

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

**PEOPLE OF THE
PHILIPPINES,**

Petitioner,

CTA EB CRIM. NO. 057
(CTA Crim. Case Nos. O-424
and O-426)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and
Modesto-San Pedro, JJ.

- versus -

FERDINAND P. MAHUSAY,
Respondent.

Promulgated:

MAY 27 2020

X----- 11:45 a.m. X

DECISION

CASTAÑEDA, JR., J.:

This is an appeal, by way of Petition for Review,¹ filed by petitioner People of the Philippines under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) of the Decision dated April 4, 2018 (Assailed Decision)² and the Resolution dated August 3, 2018 (Assailed Resolution)³ both rendered by the First Division of this Court (Court in *gr*

¹ Court *En Banc*'s Docket, pp. 1-14.

² Penned by Associate Justice Cielito N. Mindaro-Grulla, concurred in by Presiding Justice Roman G. Del Rosario and Associate Justice Erlinda P. Uy; Court *En Banc*'s Docket, pp. 23-52.

³ Penned by Associate Justice Cielito N. Mindaro-Grulla, concurred in by Presiding Justice Roman G. Del Rosario and Associate Justice Erlinda P. Uy; Court *En Banc*'s Docket, pp. 53-57.

Division) in CTA Crim. Case Nos. O-424 and O-426. In the Assailed Decision, the Court in Division acquitted respondent Ferdinand P. Mahusay for failure of the prosecution to prove his guilt beyond reasonable doubt. Moreover, no civil liability was imposed on the accused due to insufficiency of evidence. This present Petition for Review seeks the review of the civil aspect of the case.

The respective dispositive portions of the Assailed Decision and Resolution are quoted hereunder:

Assailed Decision:

“WHEREFORE, premises considered, in CTA Criminal Case Nos. O-424 and O-426, accused **Ferdinand P. Mahusay** is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. Accordingly, for insufficiency of evidence, no civil liability is herein imposed.

SO ORDERED.”

Assailed Resolution:

“WHEREFORE, premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.”

THE FACTS

The facts of the present case, as culled from the records, are as follows:⁴

“Accused Ferdinand P. Mahusay is charged before this Court with violation of Sections 254 and 255 of the NIRC of 1997, as amended, under two (2) separate Informations which, respectively, read as follows:

Crim. Case No. O-424

‘The undersigned Prosecution Attorney of the Department of Justice, hereby accuses **FERDINAND P. MAHUSAY** of the offense of attempt to evade or 

⁴ Court *En Banc*’s Docket, pp. 23-33 (Citations omitted).

defeat tax for taxable year 2009 in violation of Section 254 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

That on or about April 16, 2010, in Pasay City and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino Citizen residing in the Philippines and a registered taxpayer earning income as a member of the Board of Trustees of the Regular and Corporate Offices of Metropolitan Works and Sewerage System (MWSS) and as such, required by law, rules and regulations to file his annual income tax return and pay the appropriate tax, willfully, unlawfully and feloniously attempt to evade or defeat tax, by not declaring his income earned from Metropolitan Works and Sewerage System (MWSS) for taxable year 2009 amounting to Four Million Five Hundred Fifty Seven Thousand One Hundred Sixty Pesos and Thirteen Centavos (P4,557,160.13), which resulted to a basic deficiency income tax of One Million Four Hundred Seven Thousand One Hundred Sixty Pesos and Thirteen Centavos (P1,407,160.13) *(more or less-deleted/amended on July 1, 2015)* for taxable year 2009, exclusive of penalties, surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines.

CONTRARY TO LAW.'

Crim. Case No. O-426

'The undersigned Prosecution Attorney of the Department of Justice, hereby accuses **FERDINAND P. MAHUSAY** of the offense of failure to file an income tax return for the taxable year 2009 in violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

That on or about April 16, 2010 in Pasay City and within the jurisdiction of this Honorable Court, the above-named accused, as a Filipino Citizen residing in the Philippines and a registered taxpayer earning income as member of the Board of Trustees of the Regular and Corporate Offices of Metropolitan Waterworks 

and Sewerage System (MWSS) and as such required by law, rules and regulations to file his income tax return and pay the corresponding tax for taxable year 2009 did, then and there, willfully, unlawfully, and feloniously fail to file his annual income tax return and pay the corresponding tax for taxable year 2009 for income earned from Metropolitan Waterworks and Sewerage Systems (MWSS), in violation of the provisions of the National Internal Revenue Code of 1997, as amended, to the damage and prejudice of the Government of the Republic of the Philippines in the amount of One Million Four Hundred Seven Thousand One Hundred Sixty Pesos and Thirteen Centavos (P1,407,160.13), (*more or less - deleted/amended on July 1, 2015*), as basic income tax deficiency, exclusive of penalties, interests and surcharges.

CONTRARY TO LAW.'

On January 14, 2015, upon arraignment, the above-named accused, duly assisted by his counsel *de parte*, entered his plea of not guilty to the crimes charged against him.

Meanwhile, the prosecution filed a Motion for Consolidation on January 23, 2015.

On February 4, 2015, a Preliminary Conference was held. On the same date, the Court's First Division issued a Resolution granting the Motion for Consolidation of CTA Crim. Case Nos. O-424 and O-426, subject to the conformity of the Court's Third Division. Similarly, in a Resolution dated March 11, 2015, the Court's Third Division granted the consolidation of the cases, bearing the lower docket number.

Thereafter, in the Preliminary Conference held on July 1, 2015, this Court noted that the Informations filed for both cases have the statement 'more or less' after the amount stated therein which could affect the Court's jurisdiction. Thus, re-arraignment of the accused was set. Upon re-arraignment, accused entered his plea of not guilty to the crimes charged against him.

Pre-Trial proceeded. In the Pre-Trial Order dated September 9, 2015, the admissions and issues read as follows: *✍*

‘A. The parties admitted during the Pre-Trial Conference held on July 29, 2015 and in their Joint Stipulation of Facts and Issues filed on August 12, 2015, the following:

1. This Honorable Court has jurisdiction over these cases; and
2. The identity of the accused Ferdinand P. Mahusay.
3. Stipulations on the existence of the parties’ respective documentary evidence were held during the Preliminary Conference scheduled on February 4 and May 20, 2015.

B. Issues:

1. In CTA Crim. Case No. O-424 — Whether the accused is guilty beyond reasonable doubt for violation of Section 254 of the NIRC of 1997, as amended; and
2. In CTA Crim. Case No. O-426 — whether accused is guilty beyond reasonable doubt for violation of Section 255 of the NIRC of 1997, as amended.’

During trial, the prosecution presented the testimonies of the following witnesses:

1. **DANIEL R. LLAVOR**

Based on the Judicial Affidavit, Daniel R. Llavor is currently designated as a Revenue Officer (RO) II of the Bureau of Internal Revenue (BIR), currently assigned at Revenue District Office (RDO) No. 34-Paco. Prior to being assigned at RDO 34, he served also as a RO at the National Investigation Division (NID) of the BIR from 2009 until 2013. According to him, pursuant to NID Memorandum dated October 5, 2010, his group was directed to conduct the initial investigation on the possible tax liabilities of the accused. His group is composed of the following persons: himself, Franklin Mendoza and Renato S. Corpuz as their Group Supervisor (GS). He also stated that in *✍*

conducting said preliminary investigation, they adopted the following procedure:

a. *Profiling of taxpayer*

- The group accessed the centralized database of the BIR which is the Integrated Tax System, and found that the accused is a registered taxpayer at RDO No. 51-Pasay City with Tax Identification Number (TIN) 118-395-316-000 and registered address at PICC Bldg., CCP Complex Roxas Blvd., Pasay City.

b. *Third-party verification*

- The group requested from MWSS and Commission on Audit (COA) a copy of the Report on Salaries, Allowance and other Personnel Benefits Received by principal officers and members of the governing board of GOCCs, specifically, MWSS for both the Regulatory Offices, and Corporate Offices for the period from January 1, 2008 through December 31, 2009.

He likewise stated that the group was able to secure Certifications from the Information System Operation Service (ISOS), through Assistant Commissioner Victoria V. Santos, and RDO No. 51, that no record of returns were (sic) filed by the accused for the years 2006, 2007, 2008 and 2009.

c. *Consolidation and Evaluation of all data, information, and documents gathered pertaining to the records of the accused*

- He testified that based on the all the information gathered, the group was able to conclude the following: (i) Ferdinand P. Mahusay did not file any return for the years 2006 to 2009; and (ii) Ferdinand Mahusay earned substantial income from MWSS for the years 2008 and 2009 as per lists from the COA.

d. *Findings and recommendations*

- The group recommended the issuance of a Letter of Authority from the Commissioner of Internal Revenue (CIR) for the purpose of conferring upon them 

authority to examine the books of accounts of the accused and to prevent the accused from amending the tax return, where it committed violation of tax laws.

Accordingly, the group made a Memorandum to the CIR recommending that the results of the preliminary investigation be immediately forwarded to the Run Against Tax Evaders (RATE) — Legal Writing and Appearance Group (LWAG) for evaluation and preparation of the corresponding pleadings required for the filing of the criminal case. Eventually, after referral of the case by CIR to the Department of Justice (DOJ) Secretary, the DOJ Secretary authorized the filing of the criminal case.

He further testified that after the filing of the criminal case, the group continued with the assessment procedure against the accused and accessed the records where MWSS is registered. The group was able to secure from RDO No. 39, through Ms. Clavelina S. Nacar, computer print-outs of withholding tax returns and the alphalist of withholding tax on compensation income filed by MWSS for taxable years 2006-2009. Based on these, the initial findings of the group corroborated that accused was not among the individuals being subjected to withholding tax on compensation. Thus, he was not among the MWSS employees subject to substituted filing of income tax.

2. RENATO S. CORPUZ

Renato S. Corpuz testified that he is currently occupying the position of Revenue Officer IV of the BIR. He is the Group Supervisor (GS) of the team who conducted the investigation regarding the tax liabilities of the accused. He claims that tax investigation against the accused stemmed from an inquiry made by the Senate regarding the compensation given to Directors and Board of Trustees and Directors of government-owned and controlled corporations.

3. CLAVELINA S. NACAR

In her Judicial Affidavit, Clavelina S. Nacar stated that she is presently assigned as the OIC-Assistant Regional Director of Revenue Region (RR) No. 9-San Pablo City, and that prior to being assigned as the OIC-ARD of RR No. 9, she served as Revenue District Officer of Revenue District Office (RDO) No. 39-South Quezon City of the BIR. She testified that when she received a letter dated February 22, 2011 requesting for the *je*

withholding tax returns filed by MWSS for 2006 to 2009, she instructed the Document Processing Section to verify if MWSS filed withholding tax returns.

She also testified on how to verify filed withholding tax returns. She also confirmed in her testimony that MWSS filed its withholding tax returns on compensation and expanded withholding tax returns which she transmitted to Atty. Sixto C. Dy including the alpha list of individuals subject to withholding tax by MWSS.

4. MA. ROSARIO ADASA

Ma. Rosario Adasa is currently the State Auditor V-Office of the Assistant Commissioner (OAC), Corporate Government Sector (CGS), Commission on Audit (COA). Based on the *subpoena duces tecum* and *ad testificandum*, she is required to bring (a) the published copy of the ROSA in the custody of COA for the year [for] 2008-2009; and (b) other documents relative to the ROSA submitted by MWSS. In her testimony, she confirmed that accused Ferdinand P. Mahusay is included in the list of Officers per ROSA submitted to COA, both in the Regulatory and Corporate Office of MWSS.

5. JOCELYN M. TOLEDO

Jocelyn M. Toledo is presently the Acting Manager of the Finance Department of the MWSS. In her Judicial Affidavit, she stated that accused, as member of the Board of Trustees, was not an employee of MWSS.

On March 28, 2016, the prosecution filed their Formal Offer of Evidence. On April 15, 2016, accused filed his comment thereto. Acting on the Formal Offer of Evidence, this Court, in a Resolution dated June 8, 2016, admitted Exhibits 'P-1', 'P-2', 'P-3', 'P-5', 'P-7', 'P-8', 'P-9', 'P-11', 'P-11-A', 'P-11-B', 'P-12', 'P-12-A', 'P-12-B', 'P-13', 'P-13-A', 'P-13-B', 'P-14', 'P-15', 'P-15-A', 'P-16', 'P-17', 'P-17-a', 'P-17-b', 'P-19', 'P-20', 'P-22', 'P-23', 'P-24', 'P-24-1', 'P-24-2', 'P-25' and 'P-25-1', subject to this Court's final evaluation and appreciation of their purposes, materiality, relevancy, and probative value to the issues involved in this case.

However, the Court denied the admission of Exhibits 'P-4', 'P-6', 'P-10' and 'P-21', for failure to present their originals for their comparison. *jc*

Meanwhile, the accused filed his Motion for Leave to File Demurrer to Evidence (With Notice of Change of Address) and his supplemental Motion for Leave to File Demurrer to Evidence on June 20, 2016 and June 30, 2016, respectively. The prosecution filed their comment to the Motion for Leave to File Demurrer to Evidence on July 7, 2016 but, failed to file their comment with respect to the supplemental Motion for Leave to File Demurrer to Evidence, as per Records Verification dated July 27, 2016.

In a Resolution dated September 6, 2016, this Court granted accused's Motion for Leave to File Demurrer to Evidence. Thereafter, accused filed his Demurrer to Evidence on September 19, 2016. On September 30, 2016, the prosecution filed a Motion for Extension to File Comment (On Accused's Demurrer to Evidence). Accordingly, on October 4, 2017, the Court granted the motion. The prosecution's Comment/Opposition (To Accused's Demurrer to Evidence) was filed on October 17, 2016.

Finding no merit in accused's Demurrer to Evidence, the Court issued a Resolution dated November 24, 2016 denying the Demurrer to Evidence. Thus, trial proceeded.

On February 8, 2017, the defense presented the accused himself as its one and only witness.

On February 20, 2017, accused filed his Formal Offer of Evidence. However, prosecution failed to file a comment despite notice. Thus, acting on the Formal Offer of Evidence, the Court admitted Exhibits 'A-3', 'A-4', 'A-8', 'A-9', 'A-10', 'A-11', 'A-12', 'A-13', 'A-14', 'A-14-A', subject to this Court's final evaluation and appreciation of their purposes, materiality, relevancy, and probative value to the issues involved in this case. However, this Court denied the following exhibits:

1. Exhibits 'A-1' and 'A-2', for failure to identify; and
2. Exhibits 'A-5', 'A-6', and 'A-7', for failure to present the originals for comparison.

Consequently, with the admission of the afore-mentioned documentary exhibits, accused was deemed to have formally rested his case. On November 3, 2017, the Court directed both parties to file their respective memoranda. However, as per Records Verification dated December 27, 2017, both parties failed to file their respective memoranda despite notice. *Re*

On January 11, 2018, this Court issued its Resolution stating among others, that these cases are now considered submitted for decision. Counsel for the accused was directed to inform this Court within ten (10) days from notice, of the new address of accused since the Resolution dated November 3, 2017 was returned unserved.”

On April 4, 2018, the Court in Division rendered the Assailed Decision.

Aggrieved, petitioner filed Motion for Reconsideration but the Court in Division likewise denied the same for lack of merit in the Assailed Resolution.

On August 29, 2018, petitioner filed the present Petition for Review.

In a Resolution⁵ dated September 19, 2018, the Court *En Banc* ordered the respondent to file a Comment to the Petition for Review within ten (10) days from receipt thereof.

Respondent, however, failed to file his Comment on the Petition for Review as per the Records Verification report issued by this Court’s Judicial Records Division dated March 25, 2019.⁶

In a Resolution⁷ dated July 12, 2019, the Court *En Banc* gave due course to the Petition for Review. Accordingly, the Court *En Banc* directed the parties to submit their respective Memorandum within 30 days from notice.

Petitioner filed its Memorandum⁸ on August 22, 2019 while respondent filed his Memorandum⁹ on August 28, 2019.

Thus, in a Resolution¹⁰ dated September 18, 2019, the present Petition for Review was submitted for decision. *gr*

⁵ *Id.*, pp. 59-60.

⁶ *Id.*, p. 63.

⁷ *Id.*, pp. 70-71.

⁸ *Id.*, pp. 72-84.

⁹ *Id.*, pp. 86-100.

¹⁰ *Id.*, pp. 102-103.

THE ISSUES

As stated earlier, petitioner seeks the review of the Assailed Decision and Resolution of the Court in Division insofar as it imposed no civil liabilities on the accused based on the following grounds:¹¹

1. The Court in Division erred when it denied the admission of the COA ROSA for failure to present its originals;
2. The Court in Division erred when it held that respondent-accused was an employee of MWSS and was therefore qualified for substituted filing of the Income Tax Return (ITR);
3. The Court in Division erred when it held that the BIR failed to prove that there is unpaid income tax; and
4. The Court in Division erred when it imposed no civil liability on respondent-accused due to insufficiency of evidence.

THE COURT *EN BANC*'S RULING

After thorough evaluation of the factual antecedents of the present case, the arguments of the parties, as well as the relevant laws and jurisprudence on the matter, the Court *En Banc* finds that the present Petition for Review should be denied for lack of merit. There is no substantial matter much less compelling reason to disturb the findings of the Court in Division in the Assailed Decision and Resolution.

Section 205 of the National Internal Revenue Code of 1997, as amended, provides the requisites for the award of civil liability in criminal cases, to wit:

“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:

(a) x x x

(b) By civil or criminal action. *gc*

¹¹ *Id.*, pp. 5-6.

Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes: *Provided, however,* That the remedies of distraint and levy shall not be availed of where the amount of tax involved is not more than One hundred pesos (P100).

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.

The Bureau of Internal Revenue shall advance the amounts needed to defray costs of collection by means of civil or criminal action, including the preservation or transportation of personal property distrained and the advertisement and sale thereof, as well as of real property and improvements thereon.”
(*Emphasis supplied*)

The above provision mandates that before the civil liability for the payment of taxes may be included in the judgment, there must be a final determination of such liability by the Commissioner. This determination of civil liability for the payment of taxes by the Commissioner refers to a formal assessment.

Section 228 of the National Internal Revenue Code of 1997, as amended (1997 NIRC) prescribes the procedure to be observed in the issuance of tax deficiency assessments. The said provision, in relevant part, provides:

“SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:

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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.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice.” (*Emphasis supplied*) *gr*

To implement the foregoing provisions, Revenue Regulations (RR) No. 12-99, as amended,¹² specifies the due process requirement to be observed in issuing deficiency tax assessments. The relevant portion of the said issuance reads:

“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:

3.1.1 ***Preliminary Assessment Notice (PAN).*** — If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ‘ANNEX A’ hereof).

If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer’s deficiency tax liability, inclusive of the applicable penalties.

If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer’s response, calling for payment of the taxpayer’s deficiency tax liability, inclusive of the applicable penalties.

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3.1.3 ***Formal Letter of Demand and Final Assessment Notice (FLD/FAN).*** — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN 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 assessment shall be void* (see illustration in ANNEX ‘B’ hereof). *je*

¹² As amended by RR No. 18-2013 dated November 28, 2013.

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3.1.6 Modes of Service. – The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner of 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.

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

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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.”

In *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*,¹³ the Supreme Court categorically held that failure to strictly comply with the notice requirements prescribed under Section 228 of the 1997 NIRC and RR No. 12-99 is tantamount to denial of due process. The Supreme Court further stressed that the absence of PAN will render nugatory any assessment made by the tax authorities. As aptly explained by the Supreme Court: *pe*

¹³ G.R. No. 185371, December 8, 2010, 637 SCRA 644, 646.

“Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations — that taxpayers should be able to present their case and adduce supporting evidence.

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From the provision quoted above, it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the ‘due process requirement in the issuance of a deficiency tax assessment,’ the absence of which renders nugatory any assessment made by the tax authorities. The use of the word ‘*shall*’ in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star’s right to due process. **Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void.”** (*Emphasis supplied and citations omitted*)

In the case of *Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue*,¹⁴ the Supreme Court held that it is a requirement of due process that the taxpayer must **actually receive the assessment**, to wit:

“x x x It must be noted, however, that the foregoing rule requires that the notice be sent to *the taxpayer*, and not merely to a disinterested party. Although there is no specific requirement that the taxpayer should receive the notice within the said period, due process requires at the very least that such notice actually be received. In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*, we had occasion to say:

An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when *ge*

¹⁴ G.R. No. 155541, January 27, 2004, 421 SCRA 275.

penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, **due process requires that it must be served on and received by the taxpayer.**" *(Emphasis supplied)*

Thus, it is not simply a question of whether the assessment notices were sent to respondent by petitioner. It is imperative that the taxpayer actually received such tax assessment notices.

Meanwhile, in the case of *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*,¹⁵ the Supreme Court enunciated the rule in cases where the taxpayer denies the receipt of assessment notices and also the requisite proof to show the fact of mailing of assessment notices. The Supreme Court held:

"If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. Here, the *onus probandi* has shifted to the BIR to show by contrary evidence that [the taxpayer] indeed received the assessment in the due course of mail. It has been settled that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee.

To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts or the Registry return card which would have been 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 Court does not put much credence to the self-serving documentations made by the BIR personnel, especially if they are unsupported by substantial evidence establishing the fact of mailing. While it is true that an assessment is made when the notice is sent within the prescribed period, the release, mailing, or sending of the same must still be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or control, and without adequate supporting evidence cannot suffice. Otherwise, the *pe*

¹⁵ G.R. No. 202695, February 29, 2016, 785 SCRA 258-259.

defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices.” (*Emphasis supplied*)

Based from the foregoing, the rule is that in case the taxpayer denies receipt of the assessment notices from the BIR, the latter has the burden to prove by competent evidence that the required notices were actually received by the taxpayer. It is also clear that to prove the fact of mailing, it is essential for the petitioner to present the registry receipt issued by the Bureau of Posts or the Registry return card signed by the taxpayer or its authorized representative or at least a certification issued by the Bureau of Posts attesting to the same fact.

In the Assailed Decision, however, the Court in Division found as follows:

“After a thorough scrutiny of the evidence for the prosecution, We find that the prosecution failed to show that the notices were indeed received by the accused. There was no proof that the notices were actually received by him. While names of the person who received the notices are evident, this Court would like to remind the prosecution that for notice by mail, it must appear that the same was **served on the addressee or a duly authorized agent of the addressee**. In fact, the registry return receipt itself provides that ‘[a] registered article must not be delivered to anyone but the addressee, or upon the addressee’s written order, in which case the authorized agent must write the addressee’s name on the proper space and then affix legibly his own signature below it.’

The rule is that receipts for registered letters and return receipts do not prove themselves; they must be properly authenticated in order to serve as proof of receipt of the letter. At most, registry receipts show that it was possible for a certain person to have received the notices. Possibilities, however, cannot replace proof beyond reasonable doubt.

The prosecution, however, was not able to successfully establish that the accused was served with the PAN, FAN and FLD.” (*Citations omitted*)

The Court *En Banc* agrees with the Court in Division. Indeed, petitioner failed to establish that there was final, demandable and executory assessment under which respondent is liable to pay deficiency taxes. 8c 3/10

In the present case, petitioner alleges that all the notices of the BIR specifically the Letter of Authority (LOA), the Notice to Taxpayer, the Preliminary Assessment Notice (PAN), and the Formal Letter of Demand (FLD) issued to the respondent were personally served by the members of his investigating team.¹⁶ Respondent, on the other hand, categorically denies having received such notices. It is thus incumbent upon petitioner to prove by competent evidence that such notices were actually received by respondent and that due process had been observed.

The records show that the following were served *personally*: (1) Letter of Authority (LOA) No. LOA-211-2010-00000252 (SN: eLA201000015048) dated November 5, 2010 received by one **Ma. Florita Inzon** on November 10, 2010; and (2) Preliminary Assessment Notice (PAN) received by one **Marivic Aspan** on October 18, 2011.

On the other hand, the following were served *by registered mail*: (1) Notice of Informal Conference dated January 11, 2011; and (2) Formal Letter of Demand (FLD).

However, based on the respective testimonies of petitioner's witnesses during trial, the identities let alone the authorities of the abovementioned persons who received the notices were not duly established. Quoted below are the relevant portions of the testimonies of petitioner's witnesses on this matter, to wit:

CROSS-EXAMINATION BY ATTY. SALVADOR B. VISTE, JR.¹⁷

X X X

X X X

X X X

“ATTY. VISTE:

Q. Mr. Witness, in your Judicial Affidavit, you also stated therein that you have conducted aside from profiling, you conducted third party verification, consolidation of all datas (sic) and evaluation of all consolidated datas, (sic) is that correct?

MR. LLAVOR:

A. Yes Sir.

ATTY. VISTE:

Q. So, after these series of investigation, you also said that you have copy furnished the Accused of this Letter of Authority?

MR. LLAVOR:

A. We served a Letter of Authority. *✓*

¹⁶ Petition for Review, p. 11, Court *En Banc*'s Docket, p. 11.

¹⁷ Transcript of Stenographic Notes (TSN), October 7, 2015 Hearing, pp. 10, 17-18; pp. 29-30; pp. 30-33.

ATTY. VISTE:

Q. It was served to the Accused?

MR. LLAVOR:

A. Yes Sir but not to the Accused but to his representative.

ATTY. VISTE:

Q. Is it not by the rules of the BIR that it should be personally served to the Accused?

MR. LLAVOR:

A. We personally served to the representative because
(interrupted)

ATTY. VISTE:

Q. Representative?

MR. LLAVOR:

A. Yes, because when we go to his office, he is not there.

ATTY. VISTE:

Q. So, when you say representative, is this representative authorized by the Accused[,] Mr. Witness?

MR. LLAVOR:

A. He works there in his office.

ATTY. VISTE:

Q. Do you have any evidence to adduce that this representative was duly authorized by the Accused?

MR. LLAVOR:

A. No.”

X X X

X X X

X X X

RE-DIRECT EXAMINATION BY ATTY. MARLON M. MENDOZA.¹⁸

“ATTY. MENDOZA:

Q. Mr. Llavor, when you serve the Letter of Authority, did you personally went (sic) to the registered address of Mr. Ferdinand Mahusay?

MR. LLAVOR:

A. Yes.

ATTY. MENDOZA:

Q. Who is this Maria Florita Inzon and Maria Corazon Mahusay who received the Letter of Authority? *z*

¹⁸ TSN, October 7, 2015 Hearing, pp. 29-30.

MR. LLAVOR:

A. They are in the office of MWSS.

ATTY. MENDOZA:

Q. Do you know who are these persons?

MR. LLAVOR:

A. They were the persons who (*interrupted*)

ATTY. MENDOZA:

Q. Yes, but do you know who they are, their identity?

MR. LLAVOR:

A. No, they are just there.

ATTY. MENDOZA:

Q. Did they tell you their capacity to receive it?

MR. LLAVOR:

A. Yes, they are employees there. Mahusay is I think the wife or related to him and Florita is an employee of MWSS."

X X X

X X X

X X X

RE-CROSS EXAMINATION BY ATTY. SALVADOR B. VISTE, JR.¹⁹

"ATTY. VISTE:

Q. When Ms. Maria Corazon Mahusay and Ms. Maria Florita Inzon received the Letter of Authority, did you ask for their authority?

MR. LLAVOR:

A. No. Actually, what transpired there is Ms. Inzon was an employee there, Mr. Mahusay then was not present during that time so Ms. Inzon received the Letter of Authority. And then actually, Mrs. Mahusay was not there but we left the Letter of Authority to Ms. Inzon because he was on the way to the office so we left the Letter of Authority. And then after one (1) hour, we came back again.

ATTY. VISTE:

Q. So Mr. Witness, am I correct in saying from the way you say it, am I correct in saying that you presumed that Ms. Inzon and Ms. Mahusay are duly authorized by the (*interrupted*)

ATTY. MENDOZA:

Objection, your Honors, (*interrupted*) 

¹⁹ TSN, October 7, 2015 Hearing, pp. 30-33.

ATTY. VISTE:

Q. By the Accused Mahusay to receive the Letter of Authority and you also assumed that the ones who received the Letter of Authority shall give the same to the Accused, am I correct?

ATTY. MENDOZA:

Objection, your Honors, misleading.

JUSTICE GRULLA:

Witness may answer.

MR LLAVOR:

I will answer, your Honors?

JUSTICE GRULLA:

Yes.

ATTY. VISTE:

Q. Just yes or no Mr. Witness.

MR. LLAVOR:

A. Can you repeat the question?

ATTY. VISTE:

Q. Am I correct in assuming that you presumed that the Letter of Authority shall be given to the Accused through Ms. Inzon and Ms. Mahusay?

MR. LLAVOR:

A. Yes.

ATTY. VISTE:

Q. And you also presumed that they are given the authority from Mr. Mahusay?

ATTY. MENDOZA:

Objection, your Honors, calls for *(interrupted)*

JUSTICE GRULLA:

Witness may answer.

MR. LLAVOR:

A. I think Ms. Mahusay was her Secretary and Ms. Inzon an employee of MWSS.

ATTY. VISTE:

Q. So, do you think they are authorized to receive the Letter of Authority? *gs*

MR. LLAVOR:

A. I cannot say that but maybe they are authorized because they are there in the same office.

ATTY. VISTE:

Q. You did not ask for any authorization from them?

MR. LLAVOR:

A. Actually, we are not doing that."

CROSS-EXAMINATION BY ATTY. SALVADOR B. VISTE, JR.

X X X

X X X

X X X

"ATTY. VISTE:²⁰

Q. When you said assessment, are you referring to Preliminary Assessment Notice or Final Assessment Notice?

MR. CORPUZ:

A. There are so many assessment Sir, we have the Final, Preliminary (*interrupted*)

ATTY. VISTE:

Q. No, I'm asking during that stage of investigation when the Letter of Authority was issued to you, were you conducting a Preliminary Assessment Notice or Final Assessment Notice or not? What is that kind of assessment Mr. Witness?

MR. CORPUZ:

A. May I answer Sir?

ATTY. VISTE:

Q. Yes.

MR. CORPUZ:

A. So, we are conducting an audit, after the result of our audit, we are going to issue an assessment through a Preliminary and Final Assessment Notice or a Formal Letter of Demand.

ATTY. VISTE:

Q. Did you do that?

MR. CORPUZ:

A. Yes Sir.

ATTY. VISTE:

Q. Did you (*interrupted*) *re*

²⁰ TSN, October 7, 2015 Hearing, pp. 48-52.

MR. CORPUZ:

A. Our group did that.

ATTY. VISTE:

Q. Did you furnish the Accused of that demand?

MR. CORPUZ:

A. Yes Sir. After taking into consideration all the necessary steps in making the assessment and also issuing a letter to the taxpayer. After we have already prepared our assessment, we have informed Sir Ferdinand Mahusay for the result of our initial findings through a Notice of Informal Conference giving him to respond, chance to respond.

ATTY. VISTE:

Q. Do you have proof that Mr. Mahusay received that Notice you are referring?

MR. CORPUZ:

A. What notice?

ATTY. VISTE:

Q. Informal Conference?

MR. CORPUZ:

A. Yes Sir, we also sent it through, we have send that through registered mail.

ATTY. VISTE:

Q. Do you have proof to show?

ATTY. MENDOZA:

Your Honors, can I show it to the witness?

JUSTICE GRULLA:

Yes.

MR. CORPUZ:

A. Yes, this notice we send through registered mail to Ferdinand Mahusay.

JUSTICE GRULLA:

Can you show it under the projector?

EXECUTIVE CLERK:

Yes, your Honors.

ATTY. VISTE:

Q. Do you have any proof that it was received by the Accused Mr. Witness? *gr*

MR. CORPUZ:

A. Yes, because the letter did not return to us.

ATTY. VISTE:

Q. The return card?

MR. CORPUZ:

A. Yes.

ATTY. VISTE:

Q. Yes, do you have in your possession the return card to [the] effect that the Accused received the letter?

MR. CORPUZ:

A. Actually, we have not received any letter returned to us but we can show you the return card.

JUSTICE GRULLA:

Is there a return card? What about the registry receipt there?

MR. LLAVOR:²¹

A. Your Honors, may I correct my statement? I cannot answer that considering that I did not see the return card. But may I say this that it was through circumstantial evidence because the representative came to our office at said designated time. And then he came to us and then he represent (sic) himself that he is the representative of Mr. Mahusay and that he also signs the response or the response form that the representative do not subscribe to the findings of the BIR.

ATTY. VISTE:

Q. Mr. Witness, who is this representative you are telling?

MR. CORPUZ:

A. I cannot remember him but he just said that he is the representative of Mr. Ferdinand Mahusay.

ATTY. VISTE:

Q. Did you inquire his authority or her authority to that effect (sic) that he is duly authorized by Mr. Mahusay?

MR. CORPUZ:

A. Because he presented a letter to us that's why.

ATTY. VISTE:

Q. Do you have that letter now Mr. Witness to show the conformity of that representative? *Je*

²¹ It should be Mr. Corpuz.

MR. CORPUZ:

A. Because we cannot just entertain him without the letter.

ATTY. VISTE:

Q. You mentioned a while ago that there is this representative of Mr. Mahusay and you said you cannot recall who is this representative. And now you cannot show any proof that this representative you are telling is duly authorized by Mr. Mahusay. Am I right?

MR. CORPUZ:

A. I said I cannot remember considering that I am now a Senior Citizen because that time has been a long long time ago. This is an honest answer."

X X X

X X X

X X X

ATTY. VISTE:²²

Q. When you issued the Preliminary Assessment Notice to, in Question No. 38 and your Answer No. 38, his authorized representative sign[s] his name and signature and the date of receipt of his receiving copy of the PAN. Can you show the Honorable Court what is your proof?

ATTY. MENDOZA:

Objection, your Honors, the document is the best evidence.

JUSTICE GRULLA:

All right, sustained.

ATTY. VISTE:

Q. Can you read the one who receives the notice Mr. Witness?

ATTY. MENDOZA:

Objection, your Honors, the document is the best evidence.

JUSTICE GRULLA:

All right, sustained. What is your question now?

ATTY. VISTE:

Q. Who is Marivic Aspan Mr. Witness?

MR. CORPUZ:

A. The one who received the letter.

ATTY. VISTE:

Q. How is [s]he related to the Accused? *gc*

²² TSN, October 7, 2015 Hearing, pp. 65-68.

MR. CORPUZ:

A. She was the one, when we deliver the letter, she was the one, we ask her where is Mr. Mahusay and she was the one inside the house and she told she knows Mahusay and everything so we let her receive the letter and advise her to give it to Mr. Mahusay immediately.

ATTY. VISTE:

Q. Whose house was that Mr. Witness? You said you deliver it to the house. Whose house was that?

MR. CORPUZ:

A. The address of Mr. Mahusay.

ATTY. VISTE:

Q. Where is that address?

MR. CORPUZ:

A. Excuse me, may I ask permission of the Honorable Court to ask my *(interrupted)*

ATTY. VISTE:

Q. No, you cannot ask your lawyer.

JUSTICE GRULLA:

What is it? You face the Court Mr. Witness.

MR. CORPUZ:

A. Yes, I apologize, your Honors. Since I cannot *(interrupted)*

JUSTICE GRULLA:

If you cannot remember, just say so.

MR. CORPUZ:

A. I cannot remember.

JUSTICE GRULLA:

Do not try to elicit your answer from other people.

MR. CORPUZ:

A. My apology, your Honors. I cannot remember.

ATTY. VISTE:

Q. Were you the one who personally served that?

MR. CORPUZ:

A. I cannot even remember.

JUSTICE GRULLA:

You face the Court only, do not look at other people. *g*

MR. CORPUZ:

A. Yes, your Honors.

ATTY. VISTE:

Q. How about the Formal Letter of Demand Mr. Witness? How did you cause the service to the Accused?

MR. CORPUZ:

A. Aside from serving the Letter of Authority to the you are referring [to] the Letter of Demand?

ATTY. VISTE:

Q. May I just turn your attention [to] Answer No. 46. You said you sent via registered mail a copy of the FLD to Mr. Ferdinand P. Mahusay. Do you have proof to that service? May I peruse the copy, your Honors? I was asking for the registry return receipt.

JUSTICE GRULLA:

Do you find any signature there?

ATTY. VISTE:

Q. I do not find any date, your Honors, when it was received and the signature does not bear a name, your Honors.

JUSTICE DEL ROSARIO:

So, your (sic) just making of record your observation?

ATTY. VISTE:

Yes, your Honors, my observation.

JUSTICE DEL ROSARIO:

Proceed.”

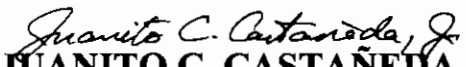
Applying the aforequoted doctrinal pronouncements by the Supreme Court to the present case, the Court *En Banc* finds that petitioner’s evidence failed to satisfactorily prove that respondent actually received the LOA, the Notice of Informal Conference, PAN, and FLD. Hence, the failure of petitioner to prove actual receipt of the assessment notices by respondent leads to the conclusion that no assessment was validly issued.

Given the above finding, there is no need to discuss the other issues raised in this Petition because it is settled that a void assessment bears no fruit.²³

WHEREFORE, the present Petition for Review is **DENIED** for lack of merit. *jr*

²³ *Commissioner of Internal Revenue v. Azucena T. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006, 480 SCRA 396.

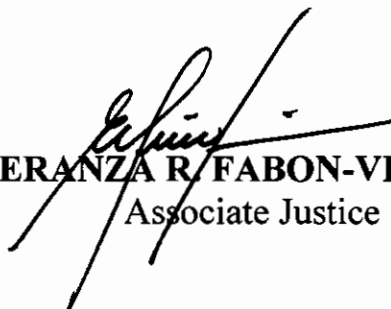
SO ORDERED.


JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice


ERLINDA P. UY
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice

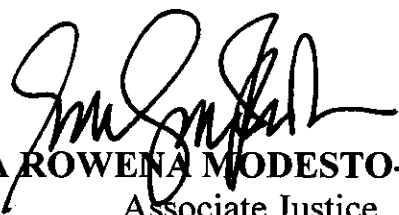

CIELITO N. MINDARO-GRULLA
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice



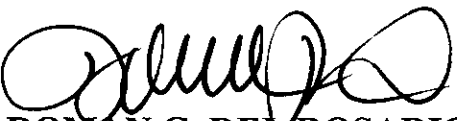
JEAN MARIE A. BACORRO-VILLENA
Associate Justice



MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in 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