

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

PEOPLE OF THE
PHILIPPINES,

Plaintiff,

-versus-

ROBIGIE CORPORATION
GRACE G. SUCKSUPHAN,
No. 1618 Alvarez St., 339,
Zone 34, Sta. Cruz, Manila
Accused.

CTA Crim. Case No. O-639
(XV-07-INV-17D-02115)

*For: Violation of Section 255 in
relation to Section 256 of the
National Internal Revenue Code of
1997, as amended.*

Members:

DEL ROSARIO, P.J., Chairperson,
FABON-VICTORINO, and
MANAHAN, JJ.

Promulgated:

JUN 17 2020 8:35 a.m.

X- - - - -X

DECISION

DEL ROSARIO, P.J.:

This is a criminal case filed by the prosecution against accused Robiegie Corporation and Grace G. Sucksuphan for violation of Section 255, in relation to Section 256, of the National Internal Revenue Code (NIRC) of 1997, as amended, for their alleged refusal and failure to pay deficiency internal revenue tax liabilities for the taxable year 2011 in the amount of Php3,850,524.77 per Assessment Notice Nos. 31-11-IT-7070 and 31-11-WE-7072.

THE FACTS

Accused Robiegie Corporation (Robiegie, for brevity) is a domestic corporation duly organized and existing under and by virtue of Philippine laws.¹

¹ Item No. 1, II. A. Facts, Pre-Trial Order, CTA Docket, p. 329.

01

DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 2 of 53

Accused Robigie filed its Annual Income Tax Return (ITR) for taxable year 2011 on April 16, 2012 at Revenue District Office (RDO) No. 31-Sta. Cruz, Bureau of Internal Revenue (BIR) Manila.²

A Letter of Authority (LOA-031-2013-00000066) dated February 25, 2013 was issued to accused Robigie by Regional Director Simplicio A. Madulara of Revenue Region No. 6 – Manila, authorizing Revenue Officer (RO) Vicente Santiago and Group Supervisor (GS) Ronan Martinez of RDO No. 031-Sta. Cruz, to examine its books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2011 to December 31, 2011.³ The LOA was received by a certain Vangie Del Rosario of El Nino Pharmacy on March 14, 2013.⁴

On April 23, 2013, Revenue District Officer Teodoro A. Huelva of RDO No. 31 issued a First Notice for the presentation of accused Robigie's records for taxable year 2011.⁵ This was followed by a Second and Final Notice issued on May 16, 2013.⁶

In a Memorandum dated May 28, 2013, RO Santiago recommended to the Revenue District Officer of RDO No. 31 the issuance of a *subpoena duces tecum* to accused Robigie to facilitate the resolution of the case.⁷ The same was noted by GS Martinez.⁸

On June 4, 2013, Regional Director Madulara issued a *subpoena duces tecum* to Ms. Dolores M. Galicia, President of accused Robigie, commanding her to appear before him on June 10, 2013, and to bring the 2011 accounting records of accused Robigie.⁹

On December 23, 2014, a Preliminary Assessment Notice (PAN),¹⁰ assessing accused Robigie for alleged deficiency Income Tax, Value Added Tax (VAT) and Expanded Withholding Tax (EWT) for taxable year 2011, was issued by the BIR and sent through registered mail.¹¹

² Item No. 5, II. A. Facts, Pre-Trial Order, CTA Docket, p. 330.

³ Exhibit "P-11", CTA Docket, p. 541.

⁴ *Id.*

⁵ Exhibit "P-13", CTA Docket, p. 543.

⁶ Exhibit "P-14", CTA Docket, p. 544.

⁷ Exhibit "P-15", CTA Docket, p. 545.

⁸ *Id.*

⁹ Exhibit "P-16", CTA Docket, p. 546.

¹⁰ Exhibit "P-19", CTA Docket, p. 554.

¹¹ Exhibit "P-20", CTA Docket, p. 557.



DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 3 of 53

On January 12, 2015, Assessment Notices and Formal Letter of Demand (FLD) dated January 12, 2015¹² were issued by Regional Director Araceli L. Francisco, assessing accused Robigie for deficiency taxes for taxable year 2011 in the aggregate amount of Php10,505,557.53, with details as follows:

Income Tax	Assessment Notice No. 31-11-IT-7070	Php5,954,979.71
VAT	Assessment Notice No. 31-11-VT-7071	Php4,544,073.12
EWT	Assessment Notice No. 31-11-WE-7072	Php6,504.70
TOTAL		Php10,505,557.53

In a Letter dated February 16, 2015, Regional Director Francisco wrote accused Robigie, informing it that it still has outstanding income tax, VAT and withholding tax liabilities in the total amount of Php10,505,557.53 for the year 2011 per Assessment Notice Nos. 31-11-IT-7070, 31-11-VT-7071, 31-11-WE-7072, all dated February 13, 2015, and that they are giving Robigie the last opportunity to settle said tax liabilities.¹³

Thereafter, a Preliminary Collection Letter (PCL) dated August 25, 2015¹⁴ and Final Notice Before Seizure (FNBS) dated September 9, 2015¹⁵ were issued and sent separately through registered mail¹⁶ to accused Robigie.

On January 19, 2016, a Warrant of Dstraint and/or Levy (WDL) was issued by Regional Director Francisco against accused Robigie.¹⁷ The same was received by a certain Vangeline del Rosario of Salud Trading.¹⁸

On April 17, 2017, RO Lorna A. Lazaro and RO Jefferson T. Ocampo executed a Joint Complaint-Affidavit, initiating a criminal complaint against accused Robigie, Galicia and Sucksuphan, in their capacities as President and Treasurer, respectively, for willful failure to

¹² Exhibits "P-1" to "P-4", CTA Docket, pp. 518 to 523.

¹³ Exhibit "P-27", CTA Docket, p. 565.

¹⁴ Exhibit "P-21", CTA Docket, p. 558.

¹⁵ Exhibit "P-22", CTA Docket, p. 559.

¹⁶ Exhibits "P-23" to "P-26", CTA Docket, pp. 560 to 564.

¹⁷ Exhibit "P-28", CTA Docket, p. 566.

¹⁸ *Id.*



DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 4 of 53

pay taxes required to be paid, in violation of Section 255, in relation to Section 256, of the NIRC of 1997, as amended.¹⁹

In a Letter dated April 17, 2017, Regional Director Arnel SD. Guballa referred the said Joint Complaint-Affidavit of RO Lazaro and RO Ocampo to the City Prosecutor of Manila for preliminary investigation and filing of the appropriate Information in court.²⁰

On June 13, 2017, the Office of the City Prosecutor of Manila issued a Resolution recommending that accused Robigie, Galicia, and Sucksuphan, in their capacity as President and Treasurer respectively, be indicted for Violation of Section 255 and 256 of the NIRC of 1997, as amended, arising from their alleged refusal and failure to pay the amounts of Php3,850,524.77 representing deficiency income tax and EWT and Php2,861,197.50 representing deficiency VAT; and, that the corresponding Information be filed with the Court of Tax Appeals.²¹

On July 13, 2017, the prosecution filed an Information dated June 13, 2017²² against accused Robigie, Galicia and Sucksuphan for violation of Section 255 in relation to Section 256 of the NIRC of 1997, as amended, the accusatory portion of which reads:

"That on or about January 12, 2015 and for sometime prior and subsequent thereto, in the City of Manila, Philippines, the said accused, ROBIGIE CORPORATION and its Corporate President and Treasurer, DOLORES M. GALICIA and GRACE G. SUCKSUPHAN, respectively, with business address located at No. 1618 Alvarez St., 339 Zone 34, Sta. Cruz, in this City, having filed its Annual Income Tax Return (AITR) for Taxable Year 2011 with attached Financial Statements (FS) dated April 16, 2012, it has been found that there is due and collectible tax from said corporation, to wit: Deficiency Income Tax and Expanded Withholding Tax in the amount of P3,850,524.77 and without formally protesting against or appealing the same, did then and there willfully and unlawfully failed to return, supply correct and accurate information in the tax return and refused to and neglected to pay the correct amount of tax despite notice and demand made upon them to do so, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount of Php3,850,524.77, Philippine Currency.

CONTRARY TO LAW."

¹⁹ CTA Docket, pp. 15 to 22.

²⁰ CTA Docket, pp. 13 to 14.

²¹ CTA Docket, pp. 8 to 10.

²² CTA Docket, p. 6



DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 5 of 53

In a Resolution dated August 2, 2017, the Court's Third Division²³ found probable cause that the crime charged has been committed and ordered the issuance of warrants of arrest against accused Galicia and Sucksuphan.²⁴

On August 4, 2017, warrants of arrest were issued against accused Galicia and Sucksuphan.²⁵

Accused Sucksuphan appeared and submitted her person to the jurisdiction of the Court, and posted the required bond for her provisional liberty on August 29, 2017.²⁶ The arraignment of Sucksuphan was set on September 27, 2017.²⁷

Plaintiff filed its Pre-Trial Brief on September 26, 2017.²⁸

On September 27, 2017, the counsel for the accused Galicia manifested that accused Galicia passed away. The arraignment and pre-trial conference of accused Sucksuphan were reset to October 11, 2017.²⁹

Accused Robigie and Sucksuphan filed their Pre-Trial Brief on October 6, 2017.³⁰

In line with the Order dated October 11, 2017,³¹ the prosecution filed an Amended Information on November 21, 2017 to exclude the name of deceased accused Galicia.³²

The Amended Information³³ reads:

²³ Composed of Associate Justice Lovell R. Bautista, Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Ma. Belen M. Ringpis-Liban.

²⁴ CTA Docket, p.77.

²⁵ CTA Docket, pp. 79 to 82.

²⁶ CTA Docket, p. 89.

²⁷ *Id.*

²⁸ CTA Docket, pp. 107 to 111.

²⁹ Order dated September 27, 2017, CTA Docket, pp. 115 to 116.

³⁰ Pre-Trial Brief (For the Accused), CTA Docket, pp. 133 to 137.

³¹ CTA Docket, pp. 143 to 144.

³² CTA Docket, p. 168.

³³ *Id.* 

DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 6 of 53

“That on or about January 12, 2015 and for sometime prior and subsequent thereto, in the City of Manila, Philippines, the said accused, ROBIGIE CORPORATION and its Corporate Treasurer GRACE SUCKSUPHAN with business address located at No. 1618 Alvarez St., 339 Zone 34, Sta. Cruz, in this City, did then and there willfully and unlawfully fail, refuse and neglect, as they fall *[sic]*, refuse and neglect to pay their deficiency internal revenue tax liabilities for the taxable year 2011 **in the amount of Php 3,850,524.77** under Assessment Notices with numbers 31-11-IT-7070 and 31-11-WE-7072, despite notice and service of said assessments, without formally protesting against or appealing the same, and repeated demands made upon them to do so, **to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount of Php 3,850,524.77, Philippine Currency.**

Contrary to law.” (*Boldfacing supplied*)

When arraigned under the Amended Information on November 22, 2017, accused Sucksuphan, duly assisted by her counsel, pleaded “NOT GUILTY” of the crime charged.³⁴

Accused filed an Amended Pre-Trial Brief on March 12, 2018.³⁵

On March 14, 2018, the Pre-Trial Conference was held.³⁶

Trial ensued where the prosecution presented its witnesses, ROs Vicente F. Santiago, Ma. Paz Arcilla and Edna A. Ortalla on April 25, 2018, May 23, 2018, and August 15, 2018, respectively.

RO Vicente F. Santiago, a Group Supervisor assigned at RDO No. 32, Revenue Region No. 6, Manila since April 2016, testified by way of Judicial Affidavit³⁷ which he identified during the hearing held on April 25, 2018.³⁸ He stated therein the following:

- (i) The 2011 tax case of Robiegie was assigned to him for audit by virtue of electronic Letter of Authority or eLA with SN: eLA201100029113/LOA-031-2013-00000066 dated February 25, 2013 issued by then Regional Director Simplicio A. Madulara;

³⁴ Certificate of Arraignment dated November 22, 2017, CTA Docket, p. 175; Order dated November 22, 2017, CTA Docket, pp. 177 to 178.

³⁵ CTA Docket, pp. 315 to 319.

³⁶ Minutes of the Hearing dated March 14, 2018, CTA Docket, p. 320.

³⁷ Exhibit P-29, CTA Docket, pp. 341 to 348.

³⁸ Order dated April 25, 2018, CTA Docket, p. 379.



DECISION

People of the Philippines vs. Robiegie Corporation and Grace G. Sucksuphan
CTA Crim. Case No. O-639

Page 7 of 53

- (ii) They **constructively served** the eLA together with the Checklist of Audit Requirements dated February 26, 2013 on March 14, 2013 at Robiegie's registered address at 1618 Alvarez St., Sta. Cruz, Manila because there was a refusal to receive the eLA and checklist. They tendered the copy of eLA and checklist to Robiegie at its registered address where it operates a pharmacy named El Nino Pharmacy and a person named Vangie del Rosario was present at that time;
- (iii) After they served the letter of authority and checklist of requirements, Robiegie failed to present and submit the documents listed in the checklist of requirements. This prompted him to prepare the First Notice dated April 23, 2013 for Robiegie's presentation of accounting records. The First Notice was served to Robiegie through registered mail under Registry Receipt No. 910768 on April 23, 2013 at Manila Central Post Office;
- (iv) Robiegie still failed to submit its accounting records. Hence, he prepared the Second and Final Notice dated May 16, 2013 which was mailed to Robiegie on the same day at Manila Central Post Office under Registry Receipt No. 912656;
- (v) After the taxpayer failed to heed their notices, they issued a Memorandum dated May 28, 2013 recommending for the issuance of *subpoena duces tecum* against Robiegie so as to compel its responsible officers to present its books of accounts and other accounting records for taxable year 2011;
- (vi) After they recommended the issuance of subpoena duces tecum against Robiegie, Revenue District Officer of RDO No. 31 endorsed and forwarded to the Regional Director, thru the Chief Legal Division, Revenue Region No. 6, all internal revenue tax docket of Robiegie for taxable year 2011 for the issuance of *subpoena duces tecum*. The Legal Division prepared the *subpoena duces tecum* and the same was signed by then Regional Director Madulara of Revenue Region No. 6. Thereafter, the duly signed *subpoena duces tecum* was forwarded to RDO No. 31 for the service of the same to Robiegie;
- (vii) After the duly signed subpoena duces tecum was forwarded to RDO No. 31, he constructively served the duly signed *subpoena duces tecum* to Robiegie on June 11, 2013 because they refused to receive the same;
- (viii) Robiegie failed to heed the issued *subpoena duces tecum*;
- (ix) The Legal Division endorsed back to their office, RDO No. 31, the 2011 tax docket of Robiegie for continuation of audit based on best evidence obtainable rule;
- (x) He examined the tax case of Robiegie for taxable year 2011 based on best evidence obtainable for failure of the subject



DECISION

People of the Philippines vs. Robiegie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 8 of 53

taxpayer to submit its books of accounts and other accounting records. He found that Robiegie is liable to pay the following taxes: income tax, VAT, EWT and compromise penalty in the respective amounts of Php4,223,362.84, Php3,982,980.33, Php6,623.85 and Php62,000.00. Thereafter, he prepared a Post Reporting Notice dated November 21, 2013 with attached Computation Sheet of Deficiency Taxes for signature of OIC-Revenue District Officer Maximo T. Cebrecus, Jr., reflecting therein results of his audit/investigation of the internal revenue tax case of Robiegie for taxable year 2011;

- (xi) He prepared a Memorandum Report dated November 22, 2013 for their Revenue District Officer, indicating therein the findings of his audit/investigation, with the recommendation to have the same evaluated and reviewed by proper authorities; and,
- (xii) Thereafter, their office, RDO No. 31, forwarded to the Assessment Division of Revenue Region No. 6, the entire tax docket of Robiegie for review and possible issuance of the corresponding PAN.

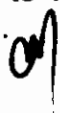
On cross-examination, RO Santiago admitted that they sent the First Notice as well as the Second and Final Notice to accused through registered mail, and that he does not have any proof or idea that they were received by anyone or by accused Sucksuphan.³⁹

During re-direct examination, RO Santiago testified that when they tried to serve the LOA, together with the Checklist of Requirements at 1618 Alvarez Street, the registered address of accused Robiegie, they found out that said address was occupied by El Nino Pharmacy. Staff at El Nino Pharmacy refused to accept their LOA even when they tried several times. Thus, they served the LOA constructively to Vangie Del Rosario who was at the pharmacy the last time they tried serving the LOA. After having a hard time serving their documents, they resorted to registered mail for service of the First Notice and the Second and Final Notice.⁴⁰

Responding to the Court's clarificatory questions, RO Santiago admitted that they do not know accused Sucksuphan. According to him, Vangie del Rosario was the person manning the pharmacy at the registered address of accused Robiegie. He assumed that Vangie Del Rosario was a saleslady, after they asked questions as to the whereabouts of any responsible person of accused Robiegie. Further, he affirmed that they resorted to constructive service of the Notices

³⁹ TSN, April 25, 2018, pp. 7 to 10.

⁴⁰ TSN, April 25, 2018, p. 10.



DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 9 of 53

and LOA due to the refusal of the persons found in said establishment to accept the same. Accused Robigie also failed to submit the documents needed for the audit despite the said Notices.⁴¹

RO Ma. Paz Arcilla, the Chief of the Billing Section at the Assessment Division, Revenue Region No. 6, Manila since June 15, 2001, testified by way of Judicial Affidavit,⁴² which she identified during the hearing held on May 23, 2018.⁴³ She stated that:

- (i) Among her principal duties as a Revenue Officer IV-Chief, Billing Section, is to personally supervise the preparation, issuance and monitoring of demand letters and final assessment notices of tax cases forwarded to their office;
- (ii) She came to know Robigie when the PAN for taxable year 2011 was forwarded to their Office from the Assessment Review Section for issuance of FAN and FLD;
- (iii) On January 12, 2015, their Office issued against Robigie, the FAN on deficiency income tax, VAT and EWT in the amounts of Php5,954,979.71, Php4,544,073.12, and Php6,504.70, respectively inclusive of increments, under Assessment Nos. 31-11-IT-7070, 31-011-VT-7071 and 31-11-WE-7072, respectively. They also issued the FLD dated January 12, 2015 with Details of Discrepancies, attached thereto as Annex "A". The FAN and the demand letter were all signed by then Regional Director Francisco; and
- (iv) The original of the FAN and FLD were transmitted to the Administrative Division, BIR Manila, with the instruction to mail them to Robigie. The Administrative Division provided them a photocopy of the transmittal of mailing with the Central Post Office Manila with the attached registry receipt proving that the FAN and the FLD were sent through registered mail to Robigie.

Responding to the Court's clarificatory questions, RO Arcilla stated that the Chief of the Assessment instructed or caused the issuance of the PAN, and that it was her department which caused the mailing of the PAN and FLD. She further explained that they have a copy of the transmittal letters to the Administrative Division, showing that the documents were actually mailed.⁴⁴

⁴¹ TSN, April 25, 2018, pp. 10 to 14.

⁴² Exhibit P-31, CTA Docket, p. 399 to 401.

⁴³ Order dated May 23, 2018, CTA Docket, p. 411.

⁴⁴ TSN dated May 23, 2018, pp. 9 to 11.



DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 10 of 53

RO Edna A. Ortalla, the Chief of the Review and Evaluation Section at the Assessment Division, Revenue Region No.6, Manila since 2004, testified by way of Judicial Affidavit⁴⁵ which she identified during the hearing held on August 15, 2018.⁴⁶ She stated that:

- (i) Among her principal duties as the Chief of the Review & Evaluation Section is to supervise the conduct of review of the reports of investigation submitted by revenue examiners from various revenue district offices of Revenue Region No. 6 and the issuance of PAN where taxpayers are audited by virtue of a Letter of Authority, Tax Verification Notice and/or other forms of notice of audit;
- (ii) The 2011 tax case of Robigie was indorsed to their office, the Assessment Division, by RDO No. 31-Sta. Cruz, for review;
- (iii) The tax case of Robigie for taxable year 2011 was assigned to RO Fernando Gonzales to conduct the review on the report of investigation submitted by RO Santiago and GS Martinez as well as the whole records of the 2011 all internal revenue tax docket of Robigie. Upon review, RO Gonzales found that Robigie is liable for the following deficiency taxes inclusive of increments: income tax of Php5,933,031.78; VAT of Php4,540,289.29; and, EWT of Php6,473.52;
- (iv) She thoroughly reviewed the findings of RO Gonzales and she found them to be in order. Thereafter, she instructed RO Gonzales to prepare the PAN with attached Details of Discrepancies, which he did and they had it dated December 23, 2014; and,
- (v) Their office through the Billing Section, transmitted the original of the PAN on December 23, 2014, to the Administrative Division for mailing to Robigie. The remaining copies of the PAN were retained by Billing Section for the possible issuance of FAN and the corresponding FLD against Robigie.

Subsequently, in view of the reorganization of the three (3) divisions of the Court, in line with CTA Administrative Circular No. 02-2018 dated September 18, 2018, the case was transferred to this Court, pursuant to the Resolution dated October 29, 2018.⁴⁷

⁴⁵ Exhibit P-32, CTA Docket, pp. 415 to 417.

⁴⁶ Order dated August 15, 2018, CTA Docket, p. 438.

⁴⁷ CTA Docket, p. 442.



DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 11 of 53

The presentation of witnesses for the prosecution, RO Jefferson T. Ocampo, and Mr. Esmeraldo F. Jose, continued on March 6, 2019 and March 27, 2019, respectively.

RO Jefferson T. Ocampo, RO-Collection at the Collection Division, Revenue Region No. 7, Quezon City, but previously assigned in 2015 to 2016 as RO-Seizure Agent/Supervisor at the Collection Division, Revenue Region No. 6, Manila, testified by way of Judicial Affidavit⁴⁸ which he identified during the hearing held on March 6, 2019.⁴⁹ He stated that:

- (i) He was tasked, among others, to enforce and to supervise seizure agents under him in the collection of final and demandable internal revenue taxes, and to submit reports thereon;
- (ii) Sometime in August 2015, all internal revenue tax docket of Robigie for taxable year 2011 was forwarded to their Division, the Collection Division, for enforcement of collection proceedings through summary remedies. The case was assigned to his group;
- (iii) The case of Robigie was assigned to seizure agent Jose Lorenzo P. Roces. He conducted review of the whole records of the 2011 all internal revenue tax docket of Robigie and thereafter prepared the PCL and the FNBS for signature of the Regional Director;
- (iv) Mr. Roces served the PCL and the FNBS to Robigie through registered mail to its registered address at 1618 Alvarez St., Sta. Cruz, Manila, as evidenced by the transmittal letter and registry receipts issued by the Philippine Postal Corporation, Manila Central Post Office;
- (v) Robigie failed to pay its deficiency taxes prompting them to prepare and serve the WDL. The WDL was prepared by Leonardo Dimatalo and personally served to Robigie, as witnessed by Jose Lorenzo Roces and Kristine Jyka Mergullo;
- (vi) Robigie still failed to pay its deficiency taxes prompting them to prepare and send a final demand letter giving Robigie last and final opportunity to settle its deficiency taxes. The final demand letter was signed by then Regional Director Francisco;
- (vii) They recommended to the Chief, Collection Division, Revenue Region No. 6 that the tax docket of Robigie be

⁴⁸ Exhibit P-33, CTA Docket, pp. 474 to 478.

⁴⁹ Order dated March 6, 2019, CTA Docket, p. 492.



DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 12 of 53

forwarded to the Legal Division of the aforesaid Revenue Region, for possible filing of appropriate case against Robigie;

- (viii) The Chief, Collection Division of Revenue Region No. 6, through the Regional Director, indorsed and forwarded the tax docket of Robigie to the Legal Division of Revenue Region No. 6, for legal action;
- (ix) On April 17, 2017, they filed a complaint against the accused for failure to pay deficiency taxes in violation of Section 255, in relation to Sections 253(d) and 256, of the NIRC of 1997, as amended, before the Office of the City Prosecutor, City of Manila.

On cross-examination, RO Ocampo admitted that the case was assigned for review to seizure agent Jose Lorenzo P. Roces. According to him, he neither personally served the PCL and the FNBS to accused Robigie nor did he have personal knowledge that the same were served on accused Robigie. He also testified that the WDL was prepared and served by Mr. Leonardo Dimatalo to accused Robigie under his direction as supervisor, which service was witnessed by Mr. Jose Lorenzo Roces and Ms. Kristine Jyka Mergullo. He further stated that while the FDL was sent to accused Robigie through registered mail, there is no proof that it was received by accused Robigie.⁵⁰

On re-direct examination, RO Ocampo clarified that he has personal knowledge of the particular service of the PCL, FNBS, and WDL, because as supervisor, his men informed him that they would be going to the taxpayer to serve the same.⁵¹

Responding to the clarificatory questions raised by the Court, RO Ocampo testified that, in the course of his work, the person serving a letter by mail or personal service informs him if the mail is actually delivered and served to the taxpayer. The proof of service is presented to him for inspection. His only participation is to effect remedial actions to enforce collection of the deficiency taxes as indicated in the Assessment Notices.⁵²

⁵⁰ TSN dated March 6, 2019, pp. 22 to 26; Minutes of the Hearing dated March 6, 2019, CTA Docket, p. 490.

⁵¹ TSN dated March 6, 2019, p. 27.

⁵² TSN dated March 6, 2019, pp. 27 to 28; Minutes of the Hearing dated March 6, 2019, CTA Docket, p. 490.



DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 13 of 53

On re-cross examination, RO Ocampo insisted that the WDL was received by Evangeline Del Rosario and witnessed by Mr. Roces and Ms. Mergullo. It was served constructively because accused Robigie or its representative refused to acknowledge the service of the WDL.⁵³

Again, responding to clarificatory questions of the Court, RO Ocampo stated that there was no way by which he could have actually confirmed whether there was any irregularity or infirmity in the issuance of the PAN or FAN, and that he does not know if the FAN was actually received in due course by the taxpayer. According to him, the only participation of his group was to effect remedial actions to enforce collections of the deficiency taxes as indicated in the Assessment Notices.⁵⁴

Mr. Esmeraldo F. Jose, OIC-Chief of the General Services Section at the Administrative Division of Revenue Region No. 6, Manila since 2017, testified by way of Judicial Affidavit,⁵⁵ which he identified during the hearing held on March 27, 2019.⁵⁶ He stated that:

- (i) As OIC-Chief of the General Service Section, his duties include the supervision in the sending by registered mail of PAN with Details of Discrepancies, FAN and Formal Letters of Demand with Details of Discrepancies and other correspondence of BIR Revenue Region No. 6 to taxpayers and other addressees as well as records keeping of mailed mail matters;
- (ii) He is familiar with the subject of the case, which is the deficiency tax assessments for taxable year 2011 issued against Robigie under PAN with Details of Discrepancies dated December 23, 2014 and FAN Nos. 31-11-IT-7070, 31-11-VT-7071 and 31-11-WE-7072 and FLD with Details of Discrepancies, all dated January 12, 2015;
- (iii) As per records of their office, the PAN with Details of Discrepancies dated December 23, 2014 was served to Robigie on December 23, 2014, through registered mail under Registry Receipt No. R14118511717772. The same was deposited at the Central Post Office Manila on December 23, 2014, addressed to Robigie at its registered address at 1618 Alvarez St., Sta. Cruz, Manila, as evidenced by a transmittal letter addressed to the Postmaster, Central Post Office Manila;

⁵³ TSN dated March 6, 2019, p. 30; Minutes of the Hearing dated March 6, 2019, CTA Docket, p. 490.

⁵⁴ TSN dated March 6, 2019, pp. 30 to 33.

⁵⁵ CTA Docket, pp. 496 to 499.

⁵⁶ Order dated March 27 2019, CTA Docket, pp. 504 to 505.

01

DECISION

People of the Philippines vs. Robiegie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 14 of 53

- (iv) As per records of their office, the mail matter containing the PAN with Details of Discrepancies dated December 23, 2014 was not returned by the postmaster to their office;
- (v) As per records of their office, the FAN with Nos. 31-11-IT-7070, 31-11-VT-7071 and 31-11-WE-7072 and FLD with Details of Discrepancy all dated January 12, 2015 were served to Robiegie on January 12, 2015, through registered mail under Registry Receipt No. 913914 as evidenced by a transmittal letter dated January 12, 2015, addressed to the Postmaster, Central Post Office Manila; and,
- (vi) As per records of their office, the mail matter containing the Assessment Notice Nos. 31-11-IT-7070, 31-11-VT-7071 and 31-11-WE-7072 and FLD with Details of Discrepancy, all dated January 12, 2015, were not returned by the postmaster to their office.

On cross-examination, Mr. Jose admitted that they just presumed that accused Robiegie received the FAN and Details of Discrepancy, without any proof of receipt.⁵⁷

Responding to the Court's clarificatory questions, Mr. Jose affirmed that since there was no "Return to Sender" card, he concluded that accused Robiegie actually received the mail matter. He further confirmed that there is no other document confirming that accused Robiegie or any of its authorized representative actually received the mail matter, other than the registry receipt.⁵⁸

There being no other witness to present, the prosecution was granted a period of five (5) days or until April 1, 2019 within which to file its Formal Offer of Evidence.⁵⁹

As prayed for by the accused, the Court granted the accused leave of court to file a Demurrer of Evidence, within a non-extendible period of ten (10) days from receipt of the resolution on the Formal Offer of Evidence.⁶⁰

⁵⁷ TSN dated March 27, 2019, pp. 10 to 13.

⁵⁸ TSN dated March 27, 2019, pp. 13 to 15.

⁵⁹ TSN dated March 27, 2019, p. 17; March 27, 2019 Order, CTA Docket, pp. 504 to 505.

⁶⁰ Order dated March 27, 2019, pp. 507 to 508.



DECISION

People of the Philippines vs. Robiegie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 15 of 53

The prosecution filed its Formal Offer of Evidence⁶¹ on April 1, 2019, offering in evidence its Exhibits P-1 to P-34-a, specifically described as follows:

Exhibit	Description
P-1	Final Assessment Notice (FAN) on Income Tax dated January 12, 2015 / Assessment No. 31-11-IT-7070
P-2	Final Assessment Notice (FAN) on Value-Added Tax (VAT) dated January 12, 2015 / Assessment No. 31-11-VT-7071
P-3	Final Assessment Notice (FAN) on Expanded Withholding Tax (EWT) dated January 12, 2015 / Assessment No. 31-11-WE-7072
P-4	Formal Letter of Demand dated January 12, 2015 with Details of Discrepancies
P-5	Transmittal of Final Assessment Notice and Formal Letter of Demand to the Postmaster, Manila Central Post Office with attached/pasted Registry Receipt No. 913814 dated January 12, 2015
P-7	Annual Income Tax Return of Robiegie Corporation for taxable year 2011, with the following attachments:
P-8	Statement of Management's Responsibility for Annual Income Tax Return for 2011
P-9	Independent Auditor's Report
P-10	Balance Sheet for December 31, 2011 and 2010 of Robiegie Corporation
P-11	Electronic Letter of Authority SN: eLA201100029113 dated February 25, 2013
P-12	Checklist of Audit Requirements per Tax Type dated February 26, 2013
P-13	Final Notice dated April 23, 2013
P-14	2 nd and Final Notice dated May 16, 2013
P-15	Memorandum dated May 28, 2013
P-16	Subpoena Duces Tecum dated June 4, 2013
P-17	Post Reporting Notice dated November 21, 2013 with Details of Discrepancies
P-18	Memorandum Report dated November 22, 2013
P-19	Preliminary Assessment Notice (PAN) dated December 23, 2014 with Details of Discrepancies
P-20	Transmittal Letter to Post Office Re: Mailing of Preliminary Assessment Notice (PAN) dated December 23, 2014 with attached Registry Receipt No. R14118511717772
P-21	Preliminary Collection Letter (PCL) dated August 25, 2015
P-22	Final Notice Before Seizure (FNBS) dated September 9, 2015
P-23	Transmittal Form dated September 11, 2015
P-24	Registry Receipt No. AC129557345ZZ dated September 11, 2015
P-25	Transmittal dated August 24, 2015
P-26	Registry Receipt No. AC118445408ZZ dated August 24, 2015

⁶¹ Plaintiff's Formal Offer of Evidence, CTA Docket, pp. 510 to 517.



DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 16 of 53

P-27	Letter dated February 16, 2015
P-28	Warrant of Dstraint and/or Levy (WDL) dated January 19, 2016
P-29 & P-29-A	Judicial Affidavit of Revenue Officer Vicente Santiago dated April 20, 2018
P-31 & P-31-a	Judicial Affidavit of Ms.Ma. Paz Arcilla dated May 18, 2018
P-32 & P32-a	Judicial Affidavit of Revenue Officer Edna Ortalla dated July 12, 2018
P-33 & P-33-a	Judicial Affidavit of Revenue Officer Jeffrey Ocampo dated February 27, 2019
P-34 & P-34-a	Judicial Affidavit of Mr. Esmeraldo F. Jose dated March 20, 2019

On April 3, 2019, accused filed a Comment to the Formal Offer of Evidence.⁶²

Accused filed a Demurrer to Evidence on May 15, 2019⁶³ with plaintiff's comment/opposition⁶⁴ thereto filed through registered mail on May 27, 2019.

On May 24, 2019, the Court issued a Resolution⁶⁵ admitting all the aforesaid pieces of exhibits offered by the prosecution. The Court further noted that Exhibits P-34 and P-34-a offered as Judicial Affidavit of Mr. Esmeraldo F. Jose and his signature, respectively, were actually marked as Exhibit P-33 and P-33-a.

In the Resolution dated October 15, 2019, this Court denied the Demurrer to Evidence of the accused for lack of merit, holding that it is incumbent upon the accused to prove their defense and be heard in a full-blown trial to be free of any criminal liability alleged in the Information.⁶⁶

Subsequently, accused presented testimonial and documentary evidence.

Accused Grace G. Sucksuphan testified on December 4, 2019 by way of Judicial Affidavit,⁶⁷ where she stated therein, among others, the following:

⁶² Comment to Formal Offer of Evidence, CTA Docket, p. 567.

⁶³ CTA Docket, p. 571.

⁶⁴ Comment/Opposition to Dumurrer to Evidence, CTA Docket, pp. 577 to 581.

⁶⁵ CTA Docket, pp. 575 to 576.

⁶⁶ CTA Docket, pp. 584 to 592.

⁶⁷ Exhibit A-33, CTA Docket, pp. 595 to 597.



DECISION

People of the Philippines vs. Robiegie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 17 of 53

- (i) She knows accused Robiegie;
- (ii) She is the Treasurer of Robiegie Corporation. As treasurer, she is in charge of handling the financial transactions of Robiegie, including the cash in bank/on hand and accounts receivables/accounts payables;
- (iii) She recalls Criminal Case No. 475001-CR filed by the BIR for Violation of Section 266 in relation to Section 5, 14, 253 (d) and 256 of the NIRC of 1997, as amended before the Metropolitan Trial Court (MTC) Branch 12 of the City of Manila. The case was dismissed;
- (iv) The case dismissed by the MTC Branch 12 of the City of Manila is the same case filed by the BIR before the CTA for violation of Section 266 in relation to Section 5, 14, 253 (d) and 256 of the NIRC of 1997, as amended for the same taxable year 2011;
- (v) Since the President of Robiegie, Dolores Galicia, died, the board decided to permanently apply for retirement and closure of business;
- (vi) After the closure of Robiegie, she transferred her residence to 1449 Oroquieta St., Sta Cruz, Manila and since then, she was not able to receive any letter or notices from the BIR.

On cross-examination, accused Sucksuphan insisted that the corporation no longer exists when the FAN was issued on January 12, 2015, albeit the application for retirement of business was only filed on November 3, 2016.⁶⁸

Responding to the Court's questions for clarification, accused Sucksuphan stated that on January 12, 2015, the corporation did not exist anymore because after her mother, Ms. Dolores Galicia died on May 13, 2012, she permanently closed it. She does not remember whether she filed any application for dissolution with the Securities and Exchange Commission. According to her, the company ceased its operations in August 2012, in order to stop the accumulation of losses, and vacated its place of business in December 2012, after her mother and father died. Furthermore, accused Sucksuphan testified that her place of residence is different from the registered business address of Robiegie.⁶⁹

⁶⁸ TSN dated December 4, 2019, pp. 19 to 25.

⁶⁹ TSN dated December 4, 2019, pp. 26 to 41.

DECISION

People of the Philippines vs. Robiegie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 18 of 53

Ms. Evelyn Nones, the accountant of accused Robiegie Corporation testified on December 4, 2019 by way of Judicial Affidavit,⁷⁰ where she stated therein, among others, the following:

- (i) She knows accused Robiegie and Grace Sucksuphan, the Treasurer of Robiegie;
- (ii) She is the Accountant of Robiegie. She is in charge of handling the accounting records of Robiegie and of the monthly BIR returns, which includes the preparation of monthly VAT Declaration, Quarterly VAT Declaration, monthly remittance return of income tax withheld on compensation, Quarterly Income Tax and the preparation of Annual Income Tax return with attachments of the audited financial statements of Robiegie for taxable year 2011;
- (iii) She was able to file the monthly BIR returns, including the monthly VAT Declaration, Quarterly VAT Declaration, monthly remittance return of income tax withheld on compensation, Quarterly Income Tax, and Annual Income Tax return with attached audited financial statements of Robiegie for taxable year 2011, on time; and
- (iv) All BIR returns have been made in good faith, verified, and to the best of her knowledge and belief are true and correct.

Thereafter, the accused filed a Formal Offer of Evidence⁷¹ on December 6, 2019, offering in evidence their Exhibits A-1 to A-33-1, to wit:

Exhibit	Description
A-1	The 2011 Annual Income Tax Return of Robiegie Corporation with attached Financial Statements
A-2	The Revenue Official Receipt (BIR Form No. 2524) ROR No. 201100895109
A-3	The Monthly VAT Declaration (01/2011) Date Paid 02/21/2011
A-4	The Monthly VAT Declaration (02/2011) Date Paid 03/21/2011
A-5	The Quarterly VAT Declaration (03/2011) Date Paid 04/25/2011
A-6	The Monthly VAT Declaration (04/2011) Date Paid 05/20/2011
A-7	The Monthly VAT Declaration (05/2011) Date Paid 06/21/2011
A-8	The Quarterly VAT Declaration (06/2011) Date Paid 07/22/2011

⁷⁰ Exhibit A-32, CTA Docket, pp. 609 to 612.

⁷¹ CTA Docket, pp. 666 to 669.

07

DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan
CTA Crim. Case No. O-639

Page 19 of 53

A-9	The Monthly VAT Declaration (07/2011) Date Paid 08/22/2011
A-10	The Monthly VAT Declaration (08/2011) Date Paid 09/20/2011
A-11	The Quarterly VAT Declaration (09/2011) Date Paid 10/20/2011
A-12	The Monthly VAT Declaration (10/2011) Date Paid 11/21/2011
A-13	The Monthly VAT Declaration (11/2011) Date Paid 12/21/2011
A-14	The Quarterly VAT Declaration (12/2011) Date Paid 01/25/2012
A-15	The Monthly Remittance Return of Income Taxes Withheld on Compensation (1601C) 01/2011 Date Filed 02/10/2011
A-16	The Monthly Remittance Return of Income Taxes Withheld on Compensation (1601C) 02/2011 Date Filed 03/09/2011
A-17	The Monthly Remittance Return of Income Taxes Withheld on Compensation (1601C) 03/2011 Date Filed 04/11/2011
A-18	The Monthly Remittance Return of Income Taxes Withheld on Compensation (1601C) 04/2011 Date Filed 05/10/2011
A-19	The Monthly Remittance Return of Income Taxes Withheld on Compensation (1601C) 05/2011 Date Filed 06/10/2011
A-20	The Monthly Remittance Return of Income Taxes Withheld on Compensation (1601C) 06/2011 Date Filed 07/11/2011
A-21	The Monthly Remittance Return of Income Taxes Withheld on Compensation (1601C) 07/2011 Date Filed 08/10/2011
A-22	The Monthly Remittance Return of Income Taxes Withheld on Compensation (1601C) 08/2011 Date Filed 09/12/2011
A-23	The Monthly Remittance Return of Income Taxes Withheld on Compensation (1601C) 09/2011 Date Filed 10/10/2011
A-24	The Monthly Remittance Return of Income Taxes Withheld on Compensation (1601C) 10/2011 Date Filed 11/10/2011
A-25	The Monthly Remittance Return of Income Taxes Withheld on Compensation (1601C) 11/2011 Date Filed 12/11/2011
A-26	The Monthly Remittance Return of Income Taxes Withheld on Compensation (1601C) 12/2011 Date Filed 01/10/2012
A-32 & A-32-1	The Amended Judicial Affidavit Evelyn Nones dated November 18, 2019
A-27	The Order of DISMISSAL from Metropolitan Trial Court, Branch 12, City of Manila CRIM Case No. 475001-CR
A-28	The Judiciary Receipt No. 4279788 Dated 03/02/2018
A-29	The Affidavit of Non-Operation of business of Robiegie Corporation Dated 12/08/2013
A-30	The Certificate of Retirement of Business of Robiegie Corporation from the City Treasurer's Office of Manila Date 02/04/2016
A-31	The Application of Permanent Closure of Business BIR Form 1905
A-33 & A-33-1	The Amended Judicial Affidavit of Grace G. Sucksuphan dated November 18, 2019 and the signature thereon

9

DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 20 of 53

Upon the prosecution's filing of its comment/opposition to the aforesaid Formal Offer of Evidence, the Court admitted the above-enumerated, exhibits except A-30 and A-31, in a Resolution dated February 3, 2020.⁷²

The Memorandum for the Accused⁷³ and Plaintiff's Memorandum⁷⁴ were filed on February 14, 2020, and March 6, 2020, respectively, as directed by this Court in the Resolution dated February 3, 2020.⁷⁵

The case was submitted for decision on March 12, 2020.⁷⁶ Hence, this decision.

THE ISSUE

Whether or not accused Robiegie Corporation and Grace G. Sucksuphan are guilty of the offense charged for violation of Section 255, in relation to Section 256, of the NIRC of 1997, as amended for willful and unlawful failure to pay deficiency internal revenue tax liabilities for the taxable year 2011 in the amount of Php3,850,524.77.

THE COURT'S RULING

At the outset, the Court notes that in the case caption, Information and Amended Information, accused corporation was referred to as **Robigie** Corporation. Meanwhile, a perusal of the parties' respective documentary evidence, including the June 13, 2017 Resolution of the Office of the City Prosecutor of Manila, revealed that the correct spelling of accused corporation's name is **Robiegie** Corporation. Meanwhile, among the facts stipulated by the parties during the Pre-Trial Conference on March 14, 2018⁷⁷ are as follows:

"II. The facts and issue stipulated by the parties during the Pre-Trial Conference on March 14, 2018 are as follows:

A. Facts:

⁷² CTA Docket, pp. 737 to 738.

⁷³ CTA Docket, pp. 739 to 742.

⁷⁴ CTA Docket, pp. 744 to 750.

⁷⁵ CTA Docket, pp. 737 to 738.

⁷⁶ Resolution dated March 12, 2020, CTA Docket, p. 753.

⁷⁷ CTA Docket, p. 329.



DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 21 of 53

1. Robigie Corporaiton is domestic corporation duly organized and existing under and by virtue of Philippine laws represented by the Treasurer/accused Grace G. Sucksuphan.
2. **The identity of accused as the same person as charged in the Amended Information.**
3. Xxx.
4. Dolores M. Galicia and Grace G. Sucksuphan as the President and Treasurer, respectively, of Robigie Corporation
5. Xxx."

As the identity of accused corporation has been admitted by the parties, the caption and the Amended Information are deemed amended to refer to the accused corporation as **Robigie Corporation**.

Jurisdiction of the Court of Tax Appeals (CTA) over cases involving criminal offenses

The Court shall now proceed to make a determination of its jurisdiction over the present case.

Section 7 of Republic Act (RA) No. 1125, as amended by RA No. 9282, provides:

"Sec. 7. *Jurisdiction*. - The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) xxx;

(b) Jurisdiction over cases involving criminal offenses as herein provided:

(1) Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs: *Provided, however*, That offenses or felonies mentioned in this paragraph **where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00)** or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate. Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil



DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 22 of 53

action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized." (*Boldfacing supplied*)

Relatedly, Section 3(b)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) states:

"SEC. 3. *Cases within the jurisdiction of the Court in Division.*-
The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

XXX

(b) Exclusive jurisdiction over cases involving criminal offenses, to wit:

(1) Original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs, **where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is one million pesos or more;** and

xxx." (*Boldfacing supplied*)

After a judicious perusal of the Amended Information, this Court finds that it palpably failed to allege facts sufficient to qualify the case as one falling within the exclusive jurisdiction of the CTA.

There is no denying that the CTA has exclusive original jurisdiction on criminal offenses arising from violations of the NIRC or Tariff and Customs Code and other laws administered by the BIR and the Bureau of Customs **provided that the principal amount of taxes and fees, exclusive of charges and penalties, claimed is at least Php1,000,000.00.** On the other hand, where the principal amount of **taxes and fees, exclusive of charges and penalties**, claimed is less than Php1,000,000.00 or where there is no specified amount claimed, the case shall be tried by the regular courts and the jurisdiction of this Court shall be appellate.

The Amended Information did not indicate that the amount of the unpaid deficiency internal revenue tax liabilities, which the government

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DECISION

People of the Philippines vs. Robiegie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 23 of 53

claims against accused Robiegie and Sucksuphan, is **exclusive of charges and penalties**. The Amended Information alleges that:

- (1) Accused Robiegie and Sucksuphan willfully and unlawfully fail, refuse and neglect to pay their deficiency internal revenue tax liabilities for the taxable year 2011 in the amount of Php 3,850,524.77 under Assessment Notices with numbers 31-11-IT-7070 and 31-11-WE-7072, despite notice and service of said assessments, without formally protesting against or appealing the same, and repeated demands made upon them to do so; and,
- (2) Accused Robiegie and Sucksuphan's failure resulted to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount of Php3,850,524.77, Philippine Currency.

It is at once glaring that the amount of deficiency internal revenue tax liabilities is just too ambiguous to qualify it as referring to the "principal amount of taxes and fees, exclusive of penalties and charges" which the government claims against respondent.

To vest jurisdiction upon this Court, a vital allegation in the Amended Information, that is - - that the "principal amount of taxes and fees" is at least Php1,000,000.00, exclusive of charges and penalties - - must be unequivocal and unmistakable. Otherwise stated, while the Amended Information stated the deficiency internal revenue tax liabilities due from accused as amounting to Php3,850,524.77, there is nothing therein that states that said amount of internal revenue tax liabilities refers to the basic or principal amount of tax liabilities of accused for taxable year 2011, **exclusive of charges and penalties**.

It is well-settled that the averments in the complaint or information characterize the crime to be prosecuted and the court before which it must be tried.⁷⁸ To determine the jurisdiction of the court in criminal cases, the complaint must be examined for the purpose of ascertaining whether or not the facts set out therein and the punishment provided for by law fall within the jurisdiction of the court where the complaint is filed.⁷⁹ **Evidence presented could not cure**

⁷⁸ Solemnidad M. Buaya vs. The Honorable Wenceslao M. Polo, Presiding Judge, Branch XIX, Regional Trial Court of Manila and the Country Bankers Insurance Corporation, G.R. No. L-75079 January 26, 1989, citing Balite v. People, L-21475, Sept. 30, 1966 cited in People v. Masilang, 142 SCRA 680.

⁷⁹ *Id.*, citing Villanueva v. Ortiz, et al., L-15344, May 30, 1960, 108 Phil, 493.



DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 24 of 53

the defect in the information.⁸⁰ Thus, the allegation in the Amended Information shall be the basis in determining whether this Court has jurisdiction over the case.

In *Allen A. Macasaet, et al. vs. The People of the Philippines and Joselito Trinidad*,⁸¹ the Supreme Court in esse declared that the failure of an Information to allege matters that specifically vest jurisdiction upon the court with which it is filed effectively deprives the court of jurisdiction to take cognizance of the case, viz.:

"Jurisdiction has been defined as 'the power conferred by law upon a judge or court to try a case the cognizance of which belongs to them exclusively' and it constitutes the basic foundation of judicial proceedings. xxx.

xxx xxx xxx

xxx, the jurisdiction of a court over the criminal case is determined by the allegations in the complaint or information. And once it is so shown, the court may validly take cognizance of the case.

xxx

In the case at bar, private respondent was a private citizen at the time of the publication of the alleged libelous article, hence, he could only file his libel suit in the City of Manila where Abante was first published or in the province or city where he actually resided at the time the purported libelous article was printed.

A perusal, however, of the information involved in this case easily reveals that the allegations contained therein are utterly insufficient to vest jurisdiction on the RTC of Quezon City. Other than perfunctorily stating Quezon City at the beginning of the information, the assistant city prosecutor who prepared the information did not bother to indicate whether the jurisdiction of RTC Quezon City was invoked either because Abante was printed in that place or private respondent was a resident of said city at the time the claimed libelous article came out. **As these matters deal with the fundamental issue of the court's jurisdiction, Article 360 of the Revised Penal Code, as amended, mandates that either one of these statements must be alleged in the information itself and the absence of both from the very face of the information renders the latter fatally defective.** Sadly for private respondent, the information filed before the trial court falls way short of this requirement. The assistant city prosecutor's failure to properly lay the basis for invoking the jurisdiction of the RTC, Quezon City,

⁸⁰ Francisco I. Chavez vs. Court of Appeals, G.R. No. 125813, February 6, 2007.

⁸¹ G.R. No. 156747, February 23, 2005.



DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 25 of 53

effectively denied said court of the power to take cognizance of this case." (*Boldfacing supplied*)

Applying *Macasaet*, matters dealing with the issue of the CTA's jurisdiction must be alleged in the Information itself. Since Section 7(b)(1) of RA No. 1125, as amended, sets forth this Court's jurisdiction based on the **principal amount of taxes and fees, exclusive of charges and penalties claimed**, such fact must be alleged in the Amended Information, lest the same would be fatally infirmed. As aforesaid, the Amended Information involved in the present controversy is wanting of the appropriate allegation anent the jurisdictional amount – the principal amount of tax – that could have vested upon this Court jurisdiction over the criminal case.

While defects in an information may be cured by amendment pursuant to Section 14, Rule 110 of the Rules of Court (ROC),⁸² not all defects in an information can be cured. Before the accused enters a plea, a formal or substantial amendment of the complaint or information may be made without leave of court. After the entry of a plea, only a formal amendment may be made but with leave of court and only if it does not prejudice the rights of the accused. After arraignment, a substantial amendment is proscribed, except if the same is beneficial to the accused.⁸³ The substantial matter in a complaint or information is the recital of facts constituting the offense charged and determinative of the jurisdiction of the court. All other matters are merely of form.⁸⁴

⁸² Section 14. Amendment or substitution. - A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.

However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party.

If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with section 19, Rule 119, provided the accused shall not be placed in double jeopardy. The court may require the witnesses to give bail for their appearance at the trial.

⁸³ *Jose Antonio C. Leviste vs. Hon. Elmo M. Alameda*, G.R. No. 182677, August 3, 2010.

⁸⁴ *Leonarda Alameda vs. Hon. Onofre A. Villaluz*, G.R. No. L-31665, August 6, 1975.



DECISION

People of the Philippines vs. Robiegie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 26 of 53

In the case at bar, accused Sucksuphan was arraigned and entered a "not guilty" plea. With her arraignment, any subsequent amendment of the Amended Information to specify the principal amount of tax is proscribed, more so, any amendment that relates to the Court's jurisdiction.

In *Victor C. Agustin vs. Hon. Fernando Vil Pamintuan*,⁸⁵ a case which had its roots in four (4) criminal cases for libel, the Supreme Court declared that amendments of the information to vest jurisdiction upon a court is not permissible, viz.:

"We do not agree with the ruling of the CA that the defects in the Informations are merely formal. Indeed, the absence of any allegations in the Informations that the offended party was actually residing in Baguio City, where the crimes charged were allegedly committed, is a substantial defect. **Indeed, the amendments of the Informations to vest jurisdiction upon the court cannot be allowed.**" (*Boldfacing supplied*)

There being no allegation in the Amended Information on the jurisdictional amount of tax liability of the accused, specifically that the principal amount of its internal revenue tax liabilities for 2011 is at least Php1,000,000.00, this Court finds the Amended Information substantially defective as to vest jurisdiction upon this Court.

In the absence of the required allegation in the Amended Information as to the principal amount of taxes, exclusive of charges and penalties, that the government claims against accused Robiegie and Sucksuphan, **the Court is constrained to dismiss the case for lack of jurisdiction.**

***Accused Robiegie may not be held
criminally liable sans arraignment***

Even assuming that the Court has jurisdiction over the instant case, accused Robiegie cannot be held criminally liable without arraignment.

Perusal of the records disclosed that while accused Sucksuphan was arraigned, accused Robiegie was never the subject of an arraignment (thru its responsible officers) wherein it was allowed to

⁸⁵ G.R. No. 164938, August 22, 2005.



DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 27 of 53

enter a plea after being informed of the nature and cause of accusation against it.

In *Alfredo Ching vs. The Secretary of Justice, et.al*,⁸⁶ the Supreme Court elucidated on the propriety of prosecuting a corporation for a crime where the imposable penalty is fine, viz.:

"If the crime is committed by a corporation or other juridical entity, the directors, officers, employees or other officers thereof responsible for the offense shall be charged and penalized for the crime, precisely because of the nature of the crime and the penalty therefor. A corporation cannot be arrested and imprisoned; hence, cannot be penalized for a crime punishable by imprisonment. However, a corporation may be charged and prosecuted for a crime if the imposable penalty is fine. Even if the statute prescribes both fine and imprisonment as penalty, a corporation may be prosecuted and, if found guilty, may be fined." (*Boldfacing supplied*)

Of course, there is a view espousing the proposition that the arraignment of an accused corporation is not sanctioned by law, jurisprudence or any rule, unlike in case of an accused natural person.

This view is not necessarily correct. The provision of Section 1 (a), Rule 116 of the Revised Rules on Criminal Procedure is categorical and unmistakable that an **accused** must be arraigned, **without any distinction as to whether the accused is a natural or juridical person**.

Arraignment of an accused is indispensable in any criminal prosecution lest the corporate accused is deprived of due process of law. For one, an accused, whether a natural or a juridical person, has the right to be informed of the nature and cause of accusation against him.⁸⁷ For another, Section 1 (a), Rule 116 cannot be any clearer:

⁸⁶ G. R. No. 164317, February 6, 2006.

⁸⁷ Section (1)(b), Rule 115, Revised Rules on Criminal Procedure:
Section 1. *Rights of accused at the trial*. — In all criminal prosecutions, the accused shall be entitled to the following rights:

(a) xxx.

(b) To be informed of the nature and cause of the accusation against him.

97

DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 28 of 53

“SECTION 1. Arraignment and plea; how made. —

(a) The accused **must** be arraigned before the court where the complaint or information was filed or assigned for trial. Xxx.”

Moreover, the utmost importance of arraignment of every accused cannot be brushed aside considering its significant repercussion on the constitutional right of the accused against double jeopardy.

Section 7, Rule 117 of the Revised Rules on Criminal Procedure provides:

“SECTION 7. Former conviction or acquittal; double jeopardy.
— When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and **after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal** of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.” *(Boldfacing supplied)*

Sans arraignment of accused Robigie, double jeopardy could not attach and accused Robigie would be exposed to a double or repeated prosecution for the same offense which is not only unfair for accused Robigie, but is certainly anathema to the concept of fair administration of justice.

Besides, the 1987 Constitution⁸⁸ is categorical in saying that trial *in absentia* may only proceed after the arraignment of an accused.

⁸⁸ Section 14. (1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 29 of 53

In sum, arraignment is indispensable in any criminal prosecution as no less than the Constitution guarantees the right of an accused to be informed of the nature and cause of any accusation against him.⁸⁹ In fact, it is only after an accused has been informed of the accusation through an arraignment that trial may proceed in *absentia*.⁹⁰

Incidentally, there is no denying that in Section 1 (a), Rule 116 of the Rules of Court, the masculine pronoun “he” was used in requiring the personal appearance of the accused during arraignment. Nonetheless, the use of the masculine pronoun “he” does not in any way suggest that arraignment of a corporation as an accused can be dispensed with.

The Rules of Court makes use of the masculine pronoun “he” in several other provisions, yet any such provision cannot be reasonably interpreted to preclude its application to a feminine litigant much more to a neuter litigant or a juridical entity.

As can be noted, the Certification of Non-Forum Shopping is a requirement in every initiatory pleadings. While a corporation could be a petitioner for instance in a Petition for Certiorari, it is NOT excused from the requirement of executing such certification, albeit the rule on the matter also makes use only of the pronoun “he”. Section 1, Rule 65 and Section 3, Rules 46 of the Rules of Court read:

Section 1, Rule 65

“Section 1. *Petition for certiorari.* - xxx

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a **sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.**” (*Boldfacing supplied*)

Section 3, Rule 46

“**Section 3. Contents and filing of petition; effect of noncompliance with requirements.** – xxx

The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of

⁸⁹ *Id.*

⁹⁰ *Id.*



DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan
CTA Crim. Case No. O-639

Page 30 of 53

Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, **he** must state the status of the same; and if **he** should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, **he** undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom." (*Boldfacing and underscoring supplied*)

Truth to tell, where a masculine noun or pronoun is used in the Rules of Court, it necessarily implies and includes the corresponding feminine gender as well as a neuter since as aforesaid, a corporate entity can be a litigant itself.

Verily, this Court cannot ignore the application of such basic principle in criminal procedure, lest it may be held administratively liable. On this point, the disquisition in *Atty. Caguioa v. Judge Laviña*⁹¹ is enlightening:

"In resolving matters in litigation, judges should endeavor assiduously to ascertain the facts and the applicable laws. Moreover, they should exhibit more than just a cursory acquaintance with statutes and procedural rules. Also, they are expected to keep abreast of and be conversant with the rules and the circulars which the Supreme Court has adopted and which affect the disposition of cases before them.

Although judges have in their favor the presumption of regularity and good faith in the performance of their judicial functions, **a blatant disregard of the clear and unmistakable terms of the law obviates this presumption and renders them susceptible to administrative sanctions.** (Emphasis and underscoring supplied)"

Section 256 of the NIRC of 1997, as amended, provides, *inter alia*, that any **corporation** liable for any of the acts or omissions penalized under the NIRC, 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 (Php50,000.00) but not more than One Hundred Thousand Pesos (Php100,000).

⁹¹ A.M. No. RTJ-00-1533, November 20, 2000, 398 Phil. 845, 858-859 (2000); cited also in *Datu Omar S. Sinsuat and Mariano H. Paps vs. Judge Vicente A. Hidalgo*, Regional Trial Court, Branch 37, Manila, A. M. No. RTJ-08-2133, August 6, 2008.



DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 31 of 53

To say that the conviction referred to in Section 256 pertains to the conviction of the responsible corporate officers, partners or employees is just too strained an interpretation. By the very title of Section 256, it refers to the **Penalty Liability of Corporations**. *Verba legis non est recedendum*. When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application.

The penal liability of corporate officers is itself governed by Section 253 (a) and (d) of the NIRC of 1997, viz.:

“SEC. 253. General Provisions. -

(a) **Any person convicted of a crime penalized by this Code shall, in addition to being liable for the payment of the tax, be subject to the penalties imposed herein: *Provided*, That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution for violation of any provision of this Code or in any action for the forfeiture of untaxed articles.**

(b) xxx.

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

xxx.” (*Boldfacing and underscoring supplied*)

The person referred to that must necessarily be convicted is the accused taxpayer. If the “accused” taxpayer is a corporation, the law simply says that the “penalty” shall be imposed on the officers responsible for the violation (who should also be indicted together with the corporation). Otherwise stated, without the conviction of the corporate taxpayer - - accused Robigie - - its Treasurer, accused Sucksuphan, cannot likewise be held liable as her culpability is dependent upon the liability and conviction of the accused corporation itself as the taxpayer.

Elements of the criminal offense charged

Assuming *arguendo* that the Court has jurisdiction to take cognizance of the case and that accused Robigie had been subjected to arraignment, the evidence presented by the prosecution failed to prove the guilt of accused Robigie and Sucksuphan beyond reasonable doubt.

09

DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 32 of 53

Sections 255 of the NIRC of 1997, as amended, provides:

*"SEC. 255. Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation. - Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct the 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.*

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

On the other hand, Section 256, in relation to Section 253, of the NIRC of 1997, as amended, specifies the respective penal liability of a corporate entity on one hand, and its officers on the other hand, in cases where the offender-taxpayer is a corporation. Jointly read, it is the **prior conviction of the corporation** that triggers the imposition of penalty upon its corporate officers, viz.:

*"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)." (Boldfacing and underscoring supplied)*

XXX

"SEC. 253. General Provisions. .

*(a) Any person **convicted** of a crime penalized by this Code shall, in addition to being liable for the payment of the tax, be subject to the penalties imposed herein: *Provided*, That payment of the tax due after apprehension shall not constitute a valid defense in any*

9

DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 33 of 53

prosecution for violation of any provision of this Code or in any action for the forfeiture of untaxed articles.

XXX

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

xxx." (Boldfacing and underscoring supplied)

From the foregoing, to sustain a conviction for the offense of "*Failure to Pay Tax*" under Section 255 of the NIRC of 1997, as amended, the following elements must be established by the prosecution beyond reasonable doubt:

1. The taxpayer is required under the NIRC or its rules and regulations to pay any tax;
2. The taxpayer failed to pay the required tax at the time required by law or rules and regulations; and,
3. **The taxpayer's failure to pay the required tax is willful.**

The burden is upon the prosecution to establish by proof beyond reasonable doubt each of the aforesaid elements. The absence of any of the enumerated elements warrants the exoneration of the accused.

In the case at bar, evidence is wanting on the third element as will be lengthily discussed hereunder.

Requirement that the accused's failure to file pay the internal revenue tax liabilities, if any, was willful

To secure the accused's conviction under the Amended Information, it is indispensable for the prosecution to prove beyond reasonable doubt that the failure to pay the internal revenue tax liabilities was willful.

Willful in tax crime statutes means voluntary and intentional violation of a known legal duty; and bad faith or bad purpose need not

9

DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 34 of 53

be shown.⁹² An act or omission is "willfully" done if done voluntarily and intentionally and with specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done; that is, with bad purpose to either disobey or disregard the law. A willful act may be described as one done intentionally, knowingly and purposely, without justifiable excuse.⁹³

Willfulness, being a "state of mind" is rarely susceptible of direct proof but must ordinarily be inferred from the facts and circumstances of the case. Thus, willfulness may be, and usually is, shown by circumstantial evidence alone.⁹⁴ For circumstantial evidence to be sufficient to support a conviction, all the circumstances must be consistent with one another and must constitute an unbroken chain leading to one fair and reasonable conclusion that a crime has been committed and that the accused is probably guilty thereof. The pieces of evidence must be consistent with the hypothesis that the accused was probably guilty of the crime and at the same time inconsistent with the hypothesis that he was innocent, and with every rational hypothesis except that of guilt. Circumstantial evidence is sufficient, therefore, if: (a) there is more than one circumstance, (b) the facts from which the inferences are derived have been proven, and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.⁹⁵

The prosecution avers that the accused willfully and unlawfully failed, and refused and neglected, to pay the deficiency internal revenue tax liabilities under FAN Nos. 31-11-IT-7070 and 31-11-WE-7072, despite repeated demands. The prosecution further posits that accused Robigie and Sucksuphan, despite notice and service of aforesaid FAN, did not make a formal protest or appeal thereto.

The prosecution maintains that the LOA, PAN, the FAN, and the FLD were all sent to accused Robigie's registered address at 1618 Alvarez St., Sta. Cruz, Manila.

⁹² Mertens' Law of Federal Income Taxation, Chapter 47.05, page 28, Volume 13, see *U.S. vs. Green*, 757 F.2d 116, 85-1 USTC 9178 (CA7 1985), in which the Court, citing *U.S. vs. Moore*, 627 F.2d 830 (CA7 1980) and *U.S. vs. Verkuilen*, 690 F.2d 648, 82-2 USTC 9618 (CA7 1982), upheld the conviction of a tax protester for willful failure to file returns.

⁹³ Black's Law Dictionary, 5th ed., p. 1434.

⁹⁴ *United States vs. Grumka*, 728 F.2d 794, 796-97 (6th Cir. 1984); *United States vs. Gleason*, 726 F.2d 385, 388 (8th Cir. 1984); *United States vs. Marabelles*, 724 F.2d 1374, 1379 (9th Cir. 1984).

⁹⁵ *Marie Callo-Claridad vs. Philip Ronald P. Esteban and Teodora Alyn Esteban*, G.R. No. 191567, March 20, 2013.



DECISION

People of the Philippines vs. Robiegie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 35 of 53

On the other hand, accused Robiegie and Sucksuphan challenge the service of the LOA and deny receipt of the assessment notices, and any document from the BIR. According to accused Sucksuphan, Robiegie already closed its business and vacated the business address.⁹⁶

The Court cannot over emphasize that the failure of the prosecution to prove accused's receipt of the LOA and assessment notices is fatal as it will render the assessment notices issued against the accused void. When the assessment notices are void, there is no obligation on the part of the accused to pay the internal revenue tax liabilities assessed therein.

Effect of failure to serve the LOA

The NIRC of 1997, as amended, is clear and categorical in requiring an authority from the CIR or from his duly authorized representatives before an examination of a taxpayer may be made.⁹⁷ Section 6 of the NIRC of 1997, as amended provides:

“SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. - (A) Examination of Returns and Determination of Tax Due - After a return has been filed as required under the provisions of this Code, the **Commissioner or his duly authorized representative may authorize** the examination of any taxpayer and the assessment of the correct amount of tax: Provided, however; That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer. Xxx” (*Boldfacing supplied*)

In addition, Section 13 of the NIRC of 1997, as amended, mandates that an RO assigned to audit a taxpayer's books of accounts and other accounting records must be authorized by an LOA issued no less than by the RD, viz.:

“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

⁹⁶ TSN dated December 4, 2019, p. 30, 37-39.

⁹⁷ *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.



DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 36 of 53

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." (*Boldfacing and underscoring supplied*)

Based on the foregoing provisions, it is clear that unless authorized by respondent himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken.⁹⁸ Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment.⁹⁹ In the absence of such an authority, the assessment or examination is a nullity.¹⁰⁰

RMO No. 43-90¹⁰¹ directs that audits conducted by BIR ROs should be conducted under an LOA, to wit:

"C. Other policies for issuance of L/As.

1. All audits/investigations, whether field audit or office audit, **should be conducted under a Letter of Authority.**

xxx." (*Boldfacing and underscoring supplied*)

Moreover, Revenue Audit Memorandum Order (RAMO) No. 1-00¹⁰² mandates that an LOA must be served **within 30 days** from the time it was issued, lest it becomes void, viz:

"VIII. Preliminary Approach to Examination

xxx

C. Contact With Taxpayer

XXX XXX XXX

1. Serving of Letter of Authority

⁹⁸ *Id.*

⁹⁹ Commissioner of Internal Revenue vs. Sony Philippines, Inc., G.R. No. 178697, November 17, 2010.

¹⁰⁰ *Id.*

¹⁰¹ SUBJECT: Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.

¹⁰² SUBJECT: Updated Handbook on Audit Procedures and Techniques Volume I (Revision- Year 2000).

41

DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 37 of 53

2.1 On the first opportunity of the Revenue Officer to have personal contact with the taxpayer, he should present the Letter of Authority (LA) together with a copy of the Taxpayer's Bill of Rights. The LA should be served by the Revenue Officer assigned to the case and no one else. He should have the proper identification card and should be in proper attire.

2.2 A Letter of Authority authorizes or empowers a designated Revenue Officer to examine, verify and scrutinize a taxpayer's books and records in relation to his internal revenue tax liabilities for a particular period.

1.3 A Letter of Authority **must be served or presented to the taxpayer within 30 days from its date of issue; otherwise it becomes null and void**, unless revalidated. The taxpayer has the right to refuse its service if presented beyond the 30-day period depending on the policy set up by management. Revalidation is done by issuing a new Letter of Authority or by just simply stamping the words 'Revalidated on _____' on the face of the copy of the Letter of Authority issued." (*Boldfacing and underscoring supplied*)

It is well-settled that where the language of the law is clear and unequivocal, it must be given its literal application and applied without interpretation. The general rule of requiring adherence to the letter in construing statutes applies with particular strictness to tax laws and provisions of a taxing act are not to be extended by implication.¹⁰³ A plain reading of the above-stated BIR issuances shows that the **service of the LOA to the taxpayer** within the said 30-day period is mandatory.

In the instant case, there is no dispute that an LOA was issued by the BIR authorizing RO Santiago and GS Martinez to examine the books of accounts and other accounting records for all internal revenue taxes of accused Robigie for taxable year 2011. Accused Sucksuphan, however, denies receipt of any document or notice sent by the BIR.¹⁰⁴

In his judicial affidavit and during trial, RO Santiago testified that they tendered a copy of the LOA and checklist to accused Robigie at its registered address where it operates a pharmacy named El Nino Pharmacy. According to him, a person named Vangie del Rosario was present at that time.

¹⁰³ Commissioner of Internal Revenue vs. Julieta Ariete, G.R. No. 164152, January 21, 2010.

¹⁰⁴ Amended Judicial Affidavit, CTA Docket, p. 597.



DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 38 of 53

Records show that indeed a person named Vangie del Rosario of El Nino Pharmacy received the LOA.¹⁰⁵ Plaintiff, however failed to establish that Vangie del Rosario was an authorized representative of accused Robigie. Thus, it cannot be concluded that accused Robigie actually received the LOA through Vangie del Rosario.

The prosecution argues that RO Santiago constructively served the LOA on March 14, 2013 because the staff at El Nino Pharmacy refused to accept the same, even when they tried several times. Accused Sucksuphan, however, oppose the constructive service of the LOA, arguing that RO Santiago's testimony did not clarify whether she or her agents refused service, and that no barangay official and two disinterested witnesses were invited to personally observe and attest to such act of refusal.¹⁰⁶

While the above-mentioned RAMO is silent on whether an LOA may be constructively served upon the taxpayer, Section 3.1.7 of Revenue Regulations (RR) No. 12-99 provides for the requirements of a valid constructive service of tax assessment notices, which reads:

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

XXX XXX XXX

3.1.7 Constructive Service. - If the notice to the taxpayer herein required is served by registered mail, and no response is received from the taxpayer within the prescribed period from date of the posting thereof in the mail, the same shall be considered actually or constructively received by the taxpayer. **If the same is personally served on the taxpayer or his duly authorized representative who, however, refused to acknowledge receipt thereof, the same shall be constructively served on the taxpayer. Constructive service thereof shall be considered effected by leaving the same in the premises of the taxpayer and this fact of constructive service is attested to, witnessed and signed by at least two (2) revenue officers other than the revenue officer who constructively served the same. The revenue officer who constructively served the same shall make a written report of this matter which shall form part of the docket of this case.**xxx
(Boldfacing supplied)

Applying analogously the above-mentioned rule on constructive service of assessment notice to LOAs, the Court finds that there was failure on the part of the prosecution to prove that there was a valid

¹⁰⁵ Exhibit "P-11", CTA Docket, p. 541.

¹⁰⁶ Memorandum for the Accused, CTA Docket, pp. 739-740.



DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 39 of 53

constructive service of the LOA. Records show that the alleged constructive service was not attested to, witnessed and signed by at least two (2) revenue officers other than the revenue officer who allegedly constructively served the same.¹⁰⁷

As aforesaid, RAMO No. 1-00 is categorical in declaring that failure to serve the LOA to an accused within the 30-day mandatory period renders the same void. In turn, a void LOA deprives revenue officers named therein of any authority to carry out the examination of the books of accounts and other accounting records of accused Robigie for all internal revenue taxes for the period covering the year 2011.

In fine, *sans* authority of the revenue officers to conduct an examination of accused's books of accounts and other accounting records, the assessment notices issued by the BIR pursuant thereto are inescapably void. Being void, they bear no fruit¹⁰⁸ and must be slain at sight. Needless to say, a void assessment cannot be used as basis in collecting the subject deficiency internal revenue tax liabilities from the accused.

Effect of failure to prove that accused received the assessment notices

Even assuming that the LOA was validly served to accused Robigie, the prosecution failed to prove that the assessment notices were received by accused Robigie.

In *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*,¹⁰⁹ the Supreme Court held that, by its nature the offense of failure to pay deficiency tax after repeated demands by the taxing authority could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayer. Said the Supreme Court:

“Inasmuch as the final notice and demand for payment of the deficiency taxes was served on petitioners on July 3, 1968, it was only then that the cause of action on the part of the BIR accrued. **This is so because prior to the receipt of the letter-assessment,**

¹⁰⁷ Exhibit “P-11”, CTA Docket, p. 541.

¹⁰⁸ *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

¹⁰⁹ G.R. Nos. L-48134-37, October 18, 1990; cited also in *Petronila C. Tupaz vs. Honorable Benedicto B. Ulep*, Presiding Judge of RTC Quezon City, Branch 105, and *People of the Philippines*, G.R. No. 127777, October 1, 1999.



DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 40 of 53

no violation has yet been committed by the taxpayers. The offense was committed only after receipt was coupled with the wilful refusal to pay the taxes due within the allotted period. xxx."
(Boldfacing supplied)

Proper service of assessment notices to the taxpayer is indispensable to the validity of the assessment. In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*¹¹⁰ and *Avon Products Manufacturing, Inc. vs. The Commissioner of Internal Revenue*,¹¹¹ the Supreme Court declared that tax assessments issued in violation of the due process rights of taxpayers are null and void, to wit:

"Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process." (Boldfacing supplied)

RR No. 12-99, as amended by RR No. 18-2013, sets forth the guidelines and procedures in serving notices to taxpayers, viz.:

"3.1.6 Modes of Service. — The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:

(i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A *known address* shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.

In case personal service is not practicable, the notice shall be served by substituted service or by mail.

(ii) Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:

The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.

If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with

¹¹⁰ G.R. Nos. 201398-99, October 3, 2018.

¹¹¹ G.R. Nos. 201418-19, October 3, 2018.



DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 41 of 53

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 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." *(Boldfacing supplied)*

The prosecution avers that the BIR sent the PAN, FAN, FLD,

01

DECISION

People of the Philippines vs. Robiegie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 42 of 53

PCL and FNBS to accused Robiegie through registered mail, while the WDL was personally served to accused Robiegie.¹¹²

As oft-repeated, accused Sucksuphan claims that she did not receive any letter or notice from the BIR after the closure of accused Robiegie¹¹³ in August 2012.¹¹⁴ She avers that in December 2012, she already vacated 1618 Alvarez St., Sta. Cruz, Manila.¹¹⁵

In *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*,¹¹⁶ it was enunciated that if the taxpayer denies receiving an assessment from the CIR, it becomes incumbent upon the CIR to prove by competent evidence that such notice was indeed received by the addressee, viz.:

"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 GJM 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.

xxx

xxx

xxx

The BIR's failure to prove GJM's receipt of the assessment leads to no other conclusion but that no assessment was issued."
(*Boldfacing supplied*)

In *Protector's Services, Inc. vs. Court of Appeals*,¹¹⁷ the Supreme Court ruled that when a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3(v), Rule 131 of the Rules of Court,¹¹⁸ that it was received in the regular course

¹¹² Plaintiff's Memorandum, CTA Docket, pp. 746-748

¹¹³ Amended Judicial Affidavit, CTA Docket, p. 597.

¹¹⁴ TSN dated December 4, 2019, p. 30.

¹¹⁵ TSN dated December 4, 2019, p. 37.

¹¹⁶ G.R. No. 202695, February 29, 2016

¹¹⁷ G.R. No. 118176, April 12, 2000.

¹¹⁸ Section 3. Disputable presumptions. — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

xxx

xxx

xxx

(v) That a letter duly directed and mailed was received in the regular course of the mail; xxx.



DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 43 of 53

of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.¹¹⁹

Considering that accused Sucksuphan directly denies receipt of the PAN, FAN, FLD, PCL and FNBS, the burden of proving that the accused actually received the said notices shifts to the plaintiff, who is the party favored by the presumption. Stated differently, the *onus probandi* was shifted to the prosecution to prove by contrary evidence that accused received the aforesaid notices in the due course of mail.

To prove that the PAN, FAN, FLD, PCL and FNBS were sent via registered mail to accused Robigie at 1618 Alvarez St., Sta. Cruz, Manila, the prosecution presented in evidence mere **transmittal letters** and **registry receipts**.¹²⁰

While the registry receipts prove the fact of mailing, plaintiff fell short in establishing **actual receipt** of the PAN, FAN, FLD, PCL and FNBS by accused. No registry return cards were offered in evidence by the prosecution to show that accused actually received the assessment notices.

In fact, during trial, Mr. Jose, testified that they just presumed that accused Robigie received the FAN and Details of Discrepancy, without any proof of actual receipt by accused Robigie or its authorized representative, *viz.*:

“ATTY. BALTAZAR:

Q. What is your proof that it was received by the accused? Do you have any document that will show that the said document was received personally by the accused?

MR. JOSE:

A. Usually, Attorney, if the letter was not received there is a sort

¹¹⁹ *Barcelon, Roxas Securities, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 157064, August 7, 2006.

¹²⁰ Exhibits “P-5”, “P-20”, P-23”, “P-24”, “P-25”, and “P-26”, CTA Docket, pp. 524, 557, 560-564.



DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 44 of 53

of RTS card, RTS meaning Return to Sender. If there is RTS we presume or we believed that the notice is mailed.

ATTY. BALTAZAR:

Q. So, you just presume that it was received but you do not have any proof that will show that the said letter was received by the accused, am I correct?

MR. JOSE:

A. Aside from the, (interrupted).

ATTY. BALTAZAR:

Q. Mr. Witness, you can answer it by Yes or No.

MR. JOSE:

A. Yes, Attorney.

ATTY. BALTAZAR:

Q. What is your answer?

MR. JOSE:

A. We received the RTS

ATTY. BALTAZAR:

Your Honor, the witness already answered "Yes".

MR. JOSE:

A. The letter was received.

ATTY. BALTAZAR:

Q. But you do not have any proof that it was received, correct?

MR. JOSE:

A. Yes, Attorney.

Xxx.

JUSTICE DEL ROSARIO:

OIC-Chief.

Now, from the General Services Section, the supposed mail matter was delivered by your staff to the Central Post Office in Manila?



DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 45 of 53

MR. JOSE:

A. Yes, your Honors.

JUSTICE DEL ROSARIO:

And, from the Central Post Office of Manila, you now reduced the assumptions that the document itself was sent by the Post Office to the taxpayer?

MR. JOSE:

A. Yes, your Honors.

JUSTICE DEL ROSARIO:

Now, you made the conclusions that since there is no Return to Sender card, the taxpayer or the accused received actually the mail matter?

MR. JOSE:

A. Yes, your Honors.

JUSTICE DEL ROSARIO:

Now, you do not know for a fact whether the mail matter was received by any person who is not authorized to receive on behalf of the taxpayer, you have no knowledge on that?

MR. JOSE:

A. Yes, your Honors.

JUSTICE DEL ROSARIO:

So, the document you are relying now to prove that the mail matter was received by the accused is simply a Registry Receipt, is that it?

MR. JOSE:

A. Yes, your Honors.

JUSTICE DEL ROSARIO:

And, on the basis of the Registry Receipt, you now reduced the assumption that since it was mailed, the mail matter was received?

MR. JOSE:

A. Yes, your Honors.



DECISION

People of the Philippines vs. Robiegie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 46 of 53

JUSTICE DEL ROSARIO:

In other words, there is no other document confirming the taxpayer or any of its authorized representative actually received the mail matter?

MR. JOSE:

A. Yes, your Honors.¹²¹

From the foregoing, it is clear that while the PAN, FAN, FLD, PCL and FNBS were sent through registered mail to accused Robiegie, there is no evidence confirming that Robiegie or its authorized representative actually received the same.

The prosecution's failure to prove accused's receipt of the PAN and FAN is patently violative of accused's right to due process thereby resulting in the nullity of the FAN and FLD as well as the subsequent collection of the amounts assessed therein, through PCL and FNBS and WDL.

To reiterate, an invalid assessment bears no valid fruit. 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.¹²² In the instant case, accused Robiegie and Sucksuphan were not properly informed of the basis of their tax liabilities considering that they did not receive the assessment notices. Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made.¹²³

The Supreme Court has consistently nullified tax assessments that were issued in violation of the taxpayer's right to due process. In *Avon, supra*, the Supreme Court elucidated on the utmost importance of observing due process in issuing deficiency tax assessments, viz.:

"Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal

¹²¹ TSN dated March 27, 2019, pp. 11 to 15.

¹²² *Commissioner of Internal Revenue vs. BASF Coating + Inks Phils., Inc., G.R. No. 198677*, November 26, 2014.

¹²³ *Id.*



DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 47 of 53

Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and **always with regard to the basic tenets of due process.**

The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.

X X X

This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99.

In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, this Court held that **failure to send a Preliminary Assessment Notice stating the facts and the law on which the assessment was made as required by Section 228 of the Tax Code rendered the assessment made by the Commissioner as void.** This Court explained:

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. (Citation omitted)

In *Commissioner of Internal Revenue v. Reyes*, this Court ruled as void an assessment for deficiency estate tax issued by the Commissioner for failure to inform the taxpayer of the law and the facts on which the assessment was made, in violation of Section 228 of the Tax Code.

In *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*, this Court ruled, among others, that the taxpayer was **deprived of due process when the Commissioner failed to issue a notice of informal conference and a Preliminary Assessment Notice as required by Revenue Regulation No. 12-99,**

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DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 48 of 53

in relation to Section 228 of the Tax Code. Hence, the assessment was void.

Compliance with strict procedural requirements must be followed in the collection of taxes as emphasized in *Commissioner of Internal Revenue v. Algue, Inc.*:

Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, **such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself.** It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.

x x x x

It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to the taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part, is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.

But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate ... that the law has not been observed. (Emphasis supplied)

In this case, Avon was able to amply demonstrate the Commissioner's disregard of the due process standards raised in *Ang Tibay* and subsequent cases, and of the Commissioner's own rules of procedure. Her disregard of the standards and rules renders the deficiency tax assessments null and void. Xxx" (*Citations omitted*)



DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 49 of 53

With the glaring failure of the prosecution to prove that accused Robigie and Sucksuphan received the assessment notices, the Court finds that accused's refusal to pay the assessed deficiency taxes was justified. Stated differently, **the failure of the accused to pay the assessed internal revenue tax liabilities for the year 2011 was not willful.**

Civil liability arising from obligation to pay tax under the NIRC of 1997, as amended

Section 7(b)(1) of RA No. 1125, as amended, states that "[a]ny provision of law or Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action shall be deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized."

As oft-repeated, since the assessment notices are void, the assessments that resulted therefrom are a nullity. Thus, the Court finds that no civil liability for deficiency internal revenue tax liabilities may be adjudged against accused Robigie and, with more reason - - upon accused Sucksuphan as the facts upon which such liability arising from law may arise do not exist.

Civil liability arising from the criminal violation of the NIRC of 1997, as amended

Lastly, it is imperative to stress that the Court may not impose against accused Sucksuphan, as Robigie's Treasurer, any civil liability arising from a criminal violation of the NIRC of 1997, as amended. In fact, there is nothing on record to show that accused Sucksuphan, as the Treasurer of Robigie, committed a criminal violation when she refused to pay the deficiency taxes assessed against accused Robigie pursuant to a void assessment. Evidence is thus wanting of the fact upon which the civil liability arising from the criminal violation may occur.



DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 50 of 53

In ***Gaw vs. Commissioner of Internal Revenue***,¹²⁴ the Supreme Court elucidated on the nature of civil liability arising from a criminal violation of the NIRC of 1997, as amended, viz.:

“The civil action filed by the petitioner to question the FDDA is not deemed instituted with the criminal case for tax evasion

Rule 9, Section 11 of A.M. No. 05-11-07-CTA, otherwise known as the Revised Rules of the Court of Tax Appeals (RRCTA), states that:

SEC. 11. Inclusion of civil action in criminal action. — In cases within the jurisdiction of the Court, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall be deemed jointly instituted in the same proceeding. The filing of the criminal action shall necessarily carry with it the filing of the civil action. No right to reserve the filing of such civil action separately from the criminal action shall be allowed or recognized.

Petitioner claimed that by virtue of the above provision, the civil aspect of the criminal case, which is the Petition for Review *Ad Cautelam*, is deemed instituted upon the filing of the criminal action. Thus, the CTA had long acquired jurisdiction over the civil aspect of the consolidated criminal cases. Therefore, the CTA erred in dismissing the case.

We do not agree.

Rule 111, Section 1 (a) of the Rules of Court provides that what is deemed instituted with the criminal action is only the action to recover civil liability arising from the crime. Civil liability arising from a different source of obligation, such as when the obligation is created by law, such civil liability is not deemed instituted with the criminal action.

It is well-settled that the taxpayer's obligation to pay the tax is an obligation that is created by law and does not arise from the offense of tax evasion, as such, the same is not deemed instituted in the criminal case.

In the case of *Republic of the Philippines v. Patanao*, We held that:

Civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him. The criminal liability arises upon failure of the debtor to

¹²⁴ G.R. No. 222837, July 23, 2018.



DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 51 of 53

satisfy his civil obligation. The incongruity of the factual premises and foundation principles of the two cases is one of the reasons for not imposing civil indemnity on the criminal infractor of the income tax law. x x x **Considering that the Government cannot seek satisfaction of the taxpayer's civil liability in a criminal proceeding under the tax law or, otherwise stated, since the said civil liability is not deemed included in the criminal action, acquittal of the taxpayer in the criminal proceeding does not necessarily entail exoneration from his liability to pay the taxes.** It is error to hold, as the lower court has held that the judgment in the criminal cases nos. 2089 and 2090 bars the action in the present case. The acquittal in the said criminal cases cannot operate to discharge defendant appellee from the duty of paying the taxes which the law requires to be paid, since that duty is imposed by statute prior to and independently of any attempts by the taxpayer to evade payment. **Said obligation is not a consequence of the felonious acts charged in the criminal proceeding nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of non-existence of the criminal acts charged.** x x x. (Citations omitted and emphasis ours)

Further, in a more recent case of *Proton Pilipinas Corp. v. Republic of the Phils.*, We ruled that:

While it is true that according to the aforesaid Section 4, of Republic Act No. 8249, the institution of the criminal action automatically carries with it the institution of the civil action for the recovery of civil liability, however, in the case at bar, **the civil case for the collection of unpaid customs duties and taxes cannot be simultaneously instituted and determined in the same proceedings as the criminal cases before the Sandiganbayan, as it cannot be made the civil aspect of the criminal cases filed before it.** It should be borne in mind that the tax and the obligation to pay the same are all created by statute; so are its collection and payment governed by statute. The payment of taxes is a duty which the law requires to be paid. Said obligation is not a consequence of the felonious acts charged in the criminal proceeding nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of non-existence of the criminal acts charged. Hence, the payment and collection of customs duties and taxes in itself creates civil liability on the part of the taxpayer. Such civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in



DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page **52** of **53**

business, and not because of any criminal act committed by him. (Citations omitted and emphasis ours)

Xxx. (Boldfacing and underscoring supplied)

The obligation to pay the tax is an obligation that is created by law; it does not arise from the criminal offense of violation of the NIRC of 1997, as amended, and, as such, is not deemed instituted in the criminal case.

All told, considering that the Court has not acquired jurisdiction over the person of accused Robigie, as it was not arraigned in the present case, no civil action pursuant to Section 253(e) of the NIRC of 1997, as amended, may prosper against it.

WHEREFORE, premises considered, the present case is **DISMISSED** for lack of jurisdiction.

Moreover, even assuming that the Court has jurisdiction over the case, accused **ROBIEGIE CORPORATION and GRACE G. SUCKSUPHAN** are hereby **ACQUITTED** of the offense charged in CTA Crim. Case No. O-639 for failure of the prosecution to prove their guilt beyond reasonable doubt, without any civil liability.

The cash bail bond of accused **GRACE G. SUCKSUPHAN** is hereby **CANCELLED** and ordered **RELEASED** to her upon presentation of proper documents, in accordance with usual accounting rules and regulations.

SO ORDERED.


ROMAN G. DEL ROSARIO
Presiding Justice

DECISION

People of the Philippines vs. Robigie Corporation and Grace G. Sucksuphan

CTA Crim. Case No. O-639

Page 53 of 53

WE CONCUR:

(on leave)

ESPERANZA R. FABON-VICTORINO

Associate Justice



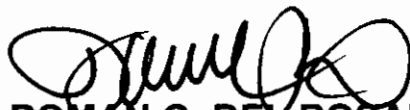
(With Concurring and Dissenting Opinion)

CATHERINE T. MANAHAN

Associate Justice

CERTIFICATION

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



ROMAN G. DEL ROSARIO

Presiding Justice