REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

PEOPLE OF THE PHILIPPINES. *Plaintiff,*	**CTA CRIM CASE NO. O-969** For: Violation of Section 255, in relation to Sections 253(d) and 256, of the NIRC of 1997, as amended
-versus-	Members: **RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
BUENSOL CONSTRUCTION CO., RODRIGO O. SOLIS AND FERDINAND F. BUENDIA (At-Large), *Accused.*	Promulgated: JAN 2 1 [illegible] 11:21 a.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before this Court is the *Information*[1] filed on December 2, 2022 charging Buensol Construction Co. (accused entity / Buensol), and its responsible officers, Rodrigo O. Solis (accused Solis) and Ferdinand F. Buendia (accused Buendia), with violation of *Section 255,* in relation to *Section 253(d) and 256, of the National Internal Revenue Code of 1997, as amended, ("Tax Code")*, the accusatory portion of which reads:

> "That on or about May 29, 2019, in Teresa, Rizal, and within the jurisdiction of this Honorable Court, accused Buensol Construction Corporation and its responsible officers, Rodrigo O. Solis and Ferdinand F. Buendia, proprietors, registered with the Bureau of Internal Revenue with Tax Identification No. 007-783-546, a domestic corporation required by law to pay income tax, did then and there, willfully, unlawfully and knowingly fail to pay deficiency income tax in the amount of Four Million Five Hundred Nineteen Pesos and Forty Seven Centavos (P4,000,519.47), exclusive of increment; for taxable year 2012, despite final assessment notice, including prior and post notice and demands to pay, the last one being the Final Notice Before Seizure dated May 29, 2019, to the damage and prejudice of the Government of the Republic of the Philippines."

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[1] Docket, pp. 5-7.

The Facts

Buensol Construction Co., is a partnership formed by accused Solis and Buendia, registered on June 2, 2010 with the Securities and Exchange Commission (SEC) under Company Registration No. PG201008413. It is engaged in building construction and civil engineering, with registered business address at B11, L33 Carissa Homes East I Bagumbayan, Teresa, Rizal.[2]

On August 6, 2014, the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 45 – Marikina City, issued Letter Notice (LN) No. 045-RLFTRS-12-00-00081[3] addressed to Buensol. The LN states that a computerized matching on information provided by third party (TPI) against the accused entity's declarations per value added tax (VAT) returns revealed an alleged under-declaration of sales amounting to Php13,335,064.89. A follow-up letter was thereafter issued by the same RDO on September 2, 2014.[4]

On April 6, 2015, BIR Revenue Region (RR) No. 7 issued Letter of Authority (LOA) No. eLA201200009212 LOA-045-2015-00000256[5] authorizing Revenue Officer (RO) Luane Martin and Group Supervisor (GS) Gilberto Ramos to examine Buensol's books of accounts and other accounting records for all internal revenue taxes for taxable year 2012 ("TY 2012"). The corresponding First Request for Presentation of Records[6] and Second and Final Notice[7] were issued by the BIR on May 11 and June 4, 2014, respectively.

Adopting the same finding of under-declared sales per LN dated August 6, 2014, the BIR issued Preliminary Assessment Notice (PAN) dated January 6, 2017,[8] and Formal Letter of Demand (FLD) with Assessment Notices (FAN) dated January 23, 2017.[9]

To show collection efforts in relation to the foregoing notices, the BIR issued Preliminary Collection Letter (PCL) dated May 18, 2017,[10] Final Notice Before Seizure (FNBS) dated May 29, 2017,[11] Warrant of Distraint and/or Levy (WDL) dated August 7, 2017,[12] and various Warrants of Garnishment (WG) addressed to Philippine Bank of Communications,[13] Bank

2 SEC Certificate of Registration with Articles of Partnership, Exhibit "P-1", Docket, p. 25-29.
3 Exhibit "P-2", *id.*, p. 30.
4 Exhibit "P-3", *id.*, p. 31.
5 Exhibit "P-5", *id.*, p. 33.
6 Exhibit "P-6", *id.*, p. 34.
7 Exhibit "P-7", *id.*, p. 35.
8 Exhibit "P-9", *id.*, pp. 40-43.
9 Exhibits "P-10" – "P-10-2", *id.*, pp. 44-49.
10 Exhibit "P-11", *id.*, p. 50.
11 Exhibit "P-12", *id.*, p. 51.
12 Exhibit "P-13", *id.*, p. 52.
13 Exhibit "P-14", *id.*, p. 53.

of the Philippine Islands,[14] Asia United Bank,[15] United Coconut Planters Bank,[16] Banco De Oro Universal Bank,[17] China Bank Corporation,[18] Unionbank of the Philippines,[19] Metropolitan Bank & Trust Company,[20] and Philippine Savings Bank.[21]

Finally, the BIR issued a Demand Before Suit (FDBS) on January 21, 2019,[22] addressed to accused Solis in his capacity as General Manager of Buensol, informing the latter of the last opportunity to settle the assessed tax liabilities within the specified period of time, otherwise, the BIR will file a criminal action.

Subsequently, on July 25, 2019, a criminal complaint was filed against the accused with the Department of Justice (DOJ).[23] In a Resolution dated April 15, 2020,[24] the DOJ resolved to file the criminal *Information* at bar.

Finding probable cause, the Court issued Warrants of Arrest against accused Solis and Buendia on February 6, 2023.[25]

Thereafter, accused Solis surrendered voluntarily and the bail bond in the amount of Php60,000 was posted. Accordingly, the Warrant of Arrest was lifted and set aside in a Resolution dated September 4, 2023.[26]

During the arraignment held on February 13, 2024, accused Solis entered a plea of not guilty.[27]

On October 23, 2023, plaintiff filed its Pre-Trial Brief (PTB)[28] while accused Solis filed his PTB on November 22, 2023.[29]

A Preliminary Conference was thereafter held on March 12, 2024,[30] and the Pre-Trial Order was later issued on April 4, 2024.[31]

During the trial proper, plaintiff presented the testimony of RO Martin who testified through judicial affidavit dated March 4, 2024,[32] filed with the Court on March 12, 2024.

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14 Exhibit "P-15", *id.,* p. 54.
15 Exhibit "P-16", *id.,* p. 55.
16 Exhibit "P-17", *id.,* p. 56.
17 Exhibit "P-18", *id.,* p. 57.
18 Exhibit "P-19", *id.,* p. 58.
19 Exhibit "P-20", *id.,* p. 59.
20 Exhibit "P-21", *id.,* p. 60.
21 Exhibit "P-21-1", *id.,* p. 61.
22 Exhibit "P-22", *id.,* p. 62.
23 Exhibits "P-23" to "P-25", *id.,* pp. 14-24.
24 Resolution dated April 15, 2020, *id.,* pp. 8-13.
25 Warrants of Arrest, *id.,* pp. 67-70.
26 Resolution dated September 4, 2023, *id.,* p. 73.
27 Certificate of Arraignment dated February 13, 2024, *id.,* p. 136.
28 Pre-Trial Brief (For the Plaintiff), *id.,* pp. 107-112.
29 Pre-Trial Brief (For Accused Rodrigo O. Solis), *id.,* pp. 118-121.
30 Minutes of Preliminary Conference, *id.,* pp. 151-157.
31 Pre-Trial Order (As regards Accused Rodrigo O. Solis only) (Accused Ferdinand F. Buendia is still at large), *id.,* pp. 174-182.
32 Exhibit "P-26", *id.,* pp. 163-170.

On June 24, 2024, plaintiff filed its Formal Offer of Evidence,[33] while accused Solis posted his Comment thereto July 3, 2024.[34] The same FOE was resolved by the Court on August 14, 2024.[35]

Meanwhile, as the sole witness for himself, accused Solis offered his direct testimony through judicial affidavit dated September 10, 2024,[36] submitted to the Court on September 12, 2024. He was presented as witness before the Court on September 19, 2024.[37]

During the hearing held on even date, the defense made an oral formal offer of evidence which were admitted in open court.[38]

Accused Solis posted his Memorandum *via* registered mail on October 18, 2024.[39]

In his Memorandum, accused Solis advances that he cannot be held criminally and civilly liable for the payment of the deficiency tax assessments. Specifically, he argues that the BIR has no valid basis in the computation of the net income of Buensol for TY 2012. Moreover, he insists that he did not receive the notices and/or issuance of the BIR; thus, rendering the assessment against Buensol void.

Plaintiff, on the other hand, manifested on September 19, 2024 that it opted to not file a memorandum.

In a Resolution dated November 12, 2024, the case was submitted for decision, with promulgation of judgment set on January 21, 2025.

<u>The Issue</u>

The issue, as stipulated by the parties, is:

> WHETHER ACCUSED SOLIS IS GUILTY OF THE CRIME CHARGED IN THE INFORMATION[40]

<u>The Ruling of the Court</u>

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33 Formal Offer of Evidence, *id.*, pp. 203-208.
34 Comment (Re: Prosecution's Formal Offer of Evidence), *id.*, pp. 209-214.
35 Resolution dated August 14, 2024, *id.*, pp. 217-218.
36 Judicial Affidavit of Rodrigo O. Solis dated September 10, 2024, *id.*, pp. 222-269, with exhibits.
37 See Minutes of Hearing dated September 19, 2024, *id.*, p. 271.
38 *Id.*
39 Memorandum (For the Accused), *id.*, pp. 278-288.
40 See Pre-Trial Order, *id.*, p. 175.

The government's right to prosecute the instant criminal case has already prescribed

Before delving into the arguments raised by the parties, the Court deems it proper to determine first if the instant criminal action is already barred by prescription.

In resolving the issue of prescription of the offense charged, the following should be considered: (1) the period of prescription for the offense charged; (2) the time the period of prescription starts to run; and (3) the time the prescriptive period is interrupted.[41]

First: The prescriptive period of subject violation under the Tax Code, as amended, is five years.

Section *281 of the Tax Code* provides for the prescriptive period for violations of any provisions thereof, to wit:

> "SECTION 281. Prescription for Violations of any Provision of this Code. — ***All violations of any provision of this Code shall prescribe after five (5) years.***
>
> *Prescription shall begin to run from the day the commission of the violation of the law*, and if the same be now known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.
>
> *The prescription shall be interrupted when proceedings are instituted against the guilty persons* and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy."
> (Emphasis and italics supplied.)

Clearly, a prescriptive period of five years shall apply for all violations under the Tax Code, including the offense charged in the case at hand.

Second: The day of commission of the offense charged is known; hence, the prescriptive period began to run from March 8, 2017, 30 days from the alleged receipt of the FLD/FAN.

As regards the second consideration, *Section 281* cited above provides for two reckoning points when the period of prescription begins to run:

(1) If the day of commission is known, prescription begins to from the day of the commission of the violation of law; or

[41] Romualdez vs. Marcelo (Resolution), G.R. Nos. 165510-33, July 28, 2006, citing the case of Domingo vs. Sandiganbayan, G.R. No. 109376, January 20, 2000.

(2) If the day of commission is unknown, from its discovery and the institution of judicial proceedings for its investigation and punishment.

A perusal of the *Information* shows that the violation alleged therein is that the accused "willfully, unlawfully and knowingly fail to pay deficiency income tax in the amount of Four Million Five Hundred Nineteen Pesos and Forty Seven Centavos (P4,000,519.47), exclusive of increment; for taxable year 2012, despite final assessment notice."

In *Emilio E. Lim, Sr., and Antonia Sun Lim vs. Court of Appeals and People of the Philippines (Lim Case)*,[42] the Supreme Court elucidated that the prescription on an alleged willful refusal to pay assessed deficiency taxes shall begin to run from the finality of the assessment coupled with the willful refusal to pay the assessed deficiency taxes within the allotted period to settle the same, *viz*:

> "Inasmuch as the final notice and demand for payment of the deficiency taxes was served on petitioners on July 3, 1968, it was only then that the cause of action on the part of the BIR accrued. This is so because prior to the receipt of the letter-assessment, no violation has yet been committed by the taxpayers. The offense was committed only after receipt was coupled with the wilful refusal to pay the taxes due within the alloted period. The two criminal informations, having been filed on June 23, 1970, are well-within the five-year prescriptive period and are not time-barred."

Our perusal of the records shows that the FLD/FAN was claimed to have been received by Vilma Solis, allegedly on behalf of accused Solis, on February 6, 2017. Due to lack of protest against the assessment, the same is deemed to have attained finality on March 8, 2017. Thus, the five-year prescriptive period shall start therefrom.

Third: The prescriptive period was interrupted by the filing of the Information with the CTA.

Consistent with *Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA),* the Supreme Court held in the *Lim Case* that the filing of an *Information* in Court interrupts the running of prescriptive period for the institution of criminal actions. *Section 2, Rule 9 of RRCTA* states:

> "SEC. 2. Institution of Criminal Actions. — All criminal actions before the Court in Division in the exercise of its original jurisdiction shall be instituted by the filing of an information in the name of the People of the Philippines. In criminal actions involving violations of the National Internal Revenue Code and other laws enforced by the Bureau of Internal Revenue, the Commissioner of Internal Revenue must approve their filing. In criminal actions involving violations of the Tariff and Customs Code and other laws enforced by the Bureau of Customs, the Commissioner of Customs must approve their filing.

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[42] G.R. Nos. L-48134-37, October 18, 1990.

> ***The institution of the criminal action shall interrupt the running of the period of prescription.***"
> (Emphasis and italics supplied.)

Based on the foregoing, the prescription of criminal institution for alleged willful failure to pay assessed deficiency taxes shall commence from the finality of the assessment and shall only be tolled upon filing of the criminal information before the Court.

Here, the subject *Information* was filed with the CTA on December 2, 2022; thus, beyond the five-year prescriptive period, counting from March 8, 2017.

Receipt of FLD/FAN	Finality of Assessment (30 days from receipt of FLD/FAN)	End of five-year period to institute criminal action	Filing of Information
February 6, 2017	March 8, 2017	March 8, 2022	December 2, 2022

In light of the foregoing, the Court finds that the right of the plaintiff to file the subject *Information* was already barred by prescription.

Nevertheless, assuming that the instant criminal action is not barred by prescription, the Court still finds for the acquittal of the accused due to the prosecution's failure to prove the accused's guilt beyond reasonable doubt of the offense charged, as discussed below.

Assuming the instant criminal case is not barred by prescription, the prosecution failed to prove the elements of the offense charged.

To recall, the *Information* charged the accused with violation of *Section 255 of the Tax Code*, as amended, for alleged failure to pay deficiency income tax for taxable year 2012. *Section 255* provides:

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

> by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years."

On the other hand, *Section 253, in relation to Section 256 of the Tax Code*, as amended, specifies the penal liabilities of partnerships, such as the accused entity herein, and its responsible officers, thus:

> "Chapter II
> Crimes, Other Offenses and Forfeitures
>
> Section 253. General Provisions. –
>
> (a) Any person convicted of a crime penalized by this Code shall, in addition to being liable for the payment of the tax, be subject to the penalties imposed herein: Provided, That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution for violation of any provision of this Code or in any action for the forfeiture of untaxed articles.
>
> x x x
>
> (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.
>
> x x x
>
> Section 256. Penal Liability of Corporations. — Any corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the 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)."

In *People vs. Mendez,*[43] the Supreme Court held that to successfully prosecute a violation of *Section 255 of the Tax Code*, it must be shown that (1) the taxpayer is required to pay any tax, make or file 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; (2) the taxpayer failed to do so; and (3) the act is willful.

Based on the foregoing, before a conviction for the offense of willful failure to pay the correct tax during the period required under *Section 255 of the Tax Code* can be sustained, the following elements must be established beyond reasonable doubt:

1. Accused is required under the Tax Code or its rules and regulations to pay any tax;

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43 G.R. Nos., 208310-11 & 208662, March 28, 2023.

2. Accused failed to pay the required tax at the time required by law or rules and regulations; and
3. Accused's failure to pay the required tax at the time required by law or rules and regulations is willful.

Thus, as regards the case at hand, the Court deems it necessary to determine whether plaintiff was able to prove that:

(a) Accused Buensol was a registered taxpayer in 2012;
(b) Accused Solis was a responsible officer of the accused entity;
(c) The subject notices were properly and validly served to Buensol's responsible officer/s;
(d) The same notices were validly issued by the BIR;
(e) The non-payment of taxes was willful.

The plaintiff, however, failed to prove the valid issuance of the subject notices which necessarily negated the alleged willfulness of failure to pay the assessed tax, as thoroughly discussed below.

A. Accused Buensol was a duly registered taxpayer in 2012

Section 24 (A) (1) of the Tax Code imposes income tax on all taxable income derived for each taxable year from all sources within and without the Philippines, other than those specific items of income subject to final income taxes, by every individual citizen of the Philippines residing therein.

In this case, the parties have stipulated that the accused entity is a partnership engaged in construction and civil engineering, and was registered with the BIR with TIN 007-783-546.[44] Further, accused Solis admitted in his Judicial Affidavit that accused entity started operations in 2011 and ceased in 2013.

Thus, Buensol was a duly registered taxpayer in taxable year 2012.

B. Accused Solis was a responsible officer of accused entity

To prove that accused Solis is a responsible office of Buensol, the prosecution presented the entity's Articles of Partnership.[45] The same document enlists accused Solis and accused Buendia as partners of the said partnership. ɣ

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44 See Pre-Trial Order, Docket, p. 174.
45 Exhibit "P-1",, *id.*, p. 26.

Moreover, accused Solis testified in his Judicial Affidavit that he acted as the General Manager of Buensol, while his partner, accused Buendia served as the Operations Manager.[46]

Indubitably, it was sufficiently established that accused Solis is one of Buensol's responsible officers.

C. The notices were validly received by accused Solis

Accused Solis argues that he did not receive the notices and/or issuances of the BIR. He insists that these notices, as shown in the documentary exhibits marked by the prosecution, were not received by persons connected with or authorized by Buensol.

Revenue Regulations (RR) No. 12-99,[47] *as amended by RR No. 18-2013,*[48] provides the following rules on service of assessment notices:

> **3.1.6 Modes of Service.** — The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:
>
> (i) The notice shall be served ***through personal service*** by delivering personally a copy thereof 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.
>
> In case personal service is not practicable, the notice shall be served by substituted service or by mail.
>
> (ii) ***Substituted service can be resorted to when the party is not present at the registered or known address*** under the following circumstances:
>
> The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.
>
> If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.
>
> ***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.***

46 Judicial Affidavit – Rodrigo O. Solis, *id.*, p. 224.
47 Subject: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, issued on September 14, 1999.
48 Subject: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, issued on November 28, 2013.

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 notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

Should the party be found at his registered or known address or any other place but refuse to receive the notice, 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 notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

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

(iii) **Service by mail** is done by sending a copy of the notice 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 notice 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.

The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information. The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.

Service to the tax agent/practitioner, who is appointed by the taxpayer under circumstances prescribed in the pertinent regulations on accreditation of tax agents, shall be deemed service to the taxpayer." (Emphasis and italics supplied.)

Pursuant to the foregoing rules, substituted service may be made at the taxpayer's residential address by leaving a copy of the notice with a person of legal age residing therein. Here, the records reveal that the LOA and notices issued pursuant thereof were signed received by the following:

Document	Received by	Date Received
Letter Notice[49]	Vilma Solis	August 11, 2014
Follow-up Letter[50]	Rodrigo Solis	September 11, 2014
Letter of Authority[51]	Vilma Solis	April 14, 2015

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49 Exhibit "P-2", Docket, p. 30.
50 Exhibit "P-3", *id.*, p. 31.
51 Exhibit "P-4", *id.*, p. 33.

First Request for Presentation of Records[52]	Jocelyn Ornum	Undated
Second and Final Notice[53]	Rovil Solis	June 15, 2015
Preliminary Assessment Notice[54]	Vilma Solis	January 6, 2017
Formal Letter of Demand / Final Assessment Notice	Vilma Solis	February 6, 2017

The table above shows that only the Follow-up Letter dated September 2, 2014 was received by accused Solis. However, during the cross-examination held on September 19, 2024, he confirmed that Vilma Solis and Rovil Solis, who signed received the other documents issued by the BIR, are of legal age and are his wife and son, respectively. He likewise confirmed that Vilma and Rovil Solis live with him at their residential address at B11, L33 Carissa Homes East I Bagumbayan, Teresa, Rizal, which was also the registered business address of Buensol.[55]

Accused Buensol, however, insists that Vilma and Rovil Solis are not connected with Buensol and are not authorized to receive documents on behalf of the latter. He then denies receipt of the notices which appear to have been received by his wife and son.

At this juncture, it must be noted that when the notices were served at the accused address from 2014 to 2017, Buensol had already ceased operations. Thus, the same address solely stands as a residential address, and not as a business address, at the time of service of notices. In such case, *RR No. 12-99, as amended by RR No. 18-2013*, as cited above, requires that "***(i)f 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.***" The Court sees no issue on the service of the notices to Vilma and Rovil Solis considering that both are of legal age residing in the known address.

During the hearing held on September 19, 2024, accused Solis further testified as follows:

"Justice San Pedro: Just some clarificatory questions, (Mr.) Solis.

Q: (T)he office x x x. is also your residence, is that correct?

A: Opo, your Honors.

52 Exhibit "P-5", *id.*, p. 34.
53 Exhibit "P-7", *id.*, p. 35.
54 Exhibit "P-9", *id.*, pp. 40-43.
55 TSN dated September 19, 2024, pp. 5-12.

Q: Were there any other employees of your partnership there?

A: Bale kaming dalawa po tapos yun mga tabahador namin, your Honors.

Q: Pero in 2017 when these communications were sent to your office, were there employees in that place?

A: Wala na po, your Honors.

Q: So, who would be authorized? Because you said that neither Vilma your wife nor Rovil your son were authorized to receive communications, tama po ba?

A: Wala po silang authorization, your Honors.

Q: Then who would be authorized to receive?

A: Ako lang po at saka si Ferdinand Buendia kaso nga lang po madalang po ako dun sa bahay.

Q: So, if you're not there and your partner also was not there, who would be authorized to receive?

A: Wala po."[56]

Thus, the BIR cannot be faulted to have been forced to resort to substituted service to Vilma and Rovil Solis since even the accused has confirmed that he is rarely at home and aside from accused Solis and accused Buendia, who is currently at-large, there is no one else authorized to receive notices and other documents on behalf of Buensol.

Accordingly, the LOA, Second and Final Notice, PAN and FLD/FAN were deemed served to accused entity and accused Solis.

D. The FLD/FAN was issued beyond the three-year prescriptive period, thus, barred by prescription; and lacks due date for payment, thus, void.

i. The FLD/FAN was issued beyond the three-year period to assess under Section 203 of the Tax Code.

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[56] TSN dated September 19, 2024, *id.*, pp. 11-12.

As a general rule, internal revenue taxes must be assessed within three years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later. *Section 203 of the Tax Code*, as amended, provides:

> "**SEC. 203.** *Period of Limitation Upon Assessment and Collection.* — Except as provided in Section 222, internal revenue taxes *shall be assessed* ***within three (3) years after the last day prescribed by law for the filing of the return****, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."
> (Emphasis and italics supplied.)

As an exception thereto, *Section 222 (a) of the Tax Code*, as amended, prescribes a ten-year prescriptive period when a false or fraudulent return is filed with the intent of evading the tax or when no return was filed at all, *viz.*:

> "**SEC. 222.** *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
>
> (a) ***In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed***, or a proceeding in court for the collection of such tax may be filed without assessment, at any time ***within ten (10) years after the discovery*** of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof."
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> (Emphasis and italics supplied.)

In relation to the same prescriptive period, *Section 248 (B) of the Tax Code*, as amended, provides that:

> "**SEC. 248.** *Civil Penalties.* —
>
> x x x
>
> (B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or ***in case a false or fraudulent return is willfully made***, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case, any payment has been made on the basis of such return before the discovery of the falsity or fraud: *Provided*, That ***a substantial underdeclaration*** *of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance,* ***shall constitute prima facie evidence of a false or fraudulent return***: *Provided, further*, That failure to report sales, receipts or income

> in an ***amount exceeding thirty percent (30%) of that declared per return***, and a claim of deductions in an amount exceeding (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein.
>
> x x x"
>
> (Emphasis and italics supplied.)

Gleaning from the foregoing, when the filing of tax returns is tainted with intentional falsity, or fraud with intent to defeat payment of tax, or omission to file tax returns, the prescriptive period to assess internal revenue taxes is ten years after the discovery thereof. However, this provision does not find application in this case.

In the FLD/FAN dated January 23, 2017, the BIR's deficiency income tax and VAT assessment against Buensol for TY2012 arose from an alleged undeclared sales amounting Php13,335,064.89.[57] The Details of Discrepancies show that such amount was the difference between respondent's sales per income tax and VAT returns *vis à vis* the alleged purchases of Buensol's customers.

According to petitioner, the computed deficiency resulted in substantial under-declaration of sales exceeding the 30% threshold under *Section 248(B) of the Tax Code* cited above; thus, appearing to constitute as *prima facie* evidence of a false or fraudulent return.

The Court, however, believes that such *prima facie* finding of falsity or fraud cannot arise from this case since the assessment was based on unverified information and mere presumptions.

As stated in the FLD/FAN[58] and as confirmed by RO Martin during the cross-examination held on June 4, 2024,[59] the alleged discrepancy was based on the third-party information (TPI), specifically the Summary List of Purchases (SLP) submitted by Buensol's supposed customers. The same discrepancy was first noted by the BIR in 2014, prior to the issuance of the LOA; hence, the issuance of LN dated August 6, 2014.[60] Such findings were adopted in the assessment notices issued by the BIR pursuant to the LOA dated April 6, 2015.[61]

---

57 See FLD/FAN dated January 23, 2017, Exhibit "P-10", Docket, p. 44-47.
58 *Id.*
59 See Transcript of Stenographic Notes, June 4, 2024, p. 8.
60 Exhibit "P-2", Docket., p. 30.
61 Exhibit "P-5", *id.*, p. 33.

In *Revenue Memorandum Order No. 28-2007*,[62] the BIR prescribes the guidelines and procedures in the computerized extraction, matching, analysis and utilization of extracted data from the BIR's Tax Reconciliation System (TRS). Specifically, *Item IV (E) (4) b.3.c.* thereof commands the BIR to prepare a Confirmation Request ("CR") to the TPI source/s, who in turn shall confirm the TPI through a Confirmation Certificate. Additionally, if the TPI sources are agreeable to the data shown by the BIR, sworn statements, attesting to the veracity of such TP data is as well required, to wit:

> "b.3.c. If the discrepancy is on the data submitted by a third party, obtain Sworn Statements from the TPI sources (Annexes "M1" and "M2") attesting to the veracity of the data provided.
>
> i. Prepare and send a "Confirmation Request"(CR) (Annex C) to be signed by the heads of the concerned investigating office for purposes of verifying the accuracy of the figures appearing in the DWAPR.
>
> ii. If the TPI source agrees with the figures in the CR, secure a sworn statement to allow the RO to build a case. The confirmation by the Taxpayer/withholding agents/TPI source should be embodied in a Confirmation Certificate" (CC) (Annexes "G" and "G-1").
>
> iii. Request for CC from the TPI source, if necessary.
>
> If the TPI source would not want to confirm the data as provided to the BIR, this TPI source shall be subjected to tax fraud investigation.
>
> b.3.d. If the TPI source is outside of the jurisdiction of the RDO/LTAIDI/LTAIDII/LTDO/WTD/Investigating Office where the TP is registered:
>
> i. Prepare a CR to be transmitted to and signed by the CIR where the latter shall request for a sworn statement and Confirmation Certificate signed by the TPI source.
>
> ii. Assist the head of the investigating office in the preparation of Monthly Status Report of CRs (Annex "N") transmitted outside his office/to the CIR office and submit the same to the WTD for information.
>
> iii. Monitor compliance on the request for signature on CRs released to CIR.
>
> iv. Provide the taxpayer fifteen (15) days to reconcile the figures.

---

[62] SUBJECT: Prescribing Guidelines and Procedures in the Transmittal and Processing of the Annual Information Return on Income Taxes Withheld on Compensation and Final Withholding Taxes (BIR Form No. 1604-CF), Annual Information Return of Creditable Taxes Withheld — Expanded/Income Payments Exempt from Withholding Tax (BIR Form No. 1604-E) and Monthly/Quarterly/Transactional Remittance Returns (BIR Forms Nos. 1601C, 1601E, 1601F, 1600, 1606, 1602, 1603) with the Monthly Alphalist of Payees (MAP) and Returns Required to have Summary Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld at Source (SAWT) (1701, 1702, 2550Q, 2551M, 2551Q, etc.) under Revenue Regulations No. 2-2006 and Procedures in the Extraction, Matching, Analysis, Dissemination, Utilization of Payor/Payees Data Including Monitoring the Extent of Compliance of Withholding Agents and Income Recipients Subject to Withholding Tax through the Tax Reconciliation System, issued on 24 September 2007.

v. If TP interposes no more objections, require the payment of deficiency taxes and penalties, if any."

A review of the records of the case shows that the extracted TPI from the BIR's computerized system were unverified. There are no CRs and CCs presented to the Court that could, at the very least, suggest compliance with the procedural requirements per *RMO 28-2007*, let alone attest to the veracity of the data adopted in the assessment notices issued by the BIR.

Thus, We hereby hold that the BIR erroneously imputed undeclared sales of Php13,335,064.89 to accused Buensol for TY 2012 due to the unvalidated TPI on alleged customer's purchases. A *fortiori*, there was no *prima facie* falsity or fraud in the filing of respondent's income tax returns for TY 2012. This, thus, warrants the non-application of the ten-year extraordinary prescriptive period to assess internal revenue taxes under *Section 222 (a) of the Tax Code*, as amended.

The Court also notes the allegation of execution of waiver of defense of prescription by Buensol's authorized representative, per Details of Discrepancies attached to the FLD.[63] The prosecution, however, failed to present the said document to prove a valid waiver by the taxpayer. Hence, the Court is hereby constrained to rule that the defense of prescription cannot be deemed waived in this case.

For purposes, however, of determining the commencement of the three-year prescriptive period, the Court notes the plaintiff's non-submission of Buensol's filed income tax return and the lack of any allegation on the actual date of submission of the same. Thus, assuming the accused entity's filing of TY 2012 income tax return on the last day prescribed under the law, the issued assessment against respondent, specifically the income tax liability subject of the instant *Information*, for TY 2012 is time-barred, as illustrated below:

Last day prescribed by law for filing income tax return for TY 2012	**Last day to assess income tax for TY 2012**	**Date when FLD/DAN was issued**	**Remarks**
April 15, 2013	April 15, 2016	January 23, 2017	Prescribed

ii. The FLD/FAN does not bear the due date for payment

[63] Details of Discrepancies, Docket, p. 47.

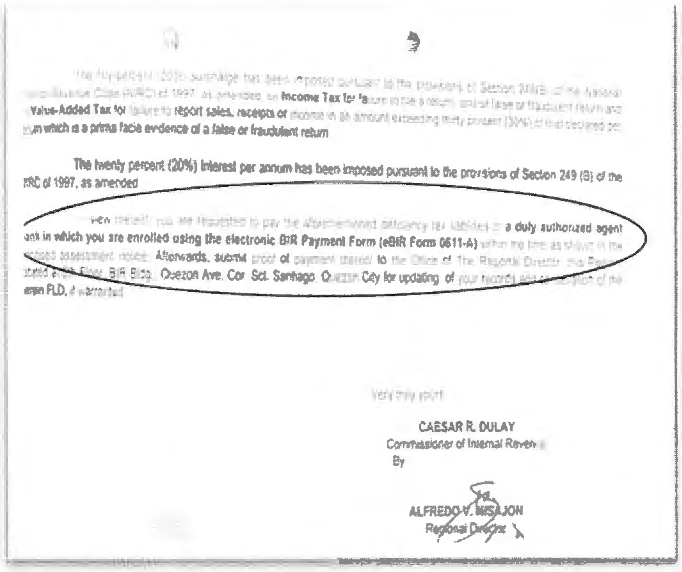
In *Commissioner of Internal Revenue vs. Fitness by Design Inc.*[64], the Supreme Court ruled that failure of the FLD to provide due date for payment of deficiency tax renders the assessment void, to wit:

> "The disputed Final Assessment Notice is not a valid assessment.
>
> x x x
>
> Second, there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:
>
> > In view thereof, you are *requested to pay* your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled *within the time shown in the enclosed assessment notice.*
> >
> > (Emphasis in the original)
>
> However, based on the findings of the Court of Tax Appeals First Division, the enclosed assessment pertained to remained unaccomplished.
>
> Contrary to petitioner's view, April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay.
>
> Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation."

Upon review of the FLD/FAN, We note that there was failure to demand payment of alleged deficiency taxes within a definite period of time. The FLD specifically stated that the accused is only "requested" to pay the alleged tax liabilities in a duly authorized agent bank using the electronic BIR Payment Form without specifying the due date for payment. The enclosed FANs, on the other hand, left blank the space provided for such due date.

---

[64] G.R. No. 215957, November 9, 2016.



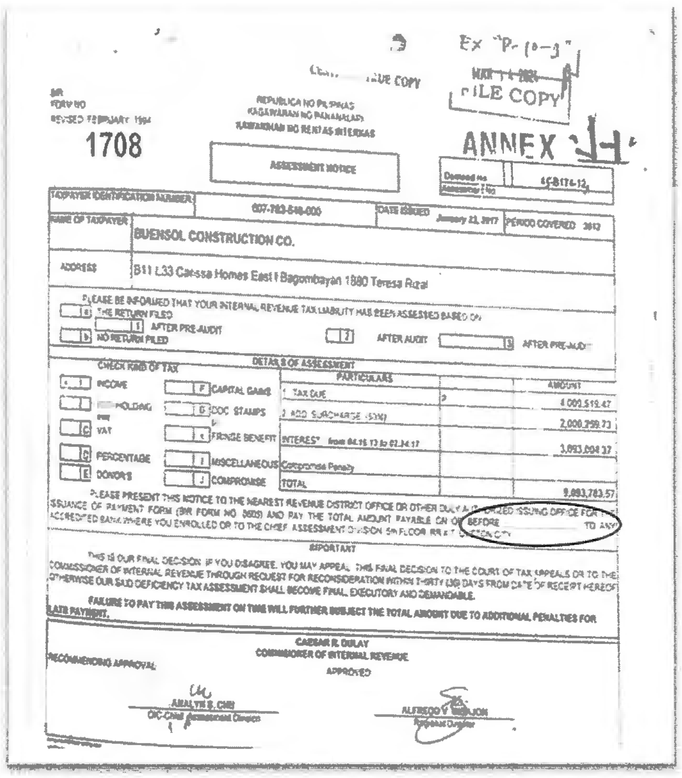
Value-Added Tax for failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return which is a prima facie evidence of a false or fraudulent return

The twenty percent (20%) interest per annum has been imposed pursuant to the provisions of Section 249 (B) of the NIRC of 1997, as amended

... a duly authorized agent bank in which you are enrolled using the electronic BIR Payment Form (eBIR Form 0611-A) ... Afterwards, submit proof of payment ... to ... BIR Bldg., Quezon Ave. Cor. Sct. Santiago, Quezon City for updating of your records ... FLD, if warranted

CAESAR R. DULAY
Commissioner of Internal Revenue
By

ALFREDO V. MISAJON
Regional Director



Ex "P-10-3"

FILE COPY

ANNEX "H"

1708

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

ASSESSMENT NOTICE

TAXPAYER IDENTIFICATION NUMBER	007-783-546-000
DATE ISSUED	January 23, 2017
PERIOD COVERED	2012
NAME OF TAXPAYER	BUENSOL CONSTRUCTION CO.
ADDRESS	B11 L33 Caessa Homes East I Bagombayan 1880 Teresa Rizal

PLEASE BE INFORMED THAT YOUR INTERNAL REVENUE TAX LIABILITY HAS BEEN ASSESSED BASED ON

DETAILS OF ASSESSMENT

PARTICULARS	AMOUNT
1. TAX DUE	4,000,519.47
2. ADD: SURCHARGE (50%)	2,000,259.73
INTEREST from 04.15.13 to 02.24.17	3,093,004.37
Compromise Penalty	
TOTAL	9,093,783.57

PLEASE PRESENT THIS NOTICE TO THE NEAREST REVENUE DISTRICT OFFICE OR OTHER DULY AUTHORIZED ISSUING OFFICE FOR ISSUANCE OF PAYMENT FORM (BIR FORM NO. 0605) AND PAY THE TOTAL AMOUNT PAYABLE ON OR BEFORE ______ TO ANY ACCREDITED BANK WHERE YOU ENROLLED OR TO THE CHIEF, ASSESSMENT DIVISION ... QUEZON CITY

IMPORTANT

THIS IS OUR FINAL DECISION. IF YOU DISAGREE, YOU MAY APPEAL THIS FINAL DECISION TO THE COURT OF TAX APPEALS OR TO THE COMMISSIONER OF INTERNAL REVENUE THROUGH REQUEST FOR RECONSIDERATION WITHIN THIRTY (30) DAYS FROM DATE OF RECEIPT HEREOF, OTHERWISE OUR SAID DEFICIENCY TAX ASSESSMENT SHALL BECOME FINAL, EXECUTORY AND DEMANDABLE.

FAILURE TO PAY THIS ASSESSMENT ON TIME WILL FURTHER SUBJECT THE TOTAL AMOUNT DUE TO ADDITIONAL PENALTIES FOR LATE PAYMENT.

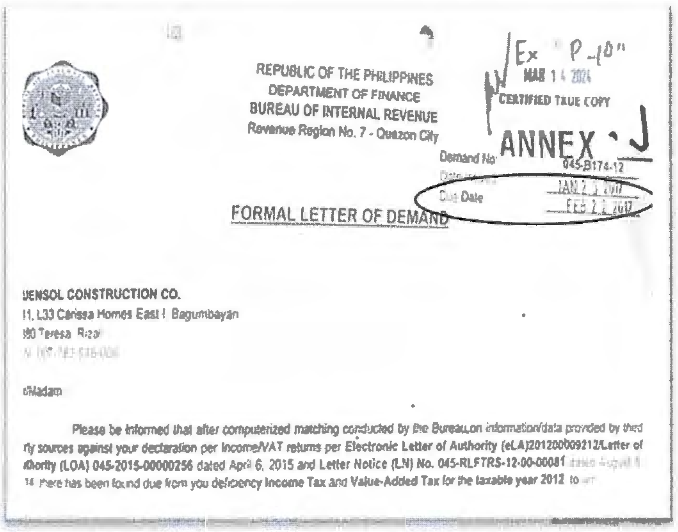
RECOMMENDING APPROVAL:

ANALYN S. CHE
OIC-Chief, Assessment Division

CAESAR R. DULAY
COMMISSIONER OF INTERNAL REVENUE
APPROVED

ALFREDO V. MISAJON
Regional Director

The Court also notes that the upper right-hand corner of the FLD indicated "Due Date: February 22, 2017." We, however, find said information too equivocal. Such entry may even refer to the due date when the FLD/FAN should be delivered to the taxpayer. The deadline for payment becomes even more confusing when the interest per FLD was computed until February 24, 2017, which clearly does not coincide with the indicated "due date" of February 22, 2017.



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Revenue Region No. 7 - Quezon City

Ex "P-10"
MAR 14 2024
CERTIFIED TRUE COPY
ANNEX "J

Demand No: 045-B174-12
JAN 2_ 2017
Due Date FEB 2_ 2017

FORMAL LETTER OF DEMAND

JENSOL CONSTRUCTION CO.
11, L33 Carissa Homes East I Bagumbayan
Teresa, Rizal

Madam

Please be informed that after computerized matching conducted by the Bureau on information/data provided by third party sources against your declaration per Income/VAT returns per Electronic Letter of Authority (eLA)201200009212/Letter of Authority (LOA) 045-2015-00000256 dated April 6, 2015 and Letter Notice (LN) No. 045-RLFTRS-12-00-00081 ... there has been found due from you deficiency Income Tax and Value-Added Tax for the taxable year 2012 to ...

In light of the foregoing, the Court finds that the BIR failed to make a categorical demand for payment within a specific period of time through the issued FLD/FAN; thus, making the assessment invalid.

We hereby find the assessment subject of this case barred by prescription and void for being violative of the taxpayer's right to due process due to the lack of due date for payment of assessed taxes.

E. Accused Solis did not willfully fail to pay the assessed deficiency taxes

"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.[65] It means "premeditated, malicious; done with intent, or with bad motive or purpose, or with indifference to the natural consequence."[66] Thus, to attribute to the accused a "willful failure to pay" the tax, it must be shown that such failure or omission by accused was done knowingly, intentionally and with the specific intent not to pay the tax. In other words, it must be shown that accused was aware of his obligation to pay the tax, but he nevertheless voluntarily, knowingly, and intentionally failed to pay it.

A scrutiny of the pieces of evidence before the Court clearly shows that there is no competent evidence to support the verdict of guilt of accused Solis. Plaintiff failed to prove the elements of the crimes charged against him. Specifically, there was failure to show a valid issuance of the assessment notices, which are the bases of the criminal complaint and *Information* for willful failure to pay the alleged income tax liability. The plaintiff, thus, failed to prove accused Solis' authorship of the crime charged.

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[65] Mertens' Law of Federal Income Taxation, Chapter 47.05, page 28, Volume 13, see U.S. vs. Green, 757 F2d 116, 85-1 USTC 9178 (CA7 1985), in which the Court, citing U.S. vs. Moore, 627 F2d 830 (CA7 1980) and U.S. vs. Verkuilen, 690 F2d 648, 82-2 USTC 9618 (CA7 1982), upheld the conviction of a tax protester for willful failure to file returns.

[66] Commissioner of Internal Revenue, et al. vs. The Honorable Court of Appeals, *et al*,.G. R. No. 119322, June 4, 1996.

In the appreciation of evidence in criminal cases, it is a basic tenet that the prosecution has the burden of proof in establishing the guilt of the accused for the offense with which he or she is charged. Thus, the prosecution has the duty to convince the court that the accused is guilty beyond all reasonable doubt, based on the evidence it presented during trial. If the proof fails to establish any of the essential elements necessary to constitute a crime, the accused is entitled to acquittal. At best, the evidence proffered by the prosecution only goes so far to create a suspicion that accused probably perpetrated the crime charged. But suspicion alone is insufficient, the required quantum of evidence being proof beyond reasonable doubt. When the People's evidence fails to indubitably prove the accused's authorship of the crime of which he stands accused; then it is the Court's duty, and the right of the accused, to proclaim his innocence.[67]

Accused have neither criminal nor civil liability

The civil liability of Buensol and Solis is deemed instituted herewith pursuant to *R.A. No. 1125, as amended by Section 7 (b) (1) of R.A. No. 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 civil action separately from the criminal action will be recognized."

Here, with the glaring failure of the prosecution to prove that accused Solis was served with a valid FLD/FAN, the Court finds that the accused has no obligation to pay the deficiency income tax indicated in the void notices. Clearly, the fact from which the civil liability might arise does not exist. Stated differently, the failure of the accused to pay the deficiency income tax in the void FLD/FAN does not give rise to any criminal or civil liability on the part of the accused.

As heretofore discussed, since there is no valid assessment to speak of, the crime of willful failure to pay tax cannot be ascribed on the accused. The Court has to acquit accused Buensol from the crime charge; and such acquittal necessarily results in the acquittal of accused Solis, a partner and responsible officer of the accused entity.

Considering that the act of omission from which the civil liability *ex delicto* may arise is wanting, no civil liability arising from the crime may likewise be adjudged against accused Buensol, as well as accused Solis.

---

[67] Aurea R. Monteverde vs. People of the Philippines, G.R. No. 139610, August 12, 2022; Imelda Darvin vs. Court of Appeals and People of the Philippines, G.R. No. 125044, July 13, 1998.

ACCORDINGLY, premises considered, this case is **DISMISSED** due to the prescription of the government's right to prosecute the case. Accused **RODRIGO O. SOLIS** is **ACQUITTED** for failure of plaintiff to prove his guilt beyond reasonable doubt.

As regards accused **FERDINAND F. BUENDIA**, the case against him is *extinguished* by prescription of the right of the government to prosecute the instant criminal case, pursuant to *Section 281 of the Tax Code.*

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

I CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice