

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, CTA Crim. Case No. O-804

Plaintiff,

Members:

- versus -

DEL ROSARIO, PJ, Chairperson,
MANAHAN, and
REYES-FAJARDO, JJ.

COSCO PETROLEUM
COMPANY, INC., MICHAEL
C. COSAY, Santiago, Pili,
Camarines Sur,

Promulgated:

Accused.

SEP 21 2022 8:33 a.m.

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DECISION

REYES-FAJARDO, J.:

The presumption of innocence in favor of an accused in a criminal case is a basic constitutional guarantee. It demands that the State must establish his [or her] guilt beyond reasonable doubt. To do so, the Prosecution must rely on the strength of its evidence, not on the weakness of his [or her] defense. Every reasonable doubt of his [or her] guilt entitles him [or her] to an acquittal.¹

On January 28, 2020, an Information was filed against Michael C. Cosay (accused Cosay), as President of COSCO Petroleum Company, Inc. (COSCO), for violation of Section 255, in relation to Section 253(d) and 256 of the National Internal Revenue Code (NIRC), as amended, the accusatory portion of which reads:

That on or about November 5, 2015 and thereafter, in Santiago, Pili, Camarines Sur and within the jurisdiction of this Honorable Court, the above-named accused MICHAEL C. COSAY, being the President and responsible corporate officer of COSCO

¹ *People of the Philippines v. Sangcajo, Jr.*, G.R. No. 229904, September 5, 2018.

Petroleum Company, Inc., did then and there willfully and unlawfully fail to pay deficiency Income Tax for taxable year 2008, in the amount of P23,935,637.23, exclusive of increments and penalties, despite final assessment notice, including prior and post notices and demands to pay the latest being in the nature of a demand before suit issued by the Bureau of Internal Revenue on November 5, 2015, to the damage and prejudice of the government.²

Through Resolution dated August 3, 2020, the Court: 1) found probable cause against accused Cosay; 2) directed the issuance of warrant of arrest against him; and 3) fixed the amount of bail at P60,000.00.³ Hence, a warrant of arrest dated August 26, 2020 was issued against accused Cosay.⁴

By Order dated October 5, 2020, the warrant of arrest previously issued against accused Cosay was lifted, in view of his voluntary surrender, along with his posting of the required bail bond in cash.⁵

In the Hearing held on January 20, 2021, accused Cosay pleaded not guilty to the offense charged.⁶

On June 1, 2021, the Court issued a Pre-Trial Order.⁷

During trial, the prosecution presented: *one*, Revenue Officer (RO) Annalee M. Pagorogon; and *two*, RO Alex D. Referiza as its witnesses.

Annalee M. Pagorogon⁸ was previously assigned as RO I (Assessment) at Revenue District Officer (RDO) No. 65 – Naga City from 2011 to 2018, and now, a RO III assigned in RDO No. 67 – Legazpi City. Among her duties and responsibilities are the audit of taxpayers to determine their taxes due, investigate possible violations

² Docket, p. 5.

³ *Id.* at pp. 112-116.

⁴ *Id.* at pp. 117-118.

⁵ *Id.* at pp. 122-123.

⁶ Minutes of Hearing held on January 20, 2021, *id.* at pp. 333-334. Certificate of Arraignment/ With Waiver of the Reading of the Information, *id.* at p. 335.

⁷ *Id.* at pp. 416-426.

⁸ Exhibit "P-18" and "P-18-a," *id.* at pp. 279-288. Identified during the hearing held on May 9, 2021. See Order dated May 9, 2021, *id.* at 387-389.

of the NIRC, as amended, and recommend filing of civil and criminal complaints against errant taxpayers. RO Pagorogon recounted:

On May 20, 2010, COSCO's alleged authorized representative Jocelyn K. Corpuz received Letter of Authority (LOA) dated May 7, 2010, authorizing the examination of its books of account and other accounting record for taxable year (TY) 2008.

On May 20, 2010, a First Notice for Presentation of Records was issued. This was followed by a Second Notice for Presentation of Records dated July 7, 2010, and Final Notice for Presentation of Records issued on August 16, 2010. COSCO failed to heed said notices.

On February 16, 2011, a Subpoena Duces Tecum (SDT) was issued against COSCO, requiring it to appear and submit documents for TY 2008. Again, COSCO failed to comply the directive in said SDT.

On November 14, 2012, a Preliminary Assessment Notice (PAN) with Details of Discrepancies was issued against COSCO, containing the proposed deficiency taxes covering TY 2008.

On January 9, 2013, a Formal Letter of Demand with Details of Discrepancies (FLD) dated January 9, 2013 was issued to COSCO, assessing it for deficiency Income Tax (IT) and Value-Added Tax (VAT) for TY 2008. COSCO failed to protest said FLD, thereby attaining finality.

On various dates, the BIR proceeded to collect taxes due from COSCO, through the following issuances: *first*, a 1st Collection Notice dated December 10, 2013; *second*, a Final Notice Before Seizure dated June 25, 2014; *third*, a Warrant of Distraint and/or Levy dated September 2, 2015; and *fourth*, a Final Demand Before Suit dated November 5, 2015. COSCO failed to pay its taxes due for TY 2008.

By reason of COSCO's repeated failure to pay taxes due for TY 2008, despite the BIR's repeated demands, a Joint Complaint-Affidavit (JCA) dated June 16, 2016, duly approved by the Commissioner of Internal Revenue (CIR), was filed against accused Cosay, as president of COSCO, before the Department of Justice (DOJ), for violation of Section 255, in relation to Section 253(d) and 256 of the NIRC, as amended.

Alex D. Referiza⁹ was a RO I (Collection), and now, RO II (Collection), assigned in RDO No. 65 - Naga City. He is tasked with the execution and enforcement of summary remedies for the collection of delinquent accounts, including submission of reports pertaining thereto, as well as recommend the filing of civil and/or criminal complaints for violation of the NIRC, as amended against erring taxpayers. RO Referiza testified:

COSCO's tax docket was indorsed to him or her, through a Memorandum of Assignment (MOA), issued by then Revenue District Officer Caesar Charlie S. Lim of RDO No. 65 - Naga City.

On September 2, 2015, he personally served the WDL to accused Cosay's alleged father Maximino Cosay, demanding payment of COSCO's tax liabilities for TY 2008. COSCO failed to pay the taxes demanded therein.

In view thereof, he joined RO Pagorogon in filing the JCA dated June 16, 2016 against accused Cosay, as president of COSCO, before the DOJ, for violation of Section 255, in relation to Sections 253(d) and 256 of the NIRC, as amended.

On February 24, 2021, the prosecution offered the following pieces of evidence for consideration of the Court:¹⁰

Exhibit	Description
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⁹ Exhibit "P-19" and "P-19-a," *id.* at pp. 289-293. Identified during the hearing held on May 9, 2021. See Order dated May 9, 2021, *id.* at 387-389.

¹⁰ The prosecution's Formal Offer of Evidence. *Id.* at pp. 427-441.

"P-1"	Joint Complaint-Affidavit dated June 16, 2016 executed by Affiants Revenue Officer[s] (RO[s]) El-Se H. Vida, Annalee N. Mina, and Alex Referiza
"P-1-a"	Signatures of Affiants ROs El-Se H. Vida, Annalee N. Mina, and Alex Referiza on the Joint Complaint-Affidavit dated June 16, 2016
"P-2"	BIR Referral Letter to Honorable Emmanuel L. Caparas, Secretary of Justice, dated June 9, 2016, signed by Hon. Kim S. Jacinto-Henares, Commissioner of Internal Revenue, consisting of two (2) pages
"P-3"	Department of Justice Resolution dated December 14, 2018 signed by Assistant State Prosecutor Antonio A. Arquiza, Jr.
"P-4"	Letter of Authority with LOA 2009 00012154 dated May 7, 2010 issued to Cosco Petroleum Products, Inc. with address at National Highway, Santiago, Pili, Camarines Sur.
"P-5"	First Request for Presentation of Records for Taxable Year 2008 dated May 20, 2010 issued by RO El-se H. Vida.
"P-5-a"	Checklist of Requirements attached to the First Request for Presentation of Records for taxable [y]ear 2008 dated May 20, 2010.
"P-6"	Second Notice for Presentation of Records dated July 7, 2010 for taxable year 2008 issued by RO El-se H. Vida.
"P-7"	Final Notice for Presentation of Records dated August 16, 2010 with Registry Receipt Stamp dated October 12, 2010. The said final notice was issued by Revenue District Office[r] (RDO) Socorro O. Ramos-Lafuente.
"P-8"	Memorandum dated February 8, 2011 issued by RO El-se H. Vida and RDO Socorro O. Ramos-Lafuente.
"P-9"	Subpoena Duces Tecum with SDT No. 05-2011-RR10 dated February 16, 2011 issued by the CIR through OIC Regional Director Atty. Diosdado R. Mendoza.
"P-9-a"	Memorandum Report dated April 12, 2011 in relation to the details of service by RO El-se H. Vida of the SDT to Cosco Petroleum Products, Inc.
"P-10"	Preliminary Assessment Notice (PAN) dated November 14, 2012.
"P-10-a"	Signature of BIR Revenue Region 10, Regional Director Ms. Esmeralda M. Tabule on the Preliminary Assessment Notice dated November 14, 2012.

"P-10-b"	Details of Discrepancies attached to the Preliminary Assessment Notice (PAN) dated November 14, 2012.
"P-11"	Formal Letter of Demand with attached Details of Discrepancies dated January 9, 2013.
"P-11-a"	Signature of BIR Revenue Region 10, Regional Director Ms. Esmeralda M. Tabule on the Formal Letter of Demand with attached Details of Discrepancies dated January 9, 2013.
"P-11-b"	Registry Receipt Stamp dated January 10, 2013 on the Formal Letter of Demand.
"P-12"	First Collection Notice dated December 10, 2013 and signed by Bureau of Internal Revenue (BIR), Revenue Region (RR) 10, Revenue District Office (RDO) No. 65 Revenue District Officer Cesar Charlie C. Lim.
"P-13"	Final Notice Before Seizure dated June 25, 2014 signed by Bureau of Internal Revenue (BIR), Revenue Region (RR) 10, Revenue District Office (RDO) No. 65 Revenue District Officer Cesar Charlie C. Lim.
"P-14"	Memorandum of Assignment to RO Alex Referiza issued by Bureau of Internal Revenue (BIR), Revenue Region (RR) 10, Revenue District Office (RDO) No. 65 Revenue District Officer Cesar Charlie C. Lim.
"P-15"	Warrant of Distraint and/or Levy No. 065-14-011 dated September 2, 2015 issued by the Commissioner of Internal Revenue (CIR), through authorized internal revenue officer RDO Cesar Charlie C. Lim.
"P-15-a"	Service of Warrant signed by RO Alex Referiza
"P-16"	Final Demand before Suit dated November 5, 2015 issued by Regional Director (RD) Alberto S. Olasiman.
"P-17"	General Information Sheet of Cosco Petroleum Products, Inc.
"P-18"	Judicial Affidavit of Ms. Annalee M. Pagorogon dated October 21, 2020.
"P-18-a"	Signature of Affiant Ms. Annalee M. Pagorogon on the Judicial Affidavit dated October 21, 2020.
"P-19"	Judicial Affidavit of Mr. Alex D. Referiza dated October 23, 2020.
"P-19-a"	Signature of Affiant Mr. Alex D. Referiza on the Judicial Affidavit dated October 23, 2020.

By Resolution dated October 14, 2021,¹¹ Exhibits "P-1," "P-1-a," "P-2," "P-3," "P-4," "P-5," "P-5-a," "P-6," "P-7," "P-8," "P-9," "P-9-a," "P-10," "P-10-a," "P-10-b," "P-11," "P-11-a," "P-12," "P-13," "P-14," "P-15," "P-15-a," "P-16," "P-17," "P-18," "P-18-a," "P-19," and "P-19-a" were admitted as evidence for the prosecution. Exhibit "P-11-b" was denied admission as evidence for the prosecution. The prosecution rested its case.

The defense presented: *one*, Ma. Lorenza Nacor; *two*, accused Cosay; and *three*, Maria Roxan R. Nayles as its witnesses.¹² However, their respective direct testimonies were denied admission by the Court as evidence for the defense for failure to comply with Section 3(c) of the Judicial Affidavit Rule.¹³

On November 25, 2021, the defense offered¹⁴ the following exhibits for consideration of the Court:

Exhibit	Description
"A-1"	First Request for the Presentation of Records dated May 20, 2020
"A-2"	Second Request for Presentation of Records dated July 7, 2020
"A-3"	Final Notice for Presentation of Records dated August 16, 2020
"A-4"	Preliminary Assessment Notice
"A-4-a"	Signature of Esmeralda M. Tabule, CESO VI, Regional Director
"A-4-b"	Details of Discrepancies Assessment No. 065-08-005-532-524-000
"A-5"	Formal Letter of Demand dated January 9, 2013
"A-5-a"	Signature of Esmeralda M. Tabule, CESO VI, Regional Director
"A-5-b"	Details of Discrepancies Assessment No. 065-08-005-532-524-000
"A-6"	1 st Collection Notice dated December 10, 2013
"A-7"	Final Notice before Seizure dated June 25, 2014
"A-8"	Final Demand before Suit dated November 5, 2015
"A-9"	Certificate of Registration of COSAY AND COMPANY from the Bureau of Internal Revenue

¹¹ *Id.* at pp. 476-477.

¹² See Order dated November 10, 2021, *id.* at pp. 489-491.

¹³ *Infra* note 15.

¹⁴ Accused's Formal Offer of Exhibits. Docket, pp. 492-495.

"A-11"	Certificate from the Municipal Treasurer of Local Government of Pili dated September 14, 2015
"A-12"	Certification from the Office of the Punong Barangay of Santiago, Pili, Camarines Sur dated September 13, 2016
"A-13"	Counter Affidavit of accused Michael T. Co Say before the Prosecution's Office subscribed on September 6, 2016
"A-14" and "A-14-a"	Judicial Affidavit of the accused Michael T. Co Say executed on February 27, 2021 and his signature [thereon]
"A-15" and "A-15-a"	Judicial Affidavit of Ma. Lorenza Nacor executed on May 14, 2021 and her signature [thereon]
"A-16" and "A-16-a"	Judicial Affidavit of Maria Roxan Nayles executed on May 13, 2021 and her signature [thereon]

Under Resolution¹⁵ dated March 21, 2022, Exhibits "A-1, A-2, A-3, A-4, A-4-a," "A-4-b, A-5, and A-5-a," "A-6, A-7 and A-8," and "A-9" were admitted as evidence for the defense. On the other hand, Exhibits "A-5-b," "A-11," "A-12," "A-13," "A-14 and A-14-a," "A-15 and A-15-a," and "A-16 and A-16-a," were denied admission as evidence for the defense.

Through Resolution dated June 23, 2022,¹⁶ this case was submitted for decision, taking into account the prosecution's Memorandum¹⁷ posted on May 2, 2022, and accused's Memorandum¹⁸ posted on May 30, 2022.

ISSUES¹⁹

We are called upon to answer the following matters:

First, is accused Cosay, as president of COSCO, guilty beyond reasonable doubt of the offense charged?

¹⁵ *Id.* at pp. 516-517.

¹⁶ *Id.* at p. 585.

¹⁷ *Id.* at pp. 544-566.

¹⁸ *Id.* at pp. 571-582.

¹⁹ *Supra* note 7.

Second, is accused Cosay, as president of COSCO, liable to pay the deficiency Income Tax (IT) for taxable year 2008 due to willful and non-payment of taxes pursuant to Section 255, in relation to Sections 253(d) and 256 of the NIRC, as amended?

ARGUMENTS

The prosecution argues that it had proven beyond reasonable doubt all the elements for the successful prosecution of willful failure to pay IT for TY 2008, punishable under Section 255, in relation to Section 253(d) and 256 of the NIRC, as amended.

According to the prosecution, the BIR issued a FLD and Final Assessment Notice (FAN) against COSCO. The latter failed to file an administrative protest thereto, despite receipt of the FLD and FAN, resulting in the finality thereof. As such, COSCO is commanded by law to pay the IT due for TY 2008 embodied in said final and executory assessment. Despite repeated attempts to collect such IT by the BIR, COSCO, and its president accused Cosay, deliberately failed to pay said IT due for TY 2008. Hence, COSCO's president, accused Cosay must be convicted for willful failure to pay IT due for TY 2008, punishable under Section 255, in relation to Sections 253(d) and 256 of the NIRC, as amended.

Accused Cosay counters that he and COSCO did not receive any BIR notices. The BIR must ensure actual receipt thereof by the taxpayer. Since the prosecution's evidence fell short in demonstrating that the BIR's, FAN, and demand to pay were actually received by them, they cannot be faulted for failure to file an administrative protest to the assessment, much more, pay the taxes embodied therein. Simply put, accused Cosay believes the assessment from which the IT due for TY 2008 is void for violative of due process on assessment.

OUR RULING

We acquit accused Cosay.

Section 255 of the NIRC, as amended reads:



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 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.**²⁰

Indeed, Section 255 of the NIRC, as amended punishes by fine and imprisonment, any person, who, willfully failed to pay taxes, despite required by law to do so. Corporate taxpayers like COSCO are no exception.

In connection thereto, a corporation is an artificial being created by operation of law.²¹ Being a juridical entity, it cannot be put to jail.²² A corporation, too, may act only through its directors, officers and employees,²³ "... and where the business itself involves a violation of the law, the correct rule is that all who participate in it are liable."²⁴ Precisely, Section 253(d) of the NIRC, as amended imposes the penalty of imprisonment on tax offenses committed by a corporate taxpayer, to its president, general manager, branch manager, treasurer, officer-in-charge, and the employees responsible for the violation thereof:

SEC. 253. General Provisions. -

...

(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 the employees responsible for the violation.**

...²⁵

²⁰ Boldfacing supplied.

²¹ See *Ago Realty & Development Corporation (ARDC), et al. v. Dr. Ago, et al.*, G.R. No. 210906, October 16, 2019. See also Section 2, *Batas Pambansa Blg. 68*.

²² See *Ong v. The Court of Appeals*, G.R. No. 119858, April 29, 2003.

²³ *Zaragosa v. Tan*, G.R. No. 225544, December 4, 2017.

²⁴ See *The People of the Philippine Islands v. Tan Boon Kong*, G.R. No. L-35262, March 15, 1930.

²⁵ Boldfacing supplied.

In addition, while a corporation may not be imprisoned for criminal infractions under penal laws, it may be punished by law through imposition of a fine.²⁶ This much is clear from Section 256 of the NIRC, as amended, which states:

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).

...²⁷

Our Constitution and our laws dearly value individual life and liberty and require no less than moral certainty or proof beyond reasonable doubt to offset the presumption of innocence. Courts are tasked to determine whether the prosecution has submitted sufficient legally admissible evidence showing beyond reasonable doubt that a crime has been committed, and that the accused committed it.²⁸

As it stands, to sustain a conviction for willful failure to pay taxes punishable under Section 255, in relation to Section 253(d) and 256 of the NIRC, as amended, the prosecution must prove beyond reasonable doubt the existence of the following elements: *first*, a corporate taxpayer is required by the NIRC, as amended, or by duly promulgated rules and regulations, to pay taxes due; *second*, such corporate taxpayer failed to pay said taxes; and *third*, such corporate taxpayer's president, general manager, branch manager, treasurer, officer-in-charge, and the employees responsible for the violation, willfully failed to pay said taxes.²⁹

²⁶ See *Ching v. The Secretary of Justice, et. al.*, G.R. No. 164317, February 6, 2006.

²⁷ Boldfacing supplied.

²⁸ *People of the Philippines v. Agustin*, G.R. No. 247718, March 3, 2021.

²⁹ See *Suarez v. People of the Philippines, et al. (Suarez)*, G.R. No. 253429, October 6, 2021. The accused in *Suarez* was charged as a corporate employee responsible for tax violation, whereas in this case, accused was charged as a president of a corporation. Since the criminal liability of the president, and corporate employee responsible for tax violation is based on Section 253(d) of the NIRC, as amended, the elements of Section 255, in relation to Sections 253(d) and 256 of the NIRC, as amended, as condensed in *Suarez*, equally finds application in this case.

Significantly, *Tupaz v. Ulep*³⁰ declares that the offense of willful failure to pay tax may be committed:

... after service of notice and demand for payment of the deficiency taxes upon the taxpayer.... This is so because prior to the finality of the assessment, the taxpayer has not committed any violation for nonpayment of the tax. The offense was committed only after the finality of the assessment coupled with taxpayer's willful refusal to pay the taxes within the allotted period....

Accused Cosay, as president of COSCO, was charged for willful failure to pay the latter's IT³¹ due for TY 2008 based on a final and executory assessment. Yet, COSCO is not required to pay IT for TY 2008 because the assessment is void. Being void, such assessment never attained finality.³² Bear in mind:

First, the BIR conducted an illegal examination on COSCO in TY 2008.

Section 6(A) of the NIRC, as amended confines the authority to examine any taxpayer for correct determination of tax liabilities to the CIR, or his or her duly authorized representatives. By way of exception, the CIR, or his or her duly authorized representatives may authorize the examination of any taxpayer for the correct determination of tax liability:

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. After a return has been filed as required under the provisions of this Code, the Commissioner or his [or her] duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: ...

...

³⁰ G.R. No. 127777, October 1, 1999.

³¹ *Supra* note 2.

³² In *Commissioner of Internal Revenue v. T-Shuttle Services, Inc.*, G.R. No. 240729, August 24, 2020, it was ruled that the finality of an assessment is premised on the validity thereof. In reverse, if the assessment is void, it may not attain finality.

Sections 10(c) and 13 of the NIRC, as amended allows the Revenue Regional Directors to issue LOAs in favor of ROs performing assessment functions in their respective region and district offices for the examination of any taxpayer within such region:

SEC. 10. *Revenue Regional Director.* - Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional director shall, within the region and district offices under his [or her] jurisdiction, among others:

...

(c) Issue Letters of authority for the examination of taxpayers within the region;

...

SEC. 13. *Authority of a Revenue Officer.* - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself [or herself].

Section D(4) of Revenue Memorandum Order (RMO) No. 43-90³³ also provides that deputy commissioners, and other BIR officials authorized by the CIR are permitted to issue an LOA.³⁴ Among the BIR officials expressly authorized³⁵ by the CIR to issue an LOA are the Assistant Commissioners and Head Revenue Executive Assistant.

Irrefragably, the LOA is the concrete manifestation of the grant of authority bestowed by the CIR or his [or her] authorized representatives to the revenue officers pursuant to Sections 6, 10(c)

³³ SUBJECT: *Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revise Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit*

³⁴ For proper monitoring and coordination of the issuance of Letter of Authority, the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner. For exigencies of service, other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself.

³⁵ No. 2, Roman Number II of RMO No. 29-2007 permits assistant commissioners and head revenue executive assistant to issue LOAs.

and 13 of the NIRC. Naturally, this grant of authority is issued or bestowed upon an agent of the BIR, *i.e.*, a revenue officer.³⁶ It gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment; at the same time it authorizes or empowers a designated revenue officer to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a *particular period*.³⁷ Conversely, the absence of such an authority renders the assessment or examination a patent nullity.³⁸

In the LOA dated May 7, 2010, Regional Director Diosdado R. Mendoza, CE[S]O VI, authorized RO El-Se H. Vida to conduct the examination of COSCO for TY 2008.³⁹ However, a perusal of page 2 of the FLD dated January 9, 2013 reveals the following statement: "The complete details of the aforementioned discrepancies established during the *investigation of Revenue Officer Manolito B. Gagalac* [RO Gagalac] are shown in the accompanying ANNEX-A and schedules of this letter."⁴⁰ It simply means that the examination conducted by the BIR on COSCO for TY 2008, leading to the issuance of the supposed assessment was made by a certain RO Gagalac, a person not named in said LOA. Therefore, the finding of IT liability against COSCO on TY 2008 is void.

Second, the BIR's FLD dated January 9, 2013, containing COSCO's IT liability for TY 2008, is not demandable against the latter.

Section 6(A) of the NIRC, as amended provides that the tax or deficiency tax so assessed shall be paid upon notice and demand from the CIR, or his or her duly authorized representative.⁴¹ Jurisprudence describes an assessment as a written notice and

³⁶ *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corporation*, G.R. No. 242670, May 10, 2021.

³⁷ *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

³⁸ See *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, G.R. No. 241848, May 14, 2021.

³⁹ Exhibit "P-4." Docket, p. 159.

⁴⁰ Exhibit "P-11." *Id.* at p. 171. Italics supplied.

⁴¹ **SEC. 6. Power of the Commissioner to Make and Prescribe Additional Requirements for Tax Administration and Enforcement. -**

(A) Examination of Return and Determination of Tax Due.

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

... (Boldfacing supplied)

demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.⁴²

In *Commissioner of Internal Revenue v. Fitness by Design, Inc. (Fitness)*,⁴³ and *Republic of the Philippines, represented by the Bureau of Internal Revenue v. First Gas Power Corporation (First Gas)*,⁴⁴ the tax assessments therein were invalidated for lack of due dates in the FAN.

Just as the tax assessments in *Fitness* and *First Gas* were struck down for failure to contain due dates in the FAN, with more reason must a tax assessment be nullified when *no* FAN was issued by the BIR against the taxpayer.

Here, the FLD dated January 9, 2013 alluded COSCO's period to pay the taxes stated therein, including the IT for TY 2008, to the enclosed assessment notices (FAN).⁴⁵ However, the FAN referred to in such FLD was not presented as evidence by the prosecution. For lack thereof, COSCO's obligation to pay its IT liability for TY 2008 embodied in said FLD did not arise.

Third, no valid service of the FLD dated January 9, 2013 was made on COSCO or its duly authorized representatives.

Under Section 3(v), Rule 131 of the Rules of Court, there is a disputable presumption that "... a letter duly directed and mailed was received in the regular course of the mail." For said disputable presumption to apply, the following conditions must concur: (a) that the letter was properly addressed with postage prepaid, and (b) that it was mailed.⁴⁶ To prove the fact of mailing, *Commissioner of Internal Revenue v. GJM Manufacturing, Inc.*⁴⁷ pronounced:

... it is essential to present the registry receipt issued by the Bureau of Posts or the Registry return card which would have been

⁴² *Commissioner of Internal Revenue v. Megabucks Merchandising Corp.*, CTA EB No. 1974, February 12, 2020, citing *Adamson v. Court of Appeals*, G.R. No. 120935, May 21, 2009.

⁴³ G.R. No. 215957, November 9, 2016.

⁴⁴ G.R. No. 214933, February 15, 2022.

⁴⁵ Last paragraph of FLD dated January 9, 2013. Exhibits "P-11" and "A-5." Docket, pp. 170-172.

⁴⁶ See *Nava v. Commissioner of Internal Revenue*, G.R. No. L-19470, January 30, 1965.

⁴⁷ G.R. No. 202695, February 29, 2016.

CR

signed by the taxpayer or its authorized representative. And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention....

The prosecution asserts that the BIR served the FAN and FLD to COSCO through registered mail and were purportedly received by accused Cosay.⁴⁸ In support thereof, the prosecution offered "Registry Receipt Stamp dated January 10, 2013 on the Formal Letter of Demand" as evidence.⁴⁹ Yet, such offered evidence was denied admission by the Court.⁵⁰ Hence, the information contained therein may not be utilized to prove that the BIR served through registered mail, the FLD dated January 9, 2013 to COSCO, let alone presumptively received by COSCO, accused Cosay, or their duly authorized representatives.

In any event, a Registry Receipt may be found in the upper right portion of the FLD dated January 9, 2013. Yet, the details therein leave much to be desired. To be precise, the only information that may be gathered therefrom are: *first*, it pertains to Letter/Package No. 13-144; *second*, said Letter/Package was posted on January 10, 2013; and *third*, partially illegible stamp containing a notation "PCA - REGISTERED LEGAZPI CITY, ... ALBAY." However, the prosecution failed to present proof that the mail matter contained in Letter/Package No. 13-144 was the FLD dated January 9, 2013.

Fourth, on the assumption that the FLD dated January 9, 2013 was indeed served by the BIR, the prosecution failed to establish actual receipt thereof by COSCO or its duly authorized representatives.

Section 228 of the NIRC, as amended,⁵¹ as implemented by Section 352 of Revenue Regulations (RR) No. 12-99,⁵³ as amended by

⁴⁸ Purpose of Offer of Exhibit "P-11-b" in the prosecution's Formal Offer of Evidence. *Id.* at p. 435.

⁴⁹ Description of Exhibit "P-11-b" in the prosecution's Formal Offer of Evidence. *Ibid.*

⁵⁰ Resolution dated October 14, 2021. Docket, pp. 476-477.

⁵¹ SEC. 228. Protesting of Assessment. - ...

...

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

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RR No. 18-2013 decrees that the taxpayer is guaranteed a period of thirty (30) days from receipt of the FAN/FLD to file a valid administrative protest thereto,⁵⁴ lest there be violation of the taxpayer's right to due process on assessment.

The prosecution claims that a certain Jocelyn Corpuz is authorized to receive BIR notices on behalf of COSCO. In this regard, witness Nacor indeed declared in open court that said Jocelyn Corpuz receives official communications from both Co Say and Company, and COSCO:

JUSTICE DEL ROSARIO:

So, let's clarify. You are an employee of Co Say and Company. How about Jocelyn Corpuz? Isn't it that Jocelyn Corpuz, according to your earlier testimony, is an employee of Cosco Petroleum Company?

MS. MA. LORENZA NACOR (Witness for the Accused):

... (Boldfacing supplied)

52 SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

—

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

...

3.1.4 Formal Letter of Demand and Assessment Notice. — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) his name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.

53 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

54 In *Commissioner of Internal Revenue v. T-Shuttle Services, Inc.*, *supra* note 31, the Supreme Court held that "A final assessment is a notice 'to the effect that the amount therein stated is due as tax and a demand for payment thereof.' This demand for payment signals the time 'when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]' Thus, it must be 'sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period.'"

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A. Jocelyn Corpuz is the one in charge of demand letters from all companies of Co Say and Company, the Co Say and the Cosco. So sometimes, if they have demand letters, she is the one in charge, Jocelyn Corpuz.

JUSTICE DEL ROSARIO:

So, apparently, Jocelyn Corpuz is a receiving official of any communication addressed to either Cosco Petroleum Company or Co Say and Company?

MS. MA. LORENZA NACOR (Witness for the Accused):

A. Yes, Your Honors.

JUSTICE DEL ROSARIO:

She is authorized to receive communications addressed to both companies, either to Cosco and Company or Cosco Petroleum Company?

MS. MA. LORENZA NACOR (Witness for the Accused):

A. Yes, Your Honors.

...⁵⁵

Meanwhile, accused Cosay testified in open court that: *one*, he did not authorize Jocelyn Corpuz to represent COSCO; and *two*, said Jocelyn Corpuz is not an employee of the latter:

JUSTICE MANAHAN:

So, this is in relation to the earlier testimony. Do you have an authorization to Jocelyn Corpuz to accept or receive all official communications from any government agency, any communications addressed to your company, whether Jocelyn Corpuz is authorized to receive it on behalf of Cosco?

MR. MICHAEL TAN CO SAY (Witness for the Accused):

A. No, Your Honors. She is not authorized to represent the Cosco Petroleum.

JUSTICE MANAHAN:

Is she an employee of Cosco Petroleum Company, Ms. Jocelyn Corpuz?

MR. MICHAEL TAN CO SAY (Witness for the Accused):

A. No, Your Honors.

...⁵⁶

Ei incumbit probatio qui dicit, non que negat. He [or she] who asserts, not he [or she] who denies, must prove,⁵⁷ since, by the nature of things, he [or she] who denies a fact cannot produce any proof of it.⁵⁸ The prosecution's invocation of witness Nacor's testimony alone, and nothing more, would not prove that Jocelyn Corpuz received the FLD dated January 9, 2013 under authority from COSCO. To expound:

In *Calubad v. Ricaren Development Corporation (Calubad)*,⁵⁹ it was held that "[t]he general principles of agency govern the relationship between a corporation and its representatives. Article 1317 of the Civil Code similarly provides that the principal must delegate the necessary authority before anyone can act on his or her behalf."

Calubad, too, explains that such necessary authority may be categorized as: *first* actual authority, which, in turn, may either be express or implied; or *second*, apparent authority:

Actual authority can either be express or implied. Express actual authority refers to the power delegated to the agent by the corporation, while an agent's implied authority can be measured by his or her prior acts which have been ratified by the corporation or whose benefits have been accepted by the corporation.

...

The doctrine of apparent authority provides that even if no actual authority has been conferred on an agent, his or her acts, as

⁵⁶ *Id.* at pp. 35-36.

⁵⁷ See *Franco v. People of the Philippines*, G.R. No. 191185, February 1, 2016, citing *People of the Philippines v. Masalihit*, G.R. No. 124329, December 14, 1998.

⁵⁸ See *MOF Company, Inc. v. Shin Yang Brokerage Corporation*, G.R. No. 172822, December 18, 2009.

⁵⁹ G.R. No. 202364, August 30, 2017.

long as they are within his or her apparent scope of authority, bind the principal. However, the principal's liability is limited to third persons who are reasonably led to believe that the agent was authorized to act for the principal due to the principal's conduct.

Apparent authority is determined by the acts of the principal and not by the acts of the agent....⁶⁰

Jocelyn Corpuz was not presented by the prosecution in court to verify whether she received BIR notices, including the FLD dated January 9, 2013, and from whom did she derived said authority to receive BIR notices. Worse, there was dearth of proof demonstrating either of these circumstances: *one*, Jocelyn Corpuz is duly authorized to receive BIR notices on behalf of COSCO by express authority from the latter; *two*, COSCO ratified said Jocelyn Corpuz's purported act of receiving BIR notices; or *three*, COSCO made particular representations, which led the BIR to believe that Jocelyn Corpuz was authorized to receive BIR notices on its behalf. All these veer towards a single conclusion—COSCO or its duly authorized representative did not actually receive the FLD dated January 9, 2013, violative of its right to due process on assessment.

In fine, the *first* element is wanting since COSCO is not required to pay the IT liability for TY 2008 under a void FLD dated January 9, 2013. The absence thereof negates the presence of the *second* and *third* elements given that COSCO and accused Cosay are justified in not paying such IT liability for TY 2008. Therefore, accused Cosay must be acquitted.

We now deal with accused Cosay's civil liability arising from the crime charged in this case. Section 205 of the NIRC, as amended, reads:

SEC. 205. Remedies for the Collection of Delinquent Taxes. - The civil remedies for the collection of internal revenue taxes, fees or charges, and any increment thereto resulting from **delinquency** shall be:

...

(b) By civil or criminal action.

⁶⁰ Boldfacing supplied.

The judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case as finally decided by the Commissioner.

...⁶¹

The order to pay taxes subject of this case rests upon confluence of the following requisites: *first*, the tax subject of the criminal case is delinquent; and *second*, there must be valid final determination thereof by the CIR. None of these requisites were met. For instance:

A tax is considered delinquent when an assessment for deficiency tax has become final, executory, and demandable, and that the taxpayer has not paid the same within the period given in the notice of assessment.⁶² Conversely, when an assessment is void and did not attain finality, the taxes assessed therein may not be considered delinquency taxes.

Additionally, in *People of the Philippines v. Court of Tax Appeals-Third Division and William Villarica*,⁶³ (*Villarica*) the Supreme Court held that adherence with due process on assessment is crucial in the pursuit of the *civil* aspect of the criminal case for willful attempt in any manner to evade or defeat any tax imposed in the NIRC, as amended, punishable under Section 254 thereof.

*Macario Lim Gaw, Jr. v. Commissioner of Internal Revenue*⁶⁴ further explains that “[u]nder Sections 254 and 255 of the NIRC, the government can file a criminal case for tax evasion against any taxpayer who willfully attempts in any manner to evade or defeat any tax imposed in the tax code or the payment thereof. ...” Evidently, tax evasion also includes willful failure to pay taxes due punishable under Section 255 of the NIRC, as amended.

Just as the validity of an assessment is essential in pursuing the civil aspect of the crime of willful attempt in any manner to evade or defeat any tax imposed in the NIRC, as amended punishable under Section 254 thereof, as ruled in *Villarica*, so too should the same

⁶¹ Boldfacing supplied.

⁶² Atty. Eufrocina M. Sacdalan-Casasola, *National Internal Revenue Code (Annotated)*, Vol. 2, Rex Publishing Company, Inc. (2012), p. 1169.

⁶³ G.R. No. 248802, Resolution dated June 21, 2021.

⁶⁴ G.R. No. 222837, July 23, 2018.

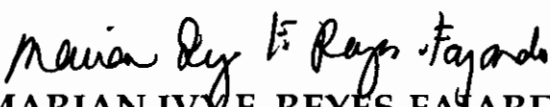
standard be applied in willful failure to pay tax due punishable under Section 255 of the same Code, such as the instant case. The reason being the *civil* liability arising from both crimes is essentially the same— recovery of taxes due from the taxpayer.

Again, the BIR's FLD dated January 9, 2013 issued against COSCO is void and never attained finality. As a result, neither the IT for TY 2008 hinged thereon become delinquent taxes within the purview of the law, nor did the CIR issue a valid final determination of COSCO's tax liability. Precisely, We cannot order COSCO's president, accused Cosay,⁶⁵ to pay the tax arising from the crime charged herein. To stress, a void assessment bears no valid fruit.⁶⁶

WHEREFORE, accused Michael C. Cosay is **ACQUITTED** of the crime charged under the Information in CTA Crim. Case No. O-804 on the ground of reasonable doubt. No pronouncement as to civil liability.

The cash bail bond of accused Michael C. Cosay is **CANCELLED** and ordered **RELEASED**, upon accused Michael C. Cosay's presentation of proper documents, in accordance with accounting rules and regulations.

SO ORDERED.



MARIAN IVY F. REYES-FAJARDO
Associate Justice

We Concur:


ROMAN G. DEL ROSARIO
Presiding Justice

⁶⁵ In *Heirs of Fe Tan Uy v. International Exchange Bank*, G.R. No. 166282, February 13, 2013, it has been ruled that: "... a corporation is a juridical entity which is vested with a legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it..."

⁶⁶ *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 4, 2021.


CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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


ROMAN G. DEL ROSARIO
Presiding Justice