59] the Supreme Court held that pawnshops or pawnshop tickets are subject to DST, to wit:

"x x x It is clear from the foregoing provisions that the subject of a DST is not limited to the document embodying the enumerated transactions. A DST is an excise tax on the exercise of a right or privilege to transfer obligations, rights or properties incident thereto. In *Philippine Home Assurance Corporation v. Court of Appeals*,[60] it was held that:

[59] G.R. No. 166786, May 3, 2006.
[60] 361 Phil. 368, 372-373 (1999).

> 'In general, documentary stamp taxes are levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments. Examples of such privileges, the exercise of which, as effected through the issuance of particular documents, are subject to the payment of documentary stamp taxes are **leases of lands, mortgages, pledges and trusts, and conveyances of real property**.

Pledge is among the privileges, the exercise of which is subject to DST. A pledge may be defined as an accessory, real and unilateral contract by virtue of which the debtor or a third person delivers to the creditor or to a third person movable property as security for the performance of the principal obligation, upon the fulfillment of which the thing pledged, with all its accessions and accessories, shall be returned to the debtor or to the third person. This is essentially the business of pawnshops which are defined under Section 3 of Presidential Decree No. 114, or the Pawnshop Regulation Act, as persons or entities engaged in lending money on personal property delivered as security for loans.

Section 12 of the Pawnshop Regulation Act and Section 21 of the Rules and Regulations For Pawnshops issued by the Central Bank to implement the Act, require every pawnshop or pawnbroker to issue, at the time of every such loan or pledge, a memorandum or ticket signed by the pawnbroker and containing the following details: (1) name and residence of the pawner; (2) date the loan is granted; (3) amount of principal loan; (4) interest rate in percent; (5) period of maturity; (6) description of pawn; (7) signature of pawnbroker or his authorized agent; (8) signature or thumb mark of pawner or his authorized agent; and (9) such other terms and conditions as may be agreed upon between the pawnbroker and the pawner. In addition, Central Bank Circular No. 445, prescribed a standard form of pawn tickets with entries for the required details on its face and the mandated terms and conditions of the pledge at the dorsal portion thereof.

Section 3 of the Pawnshop Regulation Act defines a pawn ticket as follows:

> 'Pawn ticket' is the pawnbrokers' receipt for a pawn. It is neither a security nor a printed evidence of indebtedness.'

True, the law does not consider said ticket as an evidence of security or indebtedness. However, for purposes of taxation, the same pawn ticket is proof of an exercise of a taxable privilege of concluding a contract of pledge. At any rate, it is not said ticket that creates the pawnshop's obligation to pay DST but the exercise of the privilege to enter into a contract of pledge. There is therefore no basis in petitioner's assertion that a DST is literally a tax on a document and that no tax may be imposed on a pawn ticket."

The Supreme Court further expounded on the above ruling in its Resolution in the same case,[61] to wit:

> "Section 195 of the National Internal Revenue Code (NIRC) imposes a DST on every pledge regardless of whether the same is a conventional pledge governed by the Civil Code or one that is governed by the provisions of P.D. No. 114. All pledges are subject to DST, unless there is a law exempting them in clear and categorical language. This explains why the Legislature did not see the need to explicitly impose a DST on pledges entered into by pawnshops. These pledges are already covered by Section 195 and to create a separate provision especially for them would be superfluous.
>
> Then too, it is the exercise of the privilege to enter into an accessory contract of pledge, as distinguished from a contract of loan, which gives rise to the obligation to pay DST. If the DST under Section 195 is levied on the loan or the exercise of the privilege to contract a loan, then there would be no use for Section 179 of the NIRC, to separately impose stamp tax on all debt instruments, like a simple loan agreement. It is for this reason why the definition of pawnshop ticket, as not an evidence of indebtedness, is inconsequential to and has no bearing on the taxability of contracts of pledge entered into by pawnshops. For purposes of Section 195, pawnshop tickets need not be an evidence of indebtedness nor a

[61] G.R. No. 166786, September 11, 2006.

debt instrument because it taxes the same as a pledge instrument. Neither should the definition of pawnshop ticket, as not a security, exempt it from the imposition of DST. It was correctly defined as such because the ticket itself is not the security but the pawn or the personal property pledged to the pawnbroker.

xxx xxx xxx

Moreover, it should be pointed out that the provisions of the NIRC on DST have recently been amended by R.A. No. 9243. Among the highlights thereof were the amendments to Section 199, which incorporated 12 more categories of documents in addition to the initial two categories exempted from DST. As stated in our May 3, 2006 Decision, pawnshop tickets is not one of them. *Expressio unious est exclusion alterius*. The omission of pawnshop tickets only means that it is not among the documents exempted from DST."

Furthermore, it must be stressed that the above-quoted ruling was reiterated in the subsequent cases of *First Planters Pawnshop, Inc. vs. Commissioner of Internal Revenue,*[62] and *Tambunting Pawnshop, Inc. vs. Commissioner of Internal Revenue.*[63]

Needless to state, the Supreme Court's interpretation of a statute (such as the aforequoted Section 195) constitutes part of the law as of the date it was originally passed since the said Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.[64] Since the NIRC of 1997 took effect on January 1, 1998,[65] the foregoing interpretation of the High Court constituted part of the law as of such date.

Thus, in view of the foregoing discussions, the first element of the crime charged, requiring herein corporate taxpayer, H. Tambunting Pawnshop, Inc., to pay DST is clearly satisfied.

H. Tambunting Pawnshop, Inc. failed to pay the required tax at the time or times required by law or rules and regulations.

[62] G.R. No. 174134, July 30, 2008.
[63] G.R. No. 179085, January 21, 2010.
[64] Refer to *Senarillos vs. Hermosisima, et al.*, G.R. No. L-10662, December 14, 1956.
[65] Section 8 of Republic Act No. 8424.

Section 200 of the NIRC of 1997 provides as follows:

"SEC. 200. *Payment of Documentary Stamp Tax.*—

(A) *In General.*— The provisions of Presidential Decree No. 1405 notwithstanding, any person liable to pay documentary stamp tax upon any document subject to tax under Title VII of this Code shall file a tax return and pay the tax in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner.

(B) *Time for Filing and Payment of the Tax.*— Except as provided by rules and regulations promulgated by the Secretary of Finance, upon recommendation of the Commissioner, **the tax return prescribed in this Section shall be filed within ten (10) days after the close of the month when the taxable document was made, signed, issued, accepted, or transferred, and the tax thereon shall be paid at the same time the aforesaid return is filed**.

xxx xxx xxx.

(D) *Exception.*— In lieu of the foregoing provisions of this Section, the tax may be paid either through purchase and actual affixture, or by imprinting the stamps through a documentary stamp metering machine, on the taxable document, in the manner as may be prescribed by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner." *(Emphasis supplied)*

In implementing the foregoing provisions, Section 4 of Revenue Regulations No. 9-94[66] reads:

"SECTION 4. *Time and Manner of Payment of Documentary Stamp Tax.* — The documentary stamp tax shall be paid by the purchase and affixture of the documentary stamp(s) to the document or instrument taxed or to such other papers as may be indicated by law or regulations as the proper recipients of the stamp and by the subsequent cancellation of the documentary stamp which may be done by writing, stamping or perforating the

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[66] SUBJECT: Republic Act No. 7660, An Act Rationalizing Further the Structure and Administration of the Documentary Stamp Tax, Amending for the Purpose Certain Provisions of the National Internal Revenue Code, as Amended.

date of the cancellation across the face of each stamp in such a manner that part of the writing, impression, or perforation shall be on the stamp itself and partly on the document to which the stamp is attached.

If, however, the amount of the documentary stamp tax due on the taxable document is ten pesos (P10.00) or more, the documentary stamp tax shall be paid by the taxpayer at the time the act is done or transaction had, and instead of affixing actual documentary stamp on the face of the taxable document, the information shown on the evidence of payment of the documentary stamp tax due on the document, that is, the official receipt number of the evidence of payment, date of payment, amount paid, and the name of the payor, shall be written on the face of the document or on any suitable space in the document."

In addition, Section 6(A) of the NIRC of 1997 provides:

"SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –

(A) *Examination of Returns and Determination of Tax Due.* – xxx.

xxx xxx xxx

The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.

xxx xxx xxx." *(Emphasis supplied.)*

Thus, based on the foregoing provisions, there are two (2) instances when the DST must be paid: ***first***, at the time the act is done or transaction had, or ten (10) days after the close of the month when the taxable document was made, signed, issued, accepted, or transferred; and ***second***, upon notice of a DST or deficiency DST assessment, and demand from the Commissioner or his duly authorized representative for the payment thereof.

In this case, it is clear that H. Tambunting Pawnshop, Inc. failed to pay the DST in both instances. H. Tambunting Pawnshop, Inc. was precisely assessed because of its failure to pay at the first instance the DST. Thus:

> "Taxpayer was assessed a total documentary stamp tax of P2,181,301.50 inclusive of increments for failure to pay documentary stamp tax on pledges/mortgages of pawned jewelry pursuant to Section 195 of the NIRC, computed as follows:
>
> | | |
> |---|---|
> | Basic (70.575 pawned tickets used x P20.00) | 1,411,500.00 |
> | Add: interest from 1.10.00- 8.31.02 (31.66 mos.) | 744,801.50 |
> | compromise penalty | 25,000.00 |
> | Total DST Due | 2,181,301.50 |
> | | vvvvvvvvvvvv"[67] |

H. Tambunting Pawnshop, Inc. again failed to pay the required DST, at the second instance, when accused, as President of the corporation, deliberately refused to pay the DST assessment against H. Tambunting Pawnshop, Inc. This is, in fact, admitted by accused himself during the hearing held on October 24, 2012, to wit:

"ATTY. EUGENIO

Q By the way, to the other point. Mr. Witness, as a President of H. Tambunting, Inc. for taxable year 2009 *(sic)*, am I correct that you are responsible in the management of the company and in setting policies and guidelines in the company. Am I correct?

MR. ONGSIAKO

A Yes.

ATTY. EUGENIO

Q Am I also correct that you were aware at that time of the assessment of the company particularly on the DST assessment of the company for taxable year 1999 Mr. Witness?

MR. ONGSIAKO

A Yes, we were given a Letter of Authority, they went to the process, yes.

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[67] Exhibit "J", Docket, p. 177.

ATTY. EUGENIO

Q **And am I also correct that despite knowledge of that assessment, you deliberately refuse to pay the said assessment because of your position of the BIR Ruling issued by the BIR, am I correct?**

MR. ONGSIAKO

A **Yes because I relied on that ruling of the BIR.**"[68] *(Emphases supplied)*

Correspondingly, it cannot be doubted that H. Tambunting Pawnshop, Inc. failed to pay the DST at the time or times required by law or rules and regulations.

Failure of accused to pay DST was willful.

According to Black's Law Dictionary,[69] the term "willful" is defined as:

> "An act or omission is "willfully" done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose to either to disobey or to disregard the law. xxx xxx
>
> A willful act may be described as one done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently. A willful act differs essentially from a negligent act. The one is positive and the other negative.
>
> xxx xxx xxx
>
> Act is 'willful' within meaning of section (*sic*) 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**

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[68] TSN dated October 24, 2012, pp. 30 to 31.
[69] 6th Edition, St. Paul Minn. West Publishing Co., 1990, p. 1599.

> **definition.** Harrington v. U.S., C.A.R.I., 504 F.2d 1306, 1315." *(Emphasis supplied)*

Moreover, "willfulness" in tax crimes has been simply defined as:

> "Willful in the tax crime statutes means a voluntary, intentional violation of **a known legal duty** and bad faith or bad purpose need not be shown."[70] *(Emphasis supplied)*

In this case, the deliberate failure of accused, Edmundo T. Ongsiako, Jr., as then President of corporate taxpayer, H. Tambunting Pawnshop, Inc., during taxable year 1999, to pay the DST assessed by the BIR is in fact, a voluntary and intentional violation of a **known legal duty** arising from the said assessment.

An obligation is a juridical necessity to give, to do or not to do,[71] and one of the means by which obligations arise, is by law.[72] Therefore, it must be pointed out that the earlier quoted Section 6(A) of the NIRC of 1997, gives rise to an obligation, or a **legal duty** to pay the assessed tax. To reiterate:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
>
> (A) *Examination of Returns and Determination of Tax Due.* – xxx
>
> **The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.**" *(Emphasis supplied.)*

Thus, from the moment that the Commissioner or her duly authorized representative issues a notice and demands the payment of tax, or any deficiency tax, the legal obligation to pay the assessed tax arises.

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[70] [Mertens (Law of Federal Income Taxation) Chapter 47.04, page 28, Volume 13, see U.S. v. Green, 757 F2d 116, 85-1 USTC 9178 (CA7 1985), in which the Court, citing U.S. v. Moore, 627 F2d 830 (CA 1980) and U.S. v. Verkuilen, 690 F2d 648, 82-2 USTC 9618 (CA7 1982), upheld the conviction of a tax protester for willful failure to file returns], also cited in *People of the Philippines vs. Estelita Delos Angeles*, CTA Crim. Case No. O-027, November 25, 2009.

[71] Article 1156, New Civil Code.

[72] Article 1157, New Civil Code.

In this case, the prosecution was able to successfully establish that accused was furnished with copies of the following by the BIR: Assessment Notice No. 32-99 with accompanying Demand Letters for deficiency DST, including increments, and compromise penalty in the amounts of ₱ 2,610,478.21 and ₱ 25,000.00, respectively,[73] Assessment Notices,[74] Demand Letter,[75] and the Warrant of Distraint and/or Levy.[76] Evidently, the BIR made an assessment, furnished sufficient notice to the H. Tambunting Pawnshop, Inc., and demanded for the payment of deficiency DST. Thus, the legal obligation of the said corporate taxpayer to pay the said tax arose.

In his defense, accused admitted that he was aware of the said notices/assessments/demand letters/Warrant of Distraint and/or Levy, but still deliberately refused to pay the tax on his belief that he was not liable for DST.[77] He explained that, as stated in the letter dated November 18, 2002[78] filed by his counsel, the law firm of Siguion Reyna Montecillo and Ongsiako, H. Tambunting Pawnshop, Inc. was not liable for DST for taxable year 1999, on the basis of BIR Ruling No. 325-88. The said ruling states:

> "In the case of the pawnshop business, the pawnee (pawnshop or pawnbroker) issues a 'pawn ticket' to the pawner (borrower from a pawnshop). The pawn is the personal property delivered by the pawner to the pawnee as security for a loan. The 'pawn ticket' is the pawnbroker's receipt for a pawn. *It is neither a security nor a printed evidence of indebtedness.* (Sec. 3, P.D. No. 114 or the Pawnshop Regulation Act). Accordingly, considering that, the document taxable under Section 195 of the Tax Code must show the existence of debt and inasmuch as, under the law, a pawn ticket is not a printed evidence of indebtedness, such pawn ticket cannot be considered as a document subject to the documentary stamp tax imposed by Section 195 of the Tax Code.
>
> Accordingly, BIR Ruling Nos. 305-87 and 018-88 subjecting pawn tickets to the documentary stamp tax are hereby revoked. x x x." *(Emphasis in the original.)*

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[73] Exhibits "S" to "U," Docket, pp. 192 to 194.
[74] Exhibits "FF" to "GG," Docket, pp. 205 to 206.
[75] Exhibit "HH," Docket, p. 207.
[76] Exhibit "II," Docket, p. 208.
[77] Stipulation of Facts in the Pre-Trial Order dated September 28, 2011, Docket, pp. 241 to 242; Stipulations in lieu of the testimony of Revenue Officer Elizabeth F. Ginete, Docket, pp. 278 to 279, TSN dated December 7, 2011, pp. 8 to 19; TSN dated October 24, 2012, pp. 30 to 31.
[78] Exhibit "M," Docket, pp. 181 to 186.

Accused's reliance on BIR Ruling No. 325-88 is erroneous.

BIR Ruling No. 325-88 dated July 13, 1988 cannot prevail over Section 195 of the NIRC of 1997.

In case of a discrepancy between the basic law and an interpretative or administrative ruling, the basic law prevails.[79] Moreover, even granting that such is not the rule, as early as the year 1991, the BIR had already revoked said BIR Ruling No. 325-88, through then Commissioner Jose U. Ong, when it issued BIR Ruling No. 221-91 dated October 30, 1991, which ruled as follows:

> "xxx. Since the pawnshop ticket virtually evidences the pledge, it is the logical document subject to the documentary stamp tax under Section 195 of the Tax Code."

In fact, no less than the Supreme Court, in *Antam Pawnshop Corporation vs. Commissioner of Internal Revenue*,[80] acknowledged the revocation of said BIR Ruling No. 325-88, to wit:

> "Significantly, the Court notes that BIR Ruling No. 325-8881 which held that the a pawn ticket is not a printed evidence of indebtedness and thus not subject to DST imposed by Section 195 of the NIRC was revoked by BIR Ruling No 221-91."

Hence, the legal premise behind the defense of accused is bereft of merit.

Moreover, the accused cannot claim good faith in his reliance on his counsel's advice and the decisions in the cases of *Michel J. Lhuillier Pawnshop, Inc. vs. Commissioner of Internal Revenue,* in CTA Case No. 6141 (October 24, 2011), decided by this Court, and of *Commissioner of Internal Revenue vs. Hon. Andres Reyes, Jr.,* in CA G.R. SP No. 28824 (December 23, 1993), decided by the Court of Appeals, which respectively held that pawnshop tickets are not subject to DST, considering that decisions of this Court and that of the Court of Appeals, are **not** binding precedents.

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[79] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue, et al.*, G.R. Nos. 158885 & 170680, October 2, 2009.
[80] *Antam Pawnshop Corporation vs. Commissioner of Internal Revenue*, G.R. No. 167962, September 19, 2008

Anent adherence to this Court's decisions, in *Commissioner of Internal Revenue vs. San Roque Power Corporation* [82], the Supreme Court said:

> "Suffice it to state that CTA decisions do not constitute as precedents, and do not bind this Court or the public. That is why CTA decisions are appealable to this Court, which may affirm, reverse or modify CTA decisions as the facts and the law may warrant. Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system. " *(Underscoring supplied)*

As regards decisions of the Court of Appeals (CA), the Supreme Court ruled, in *Systra Phils., Inc. vs. Commissioner of Internal Revenue* that *"a decision of the CA in an action* in personam *binds **only the parties in that case. A third party in an*** **action in personam** ***cannot claim any right arising from a decision therein*** *(Emphasis supplied)."*[83]

Furthermore, considering the failure of accused to file a protest against the subject DST assessment, within the time allowed by law, the subject DST assessment became due and demandable against H. Tambunting Pawnshop, Inc. And if indeed accused strongly believed that H. Tambunting Pawnshop, Inc. was not liable to pay the subject DST assessment, then he should have taken the proper legal measures to question the legality of the subject DST assessment.

Accused cannot take the law into his own hands by outrightly refusing to recognize the subject DST assessment based on the sole ground that it was his strong belief that the corporation was not liable to pay the same. Under our tax laws, a taxpayer who believes that a tax had been erroneously or illegally assessed is mandated to take appropriate administrative and judicial measures to assail or seek the nullification of the same, otherwise, the assessment remains valid.

The procedure to properly dispute the deficiency DST assessment against H. Tambunting Pawnshop, Inc. is clearly laid down under Section 228 of the NIRC of 1997, to wit:

> "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: xxx

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[82] G.R. Nos. 187485, 196113 & 197156, February 12, 2013.
[83] G.R. No. 176290, September 21, 2007.

> xxx xxx xxx
>
> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> **Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.**
>
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.**
>
> **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 the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."** *(Emphasis supplied.)*

In this case, despite having a clear remedy readily available to H. Tambunting Pawnshop, Inc., the accused, as the President thereof, deliberately chose to ignore the subject deficiency assessment, along with all the other notices and demand letters sent by the BIR. While it may be true that H. Tambunting Pawnshop, Inc. responded to the Pre-Assessment Notice dated October 21, 2002,[84] through the letter dated November 18, 2002,[85] the said letter is of no moment as it did not have the effect of making the subsequent DST assessment (*i.e.*, Assessment Notice No. 32-99 dated January 24, 2003)[86] as not final.

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[84] Exhibit "L", Docket, pp. 179 to 180.
[85] Exhibit "M", Docket, pp.181 to 185.
[86] Exhibits "S", Docket, pp. 192.

As can be gleaned from the above-quoted Section 228 of the NIRC of 1997, what prevents an assessment notice from becoming final is the filing of a protest thereto by the taxpayer. Considering that H. Tambunting Pawnshop, Inc. chose not to protest the said DST assessment, the same became final.

As a corollary, accused likewise raises, as a defense in this criminal case , that the purported findings of Revenue Officer Cristeta S.P. Banihit leading to the DST assessment are dubious and improbable. To the mind of the Court, such argument could have readily been ventilated in a valid protest. At this point however, the same is no longer tenable as the DST assessment, as pointed out earlier, has already become final due to the failure of H. Tambunting Pawnshop, Inc. to validly protest the same.

In this connection, it must be noted that the Assessment Notice No. 32-99 and Demand (Letter) No. 32-99, both dated January 24, 2003 and pertaining to the subject DST assessment, were received by H. Tambunting Pawnshop, Inc. on January 27, 2003.[87] Notably, after such date of receipt, there is no indication that said corporate taxpayer ever filed a protest against such assessment.

A tax assessment that has become final, executory and enforceable for failure of the taxpayer to assail the same as provided in Section 228 of the NIRC of 1997 can no longer be contested.[88] Thus, accused cannot now, in the instant case, assail the DST assessment, as the same has already become final, executory and enforceable.

Considering all the foregoing considerations, it is clear that the prosecution has proven that the accused is guilty beyond reasonable doubt and should be held liable for the crime charged.

With regard to the civil aspect of this case, the same is deemed instituted pursuant to Section 7(b)(1) of Republic Act No. (RA) 1125, as amended by RA 9282, which provides that *"the criminal action and the corresponding* ***civil action for the recovery of civil liability for taxes*** *and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such*

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[87] Exhibits "S" and "T", Docket, pp. 192 to 193.
[88] *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 148380, December 9, 2005.

civil action separately from the criminal action will be recognized (Emphasis supplied)."

Considering that the subject DST assessment has already attained finality, the corporate taxpayer in this case, H. Tambunting Pawnshop, Inc. is liable to pay the assessed deficiency DST for taxable year 1999 in the total amount of ₱ 2,610,478.21.

With respect to the imposable penalty for the crime charged in this case, Section 255 of the NIRC of 1997 provides that upon conviction, a fine of not less than Ten Thousand Pesos (₱ 10,000.00), and imprisonment of not less than one (1) year, but not more than ten (10) years, shall be imposed. There being no showing that accused is disqualified from the scope of the Indeterminate Sentence Law, the same shall apply. Hence, the imposable penalty shall not be less than the minimum penalty of one (1) year, and the maximum penalty shall not exceed ten (10) years, the maximum prescribed by law.

In this case, this Court finds that the imposition of a fine of ₱ 10,000.00 and the indeterminate penalty of one (1) year, as minimum, to two (2) years as maximum term of imprisonment, is proper under the circumstances. The same is without prejudice to Section 280 of the NIRC of 1997, which provides for the imposition of a subsidiary personal liability at the rate of one (1) day for each Eight pesos and fifty centavos (₱ 8.50), subject to the rules established in Article 39 of the Revised Penal Code, in the event that the accused has no property with which to meet the fine imposed upon him, or is unable to pay such fine.

Lastly, Section 256 of the NIRC of 1997 imposes a penal liability upon the corporate taxpayer, H. Tambunting Pawnshop, Inc. by way of fine ranging from not less than Fifty Thousand pesos (P50,000) to not more than One Hundred thousand pesos (P100,000).[89]

WHEREFORE, accused **EDMUNDO T. ONGSIAKO, JR.** is hereby found **GUILTY BEYOND REASONABLE DOUBT** of violation of Section 255, in relation to Section 253 (d) and 256 of the National Internal Revenue Code of 1997, and is hereby **SENTENCED** to suffer an indeterminate penalty of imprisonment of one (1) year as

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[89] Sec. 256. Penal Liability of Corporations. Any corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees, shall upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than one hundred thousand pesos (P100,000).

minimum, to two (2) years as maximum, and is **ORDERED** to pay a fine in the amount of ₱ 10,000.00, with subsidiary imprisonment in case accused has no property with which to meet the said fine, pursuant to Section 280 of the NIRC of 1997.

With regard to the civil liability, **H. TAMBUNTING PAWNSHOP, INC.** is hereby **ORDERED TO PAY** the amount of **TWO MILLION SIX HUNDRED TEN THOUSAND FOUR HUNDRED SEVENTY EIGHT PESOS AND TWENTY ONE CENTAVOS (₱ 2,610,478.21)**, representing the deficiency documentary stamp tax for the taxable year 1999, inclusive of surcharge and interest, plus 20% delinquency interest per annum from the total amount of ₱ 2,610,478.21, counted from February 24, 2003 until fully paid, pursuant to Section 249(C)(3) of the NIRC of 1997.

In addition, **H. TAMBUNTING PAWNSHOP, INC.** is further **ORDERED TO PAY** a fine of **FIFTY THOUSAND PESOS (₱ 50,000.00)**, pursuant to Section 256 of the NIRC of 1997.

SO ORDERED.

ERLINDA P. UY
Associate Justice

I CONCUR:

ESPERANZA FABON-VICTORINO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Special First Division.

ROMAN G. DEL ROSARIO
Presiding Justice