

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE
PHILIPPINES,

THE
Petitioner,

CTA EB CRIM NO. 094
(CTA CRIM CASE NOS. O-741 to
O-744)

(NPS Docket No. XVI-15J-00387)
For: Violation of Section 255 in relation to
Sections 253 (d) and 256 of Republic Act
No. 8424 [National Internal Revenue Code
of 1997, as amended (NIRC)]

Present:

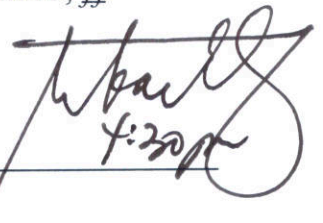
-versus-

DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, *and*
FERRER-FLORES, JJ.

GREAT DOMESTIC
INSURANCE COMPANY OF
THE PHILIPPINES, MAR S.
LOPEZ, JEMMA L. LAMCES,
and MARCELESA F. SARTO,
Respondents.

Promulgated:

JUL 10 2023



X-----X

DECISION

RINGPIS-LIBAN, J.:

The Case

Before the Court *En Banc* is a *Petition for Review* filed by the People of the Philippines under Rule 9 Section 9(b) of the Revised Rules of the Court of Tax Appeals (RRCTA) in relation to Rule 43 of the Rules of Court and assails the November 5, 2021 and March 24, 2022 Resolutions of the CTA First Division



insofar as the *civil aspects of the case is concerned*. The dispositive portions of the assailed Resolutions read:

November 5, 2021 Resolution

“In view of the foregoing, accused Jemma L. Lamces’ *Motion for Leave to File Demurrer to Evidence* filed on June 9, 2021 is hereby **GRANTED**.

Accused Jemma L. Lamces’ *Demurrer to Evidence* is also **GRANTED**. Accordingly, CTA Criminal Case Nos. 0-741 to O-744 are **DISMISSED** only against Jemma L. Lamces, on the ground of insufficiency of evidence.

Let CTA Criminal Case Nos. 0-741 to 0-744 be **ARCHIVED** against accused Mar S. Lopez, which shall be **REVIVED** upon his apprehension.

The Director of the National Bureau of Investigation (NBI); the Regional Director of NBI-Bulacan; the Chief of the Philippine National Police thru the Directorate for Investigation and Detective Management (DIDM) in Camp Crame; the Chief of the Warrant and Subpoena Section of the Manila City Police and the Chief of the Warrant and Subpoena Section of Malolos City, Bulacan Police Station, are hereby **DIRECTED** to exert efforts for the apprehension of accused Mar S. Lopez pursuant to the existing Alias Warrants of Arrest.

SO ORDERED.”

March 24, 2022 Resolution

“**WHEREFORE**, in light of the foregoing considerations, the *Motion for Reconsideration* (Re: *Resolution dated 05 November 2021*) posted by plaintiff on December 7, 2021 as regards the acquittal of herein accused, Jemma L. Lamces, is **DENIED** for lack of merit.

SO ORDERED.”

The Parties

Petitioner *People of the Philippines* is represented by the Bureau of Internal Revenue (BIR), the government agency primarily tasked to collect internal revenue taxes for the support of the government, with office at the BIR National Office Building, Diliman, Quezon City.

Respondents *Great Domestic Insurance Company of the Philippines* (GDICP), *Mar S. Lopez* (President), *Jemma L. Lamces* (Treasurer) and *Marcelesa F. Sarto* (Accounting Manager) were the accused in CTA Crim. Case Nos. 0-741 to 0-744.

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The Facts

Proceedings Before the BIR

In a *Letter of Authority* (LOA) LOA-2009-00021809 dated May 5, 2010 and signed by Regional Director – Manila, Alfredo V. Misajon, the BIR authorized Revenue Officer (RO) Divina S. Santos and Group Supervisor (GS) Almira B. Navarro of Revenue District Office No. 034 Paco, Manila (RDO-034) to examine the books of accounts and other accounting records of *Great Domestic Insurance Company of the Philippines, Inc.* (GDICPI) for all internal revenue taxes for calendar year (CY) 2009.¹

In a *First Request for Presentation of Records* dated May 6, 2010 and signed by Petronilo C. Fernando, Revenue District Officer, Revenue District Office No. 034 Paco-San Andres-Sta. Ana Pandacan (RDO-034), the BIR requested a list of documents from GDICPI for examination pursuant to Letter Authority No. 00021809 dated May 5, 2010.²

In a *Second Request for Presentation of Records* dated May 14, 2010 and signed by Petronilo C. Fernando, Revenue District Officer, RDO-034, the BIR repeated its request for a list of documents from GDICPI.³

In a *3rd and Final Request for Presentation of Records* dated May 24, 2010 and signed by Petronilo C. Fernando, Revenue District Officer, RDO-034, the BIR repeated its request for a list of documents with a warning that the continued failure to heed the request will result in the issuance of a *Subpoena Duces Tecum*.⁴

In a *Letter of Authority* (LOA) LOA-034-2010-00000285 / eLA201000012788 dated September 9, 2010 and signed by Regional Director – Manila, Alfredo V. Misajon, the BIR authorized RO Divina Santos and GS Almira Navarro of RDO 034 Paco-San Andres-Sta. Ana Pandacan (RDO-034) to examine the books of accounts and other accounting records of GDICPI for all internal revenue taxes for calendar year (CY) 2009.⁵

In a *Memorandum of Assignment* dated January 24, 2011 and signed by Petronilo C. Fernando, Head, Investigating Office/Revenue District Officer, RDO 034, the continuation of the audit/investigation of GDICPI was referred to ROs Fremarie L. Aquino and Abelardo B. Camba under GS Almira Navarro to replace the previously assigned ROs.⁶

¹ Exhibit P-10, Division Docket (O-741), Volume I, p. 318.

² Exhibit P-13, Division Docket (O-741), Volume I, p. 91.

³ Exhibit P-14, Division Docket (O-741), Volume I, p. 319.

⁴ Exhibit P-15, Division Docket (O-741), Volume I, p. 93.

⁵ Exhibit P-11, Division Docket (O-741), Volume I, p. 89.

⁶ Exhibit P-12, Division Docket (O-741), Volume I, p. 90.

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In a *Memorandum* for the Regional Director dated May 12, 2011, signed by ROs Abelardo B. Camba and Fremarie L. Aquino and noted by GS Almira Navarro, the BIR recommended the referral of the case to the Legal Division for issuance of a *Subpoena Duces Tecum* in view of the alleged failure of the taxpayer to comply with the submission of documents and requirements needed to facilitate proper audit and investigation.⁷

Consequently, the BIR issued a *Subpoena Duces Tecum* (SDT No. RR6-2011-0404) dated May 20, 2011 and signed by Regional Director, Alfredo V. Misajon, which was addressed to accused Mar S. Lopez, president of GDICPI and which commanded him to appear before the Legal Division, 5th Floor BIR Building I, Solana Street, Intramuros, Manila on June 3, 2011 at 10:00 a.m. and to bring GDICPI's accounting records.⁸

In a Memorandum dated April 18, 2012 and signed by Petronilo C. Fernando, Revenue District Officer, RDO 034, the docket of the investigation of GDICPI was referred for appropriate action to RO Fremarie L. Aquino and GS Almira B. Navarro.⁹

In a *Notice of Informal Conference* dated April 30, 2012 and signed by Petronilo C. Fernando, Revenue District Officer, RDO-034, the BIR informed GDICPI that, after an investigation based on the Best Evidence Obtainable conducted by RO Fremarie L. Aquino under GS Almira Navarro pursuant to LOA-034-2010-00000285 dated September 9, 2010, there is due from the company a total of PhP90,568,956.15 computed as follows:¹⁰

Deficiency Income Tax	PhP 35,151,909.11
Deficiency Withholding on Value-Added Tax (VAT)	23,855,646.84
Deficiency Expanded Withholding Tax (EWT)	2,270,350.60
Deficiency Documentary Stamp Tax (DST)	29,291,049.60

In a *Memorandum* for the Regional Director dated May 21, 2012 and signed by RO Aquino and noted by GS Navarro, the revenue examiners reported that based on the Best Evidence Obtainable under Section 6(C) of the NIRC and Revenue Memorandum Circular No. (RMC) 23-2000 the taxpayer had a total deficiency of PhP90,568,956.15 and recommended that the whole docket be forwarded to the Assessment Division for issuance of Preliminary Assessment Notice (PAN) to effect the collection of the taxes due.¹¹

In a PAN dated March 25, 2013 and signed by Simplicio A. Madulara, OIC-Regional Director, the BIR gave the taxpayer fifteen (15) days from receipt the opportunity to present in writing its side of the case.¹²

⁷ Exhibit P-57, Division Docket (O-741), Volume I, p. 325.

⁸ Exhibit P-58, Division Docket (O-741), Volume I, p. 326.

⁹ Exhibit P-59, Division Docket (O-741), Volume I, p. 327.

¹⁰ Exhibit P-16, Division Docket (O-741), Volume I, p. 94.

¹¹ Exhibit P-17, Division Docket (O-741), Volume I, p. 98.

¹² Exhibit P-25, Division Docket (O-741), Volume I, pp. 322-323.

In four (4) *Assessment Notices* all dated May 29, 2013 and signed by Simplicio A. Madulara, OIC-Regional Director, the BIR assessed GDICPI the following deficiency taxes:

Kind of Tax	Basic Tax Due (PhP)	Exhibits
Deficiency Income Tax	29,810,269.91	Exhibit P-4 ¹³
Deficiency VAT	12,555,603.60	Exhibit P-5 ¹⁴
Deficiency EWT	1,189,703.37	Exhibit P-6 ¹⁵
Deficiency DST	15,349,021.63	Exhibit P-7 ¹⁶

In a *Formal Letter of Demand* (FLD) signed by Simplicio A. Madulara, OIC-Regional Director with attached *Details of Discrepancies*, the BIR requested the payment of the deficiency basic taxes, surcharge and interest not later than *July 1, 2013*.¹⁷

In a *Memorandum of Assignment* dated April 18, 2014 and signed by Marivic G. Tulio, Chief of Collection Division, RO Joesebeth Gregorio was assigned to conduct collection and enforcement strategies against the taxpayer.¹⁸

In a *Preliminary Collection Letter* dated May 9, 2014 and signed by Marivic G. Tulio, Chief of Collection Division, the BIR requested GDICPI to pay of the following internal revenue tax liabilities which remained unsettled, within ten (10) days from receipt:¹⁹

Tax Type	Due Date	Basic Tax Due	Interest	Surcharge	TOTAL (PhP)
Income	July 1, 2013	29,810,269.91	18,515,456.74	14,905,134.96	63,230,861.61
Value-Added Tax	July 1, 2013	12,555,603.60	8,356,005.31	6,277,801.80	27,189,410.71
Expanded Withholding Tax	July 1, 2013	1,189,703.37	798,419.45	594,851.69	2,582,974.51
Documentary Stamp Tax	July 1, 2013	15,349,021.63	10,386,115.02	7,674,510.82	33,409,647.47
TOTAL (PhP)		58,904,598.51	38,055,996.52	29,452,299.27	126,412,894.30

In a *Final Notice Before Seizure* dated June 4, 2014 and signed by Marivic G. Tulio, Chief of Collection Division, GDICPI was given the last opportunity to make the necessary settlement of the tax liabilities within ten (10) days from receipt, otherwise, the BIR warned that it will serve and execute the Warrant of Dstraint and/or Levy and Garnishment to enforce collection and will refer the case to the Legal Division of the Region for filing of appropriate judicial action.²⁰

In a *Memorandum of Assignment* dated July 3, 2014 and signed by Marivic G. Tulio, Chief of Collection Division, RO Jefferson Ocampo was assigned to conduct collection and enforcement strategies against the taxpayer.²¹

¹³ Division Docket (O-741), Volume I, p. 193.

¹⁴ *Id.*, p. 194.

¹⁵ *Id.*, p. 195.

¹⁶ *Id.*, p. 196.

¹⁷ Exhibit P-8, Division Docket (O-741), Volume I, pp. 197-200.

¹⁸ Exhibit P-32, Division Docket (O-741), Volume I, p. 120.

¹⁹ Exhibit P-33, Division Docket (O-741), Volume I, p. 121.

²⁰ Exhibit P-34, Division Docket (O-741), Volume I, p. 122.

²¹ Exhibit P-35, Division Docket (O-741), Volume I, p. 123.

A *Warrant of Distraint and/or Levy* dated July 4, 2014 and signed by Marivic G. Tulio, Chief of Regional Collection Division was issued against GDICPI commanding RO Jefferson Ocampo to (a) distraint the goods, chattels or effects and other personal property; and, (b) levy upon the real property and interest in/or rights to real property of the delinquent taxpayer.²²

Thirteen (13) *Warrants of Garnishment* all dated September 5, 2014 and signed by Araceli L. Francisco, Regional Director, were issued to various banks.²³

Letters all dated March 2, 2015 and signed by Araceli L. Francisco, Regional Director, were issued to each of the following officers of GDICPI giving them last opportunity to settle the company's tax liability before resorting to legal action:

- Rebecca C. Cagoco, VP for Corporate Affairs;²⁴
- Mercelisa F. Sarto, Accounting Manager;²⁵
- Atty. Ana Marie V. Pagsibigan, Corporate Secretary;²⁶
- Jemma L. Lamces, Treasurer;²⁷ and,
- Mar S. Lopez, President.²⁸

In a *Memorandum* dated April 15, 2015, addressed to Marivic G. Tulio, Chief of Collection Division and signed by RO Jefferson T. Ocampo, the RO reported that *Warrants of Garnishment* were served to different banks which, however, responded negatively; that, as of even date, the taxpayer failed to pay the tax delinquency; and, finally, recommended the referral of the case to the Legal Division for appropriate legal action.²⁹

Proceedings Before the Court of Tax Appeals (CTA) First Division

On June 19, 2019, four (4) *Informations* were filed with the court *a quo* where the accused corporation, *Great Domestic Insurance Company of the Philippines* (GDICP) and its three (3) alleged officers were charged with Violation of Section 255 in relation to Sections 253(d) and 256 of the NIRC, docketed as Criminal Case Nos. O-741 to O-744, for failure to pay deficiency income tax (IT), value-added tax (VAT), Expanded Withholding Tax (EWT) and Documentary Stamp Tax (DST) for taxable year 2009, committed as follows:³⁰

- **Criminal Case No. O-741 (Value-Added Tax)**

²² Exhibit P-36, Division Docket (O-741), Volume I, p. 124.

²³ Exhibits P-37 to P-49, Division Docket (O-741), Volume I, pp. 125-137.

²⁴ Exhibit P-51, Division Docket (O-741), Volume I, p. 139.

²⁵ Exhibit P-52, Division Docket (O-741), Volume I, p. 140.

²⁶ Exhibit P-53, Division Docket (O-741), Volume I, p. 141.

²⁷ Exhibit P-54, Division Docket (O-741), Volume I, p. 142.

²⁸ Exhibit P-55, Division Docket (O-741), Volume I, p. 143.

²⁹ Exhibit P-50, Division Docket (O-741), Volume I, p. 138.

³⁰ November 5, 2021 Resolution, *Rollo*, p. 19.

“INFORMATION

The undersigned State Prosecutor of the Department of Justice, hereby accuses **GREAT DOMESTIC INSURANCE COMPANY OF THE PHILIPPINES** (**GREAT DOMESTIC** for brevity), **MAR S. LOPEZ, JEMMA L. LAMCES** and **MARCELESA F. SARTO**, President, Treasurer and Accounting Manager, respectively, of **GREAT DOMESTIC** for violation of Sec. 255 of Republic Act 8424 otherwise known as the National Internal Revenue Code of 1997, as amended, in relation to Sections 253, par. (d), and 256 of the same code, committed as follows:

‘That on or about May 9, 2014 up to the present, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the aforementioned accused **GREAT DOMESTIC**, as well as its responsible officers namely: **MAR S. LOPEZ, JEMMA L. LAMCES** and **MARCELESA F. SARTO**, being the President, Treasurer and Accounting Manager, respectively, and as such, required by law, rules and regulations to pay taxes due from the said corporation, did then and there willfully, unlawfully, and feloniously fail and refuse to pay the Value-Added Tax (VAT) Deficiency of **GREAT DOMESTIC** for taxable year 2009 in the total amount of **Twelve Million Five Hundred Fifty Five Thousand Six Hundred Three Pesos and Sixty Centavos (P12,555,603.60)**, exclusive of interest and surcharges, despite due notice and demand from the BIR Commissioner or his duly authorized representatives, to the damage and prejudice of the government.’

CONTRARY TO LAW.”³¹

▪ **Criminal Case No. O-742 (Expanded Withholding Tax)**

“INFORMATION

The undersigned State Prosecutor of the Department of Justice, hereby accuses **GREAT DOMESTIC INSURANCE COMPANY OF THE PHILIPPINES** (**GREAT DOMESTIC** for brevity), **MAR S. LOPEZ, JEMMA L. LAMES** and **MARCELESA F. SARTO**, President, Treasurer and Accounting Manager, respectively, of **GREAT DOMESTIC** for violation of Sec. 255 of Republic Act 8424 otherwise known as the National Internal Revenue Code of 1997, as amended, in relation to Sections 253, par. (d), and 256 of the same code, committed as follows:

‘That on or about May 9, 2014 up to the present, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the aforementioned accused **GREAT DOMESTIC**, as well as its responsible officers namely: **MAR S. LOPEZ, JEMMA L. LAMCES** and **MARCELESA F. SARTO**, being the President, Treasurer and Accounting Manager, respectively, and as such, required by law, rules and regulations to pay taxes due from the said corporation, did then and there willfully, unlawfully, and feloniously fail and refuse

³¹ Division Docket (O-741), Volume I, pp. 8-10.

to pay the Expanded Withholding Tax Deficiency of GREAT DOMESTIC for taxable year 2009 in the total amount of **One Million One Hundred Eighty Nine Thousand Seven Hundred Three Pesos and Thirty Seven Centavos (P1,189,703.37)**, exclusive of interest and surcharges, despite due notice and demand from the BIR Commissioner or his duly authorized representatives, to the damage and prejudice of the government.’

CONTRARY TO LAW.”³²

▪ **Criminal Case No. O-743 (Documentary Stamp Tax)**

“INFORMATION

The undersigned State Prosecutor of the Department of Justice, hereby accuses **GREAT DOMESTIC INSURANCE COMPANY OF THE PHILIPPINES** (GREAT DOMESTIC for brevity), **MAR S. LOPEZ, JEMMA L. LAMCES and MARCELESA F. SARTO**, President, Treasurer, Accounting Manager, respectively, of GREAT DOMESTIC for violation of Sec. 255 of Republic Act 8424 otherwise known as the National Internal Revenue Code of 1997, as amended, in relation to Sections 253, par. (d), and 256 of the same code, committed as follows:

‘That on or about May 9, 2014 up to the present, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the aforementioned accused **GREAT DOMESTIC**, as well as its responsible officers namely: **MAR S. LOPEZ, JEMMA L. LAMCES and MARCELESA F. SARTO**, being the President, Treasurer and Accounting Manager, respectively, and as such, required by law, rules and regulations to pay taxes due from the said corporation, did then and there willfully, unlawfully, and feloniously fail and refuse to pay the Documentary Stamp Tax of GREAT DOMESTIC for taxable year 2009 in the total amount of **Fifteen Million Three Hundred Forty Nine Thousand Twenty One Pesos and Sixty Three Centavos (P15,349,021.63)**, exclusive of interest and surcharges, despite due notice and demand from the BIR Commissioner or his duly authorized representatives, to the damage and prejudice of the government.’

CONTRARY TO LAW.”³³

▪ **Criminal Case No. O-744 (Income Tax)**

“INFORMATION

The undersigned State Prosecutor of the Department of Justice, hereby accuses **GREAT DOMESTIC INSURANCE COMPANY OF THE PHILIPPINES** (GREAT DOMESTIC for brevity), **MAR S. LOPEZ, JEMMA L. LAMCES and MARCELESA F. SARTO**, President, Treasurer,

³² Division Docket (O-742), pp. 8-10.

³³ Division Docket (O-743), pp. 8-10.

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Accounting Manager, respectively, of GREAT DOMESTIC for violation of Sec. 255 of Republic Act 8424 otherwise known as the National Internal Revenue Code of 1997, as amended, in relation to Sections 253, par. (d), and 256 of the same code, committed as follows:

“That on or about May 9, 2014 up to the present, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the aforementioned accused **GREAT DOMESTIC**, as well as its responsible officers namely: **MAR S. LOPEZ, JEMMA L. LAMCES and MARCELESA F. SARTO**, being the President, Treasurer and Accounting Manager, respectively, and as such, required by law, rules and regulations to pay taxes due from the said corporation, did then and there willfully, unlawfully, and feloniously fail and refuse to pay the Income Tax Deficiency of GREAT DOMESTIC for taxable year 2009 in the total amount of **Twenty Nine Million Eight Hundred Ten Thousand Two Hundred Sixty Nine Pesos and Ninety One Centavos (P29,810,269.91)**, exclusive of interest and surcharges, despite due notice and demand from the BIR Commissioner or his duly authorized representatives, to the damage and prejudice of the government.”³⁴

CONTRARY TO LAW.”³⁴

On October 3, 2019, plaintiff filed a *Motion for Consolidation with Manifestation* requesting the court *a quo* to consolidate CTA Crim. Case Nos. O-741, O-742, O-743 and O-744 considering that all said cases are founded on the same facts, involved the same parties and arose from a single preliminary investigation.³⁵

On January 23, 2020, the court *a quo* issued a *Resolution* granting plaintiff's *Motion for Consolidation*.³⁶

On February 20, 2020, the court *a quo* issued a *Resolution* finding the existence of *probable cause* to hold accused Mar S. Lopez and Jemma L. Lamces for trial and ordered the issuance of *Warrants of Arrest* against them.³⁷

On March 3, 2020, a *Warrant of Arrest* was issued against accused Jemma L. Lamces for Criminal Case No. O-743.³⁸

Accused Jemma L. Lamces voluntarily surrendered and submitted herself to the jurisdiction of the Court on September 11, 2020 and also posted the

³⁴ Division Docket (O-744), pp. 8-10.

³⁵ November 5, 2021 Resolution, *Rollo*, p. 21.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

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required cash bail bond in the amount of PhP60,000.00 for her provisional liberty.³⁹

On September 11, 2020, the Court issued an Order, lifting the *Warrant of Arrest* issued against accused Jemma L. Lamces and set her *arraignment* and the *pre-trial conference* on October 7, 2020.⁴⁰

Upon arraignment for CTA Crim. Case Nos. O-741 to O-744, which was held on October 7, 2020, accused Jemma L. Lamces, waived the reading of the *Informations* and entered a plea of “Not Guilty” to the charges filed against her with the assistance of her counsel.⁴¹ The court *a quo* also considered the arraignment of accused Jemma L. Lamces, as the natural person who is the responsible officer of the co-accused corporation, binding upon said corporation.⁴²

Pre-trial for the consolidated cases was held on October 28, 2020.⁴³

A *Pre-trial Order* was issued by the court *a quo* on January 15, 2021, which stated that the plaintiff will present the following witnesses:

1. RO Fremarie Aquino;
2. RO Mirabel Vidal;
3. RO Jefferson Ocampo;
4. RO Divina Santos; and,
5. RO Benhur Nacorda.⁴⁴

On January 20, 2021, trial proceeded for the initial presentation of plaintiff's evidence.⁴⁵

In the subsequent trial held on February 3, 2021, plaintiff was given five (5) days from date to file its *Formal Offer of Evidence*.⁴⁶

Plaintiff filed its *Formal Offer of Exhibits* on February 15, 2021 via registered mail.⁴⁷

Accused Jemma L. Lamces filed her *Comment/Objections* to plaintiff's *Formal Offer of Exhibits* on February 22, 2021.⁴⁸

³⁹ *Id.*, pp. 21-22.

⁴⁰ *Id.*, p. 22.

⁴¹ *Id.*

⁴² Transcript of Stenographic Notes (TSN), October 7, 2022, p. 18.

⁴³ November 5, 2021 Resolution, *Rollo*, p. 22.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

On May 26, 2021, the court *a quo* issued a *Resolution* admitting the following exhibits of plaintiff:

Exhibits “P-3”, “P-4”, “P-5”, “P-6”, “P-7”, “P-8”, “P-10”, “P-11”, “P-12”, “P-13”, “P-14”, “P-15”, “P-16”, “P-16-a”, “P-16-b”, “P-17”, “P-18”, “P-19”, “P-20”, “P-21”, “P-22”, “P-23”, “P-24”, “P-25”, “P-26”, “P-27”, “P-28”, “P-29”, “P-32”, “P-33”, “P-34”, “P-35”, “P-36”, “P-37”, “P-38”, “P-39”, “P-40”, “P-41”, “P-42”, “P-43”, “P-44”, “P-45”, “P-46”, “P-47”, “P-48”, “P-49”, “P-50”, “P-51”, “P-52”, “P-53”, “P-54”, “P-55”, “P-57”, “P-58”, “P-59”, “P-60”, “P-73”, “P-73-a”, “P-74”, “P-74-a”, “P-75”, “P-75-a”, “P-76”, and “P-76-a.”⁴⁹

In this same *Resolution*, the court *a quo* denied the following exhibits offered by plaintiff:

“However, the Court **DENIES** the admission of the following exhibits:

1. Exhibits “P-1”, “P-2”, “P-30”, “P-31”, “P-62”, “P-63”, “P-64”, “P-65”, “P-68”, “P-69”, and “P-70”, for failure to identify;
2. Exhibits “P-9”, “P-33-a”, and “P-56”, for failure to present the original for comparison; and,
3. Exhibit “P-61”, for not being found in the records.”⁵⁰

On June 9, 2021, accused Jemma L. Lamces filed a *Motion for Leave to File Demurrer to Evidence* with attached *Demurrer to Evidence*.⁵¹

On July 22, 2021, plaintiff filed its *Opposition (Re: Accused’s Demurrer to Evidence)*.⁵²

On October 7, 2021, the court *a quo* issued a *Resolution* submitting accused’s *Motion for Leave to File Demurrer to Evidence* and *Demurrer to Evidence* for the resolution of the Court.⁵³

On November 5, 2021, the court *a quo* issued the assailed *Resolution*, which granted the *Demurrer to Evidence* of accused Jemma L. Lamces.⁵⁴

On December 7, 2021, the plaintiff subsequently filed a *Motion for Reconsideration (Re: Resolution dated 05 November 2021)*⁵⁵ with *Comment/Opposition*

⁴⁹ *Id.*, pp. 22-23.

⁵⁰ *Id.*, p. 23.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*, pp. 23-24.

⁵⁴ *Id.*, p. 35.

⁵⁵ Division Docket (O-741), Volume II, pp. 1049-1055.

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(*Re: Motion for Reconsideration of Resolution dated 5 November 2021*) from accused Jemma L. Lamces filed on February 7, 2022.⁵⁶

On March 24, 2022, the court *a quo* issued a Resolution, which denied plaintiff's *Motion for Reconsideration (Re: Resolution dated 05 November 2021)* for lack of merit.⁵⁷

Proceedings Before the CTA En Banc

On April 20, 2022, petitioner People of the Philippines filed a *Motion for Extension of Time to File Petition for Review* asking for fifteen (15) days from April 20, 2022 or until May 5, 2022 to file the petition. This was granted by the Court *En Banc*.⁵⁸

On May 4, 2022, petitioner filed its *Petition for Review*, which prayed for the reversal and setting aside of assailed *Resolutions* dated November 5, 2021 and March 24, 2022, insofar as the civil aspect of the case is concerned.⁵⁹

In a *Resolution* dated May 26, 2022, the Court ordered respondents *Great Domestic Insurance Company of the Philippines, Mar S. Lopez, Jemma L. Lamces* and *Marcelesa F. Sarto* to file their comment, not a motion to dismiss, on the petition.⁶⁰

On June 20, 2022, respondent Marcelesa F. Sarto filed a *Compliance and Comment*. It stated that the *Petition for Review* did not touch on any issue regarding her and manifested that CTA Crim Case Nos. O-741 and O-743 against her were *dismissed* in the February 20, 2020 *Resolution*; and further that CTA Crim Case Nos. O-742 and O-744 against her were also *dismissed* in the August 3, 2020 *Resolution* of the court *a quo*; finally, absent any action from the Special Prosecutor and considering the lapse of more than two (2) years since the *Resolutions* were handed down, the dismissal of the cases were now final and there was no longer any room left to assail the same.⁶¹

On June 20, 2022, respondent Jemma L. Lamces, through the same counsel as respondent Sarto, filed a *Comment/Opposition (Re: Petition for Review)*, which stated that witnesses for the prosecution failed to mention the name of respondent *Lamces* as a responsible officer of the accused corporation; that petitioner did not prove that the failure to pay tax on the part of accused corporation was willful on her part; and, thus, her role and/or participation was never proven.⁶²

In a *Resolution* dated July 12, 2022, the instant case was submitted for decision.⁶³



⁵⁶ *Id.*, pp. 1040-1044.

⁵⁷ *Rollo*, pp. 37-41.

⁵⁸ Minute Resolution dated April 21, 2022, *Rollo*, p. 4.

⁵⁹ *Rollo*, pp. 5-13.

⁶⁰ *Rollo*, pp. 43-44.

⁶¹ *Rollo*, pp. 55-57.

⁶² *Rollo*, pp. 45-54.

⁶³ *Rollo*, pp. 56-57.

The Issue

Petitioner raised a single assignment of error for the resolution of the Court *En Banc*:

*Whether the Honorable CTA First Division erred in ruling that petitioner failed to prove the role of respondent Lamces in the respondent corporation.*⁶⁴

The Arguments of the Parties

Arguments of Petitioner People of the Philippines

Petitioner argues that, under Section 1(a) of Rule 111 of the Rules of Court, when a criminal action is instituted, the civil action for recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.⁶⁵ It further submits that there is no longer any need to prove the position of respondent Lamces as treasurer of respondent *Great Domestic Insurance Company of the Philippines* as such fact was admitted by her in her Pre-Trial Brief and, thus, she may be held liable under Sections 253(d) and 256 of the NIRC.⁶⁶ Finally, petitioner maintains that the liability of the respondent to pay the deficiency taxes in the aggregate amount of PhP126,412,894.30 for taxable year 2009 had long been beyond dispute as the assessments had become final, executory and demandable.⁶⁷

Arguments of Respondent Jemma L. Lamces

Respondent Lamces argues, on the other hand, that the Judicial Affidavits of petitioner's witnesses failed to name her as a responsible officer of the accused corporation and did not specify the names of the responsible officers. Hence, her role and participation were never proven.⁶⁸ Also, respondent states that petitioner was unable to prove that the failure to pay tax was willful on her part.⁶⁹ Finally, an examination of the documentary exhibits presented by petitioner shows that all the official notices such as PAN, Assessment Notices, FLD and all the requests for presentation of records by the BIR were all addressed to the president of the accused corporation and, consequently, she cannot be held criminally liable for the alleged illegal acts of the corporation and cannot be held to pay the *civil aspect* of the case.⁷⁰

⁶⁴ Petition for Review, *Rollo*, p. 9.

⁶⁵ *Id.*, p. 9.

⁶⁶ *Id.*, pp. 10-11.

⁶⁷ *Id.*, p. 11-12.

⁶⁸ Comment/Opposition (Re: Petition for Review), *Rollo*, pp. 46-47.

⁶⁹ *Id.*, pp. 47-52.

⁷⁰ *Id.*, p. 52-53.

The Ruling of the Court *En Banc*

The petition is bereft of merit.

Respondents corporation, Marcelesa F. Sarto and Mar S. Lopez should not have been impleaded in this case.

With respect to respondent Sarto, her *Compliance and Comment* correctly notes that CTA Crim. Case Nos. 741 and 743 filed against her were dismissed in the court *a quo*'s Resolution dated February 20, 2020 for failure of the prosecution to establish her actual name/identity.⁷¹ Likewise, CTA Crim. Case Nos. 742 and 744 filed against her were dismissed in the Resolution dated August 3, 2020 on the same ground.⁷² Since the prosecution did not file any motion seeking reconsideration of the *dismissal*, the *dismissal* had become final under Rule 15, Section 1 of the RRCTA.

Moreover, pursuant to the Resolution dated November 5, 2021 assailed in this appeal, the criminal cases against respondent Lopez, who remains at large and over whose person the court *a quo* did *not* acquire jurisdiction, were archived and will be revived upon his apprehension.⁷³

Considering the foregoing pronouncements of the court *a quo*, respondents Sarto and Lopez should *not* be included in the instant case for the recovery of the civil liability of their co-accused Lamces.

Finally, with respect to respondent corporation, the Court notes that it was *not* included in the *Demurrer to Evidence* filed by respondent Lamces. As such, the assailed November 5, 2021 *Resolution*, which granted the demurrer, did not resolve any issue with respect to the corporation. In fact, the sole issue raised in the instant petition discussed only the alleged error of the court *a quo* in ruling that petitioner failed to prove the role of respondent Lamces in the respondent corporation. Nothing was raised in the petition concerning the civil liability of respondent corporation itself.

Accordingly, insofar as the instant petition limited its scope on the role of respondent Lamces in the respondent corporation,⁷⁴ the Court shall treat this as an appeal to recover the *civil liability* of respondent Lamces *only*. ✓

⁷¹ Division Docket (O-741), Volume I, pp. 355-362.

⁷² *Id.*, pp. 426-434.

⁷³ *Rollo*, p. 35.

⁷⁴ See Assignment of Error of Fact and Law, Petition for Review, *Rollo*, p. 9.

***The essential elements of Section
255 in relation to Sections 253(d) and
256 of the NIRC, as amended.***

The provisions of the NIRC relevant to this case are as follows:

**“TITLE X
STATUTORY OFFENSES AND PENALTIES**

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**CHAPTER II
CRIMES, OTHER OFFENSES AND FORFEITURES**

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) Any person who willfully aids or abets in the commission of a crime penalized herein or who causes the commission of any such offense by another shall be liable in the same manner as the principal.

(c) If the offender is not a citizen of the Philippines, he shall be deported immediately after serving the sentence without further proceedings for deportation. If he is a public officer or employee, the maximum penalty prescribed for the offense shall be imposed and, in addition, he shall be dismissed from the public service and perpetually disqualified from holding any public office, to vote and to participate in any election. If the offender is a Certified Public Accountant, his certificate as a Certified Public Accountant shall, upon conviction, be automatically revoked or cancelled.

(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.

(e) The fines to be imposed for any violation of the provisions of this Code shall not be lower than the fines imposed herein or twice the amount of taxes, interest and surcharges due from the taxpayer, whichever is higher.”

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Sec. 255. Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withheld and Remit Tax and Refund Excess Taxes Withheld on Compensation.
- Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos



(P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

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 therefore, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years.

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

In connection with the foregoing provisions, the Supreme Court in the recent case of *Genoveva S. Suarez v. People of the Philippines and the Bureau of Internal Revenue*⁷⁵ enumerated the following *elements* that must be established by the prosecution to secure the conviction of accused corporation and the responsible officers for violation of Section 255 in relation to Sections 253(d) and 256 of the NIRC:

“As discussed by the CTA *En Banc* in the assailed decision, the following elements must be established by the prosecution to secure the conviction of petitioner in this case, to wit:

(1) That a corporate taxpayer is required under the NIRC to pay any tax, make a return, keep any record, or supply correct and accurate information;

(2) That the corporate taxpayer failed to pay the required tax, make a return or keep the required record, or supply the correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations; and,

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

The prosecution failed to prove the first element, which requires that the corporate taxpayer was liable to pay tax under the NIRC because of the:
(1) Question on the identity of the

⁷⁵ G.R. No. 253429, October 06, 2021.

accused corporation; and (2) Void assessment due to the absence of an LOA authorizing the new ROs.

(1) Question on the identity of the accused corporation

Proof beyond reasonable doubt, or that quantum of proof sufficient to produce a *moral certainty* that would convince and satisfy the conscience of those who act in judgment, is indispensable to overcome the constitutional presumption of innocence.⁷⁶

It is worthy to mention that in every criminal conviction, the prosecution is required to prove *two things* beyond reasonable doubt:

- *First*, the fact of the commission of the crime charged, or the presence of all the elements of the offense; and
- *Second*, the fact that the accused was the perpetrator of the crime.⁷⁷

The burden rests with the prosecution to prove *beyond reasonable doubt* that *all the elements of the crime are present* and *that the accused were the ones who committed the crime penalized under Section 255 of the NIRC*. The absence of any of these two requisites warrants the *acquittal* of the accused.

The Court notes that, prior to the institution of the criminal cases, the BIR issued the following documents in connection with the investigation, audit and assessment of *Great Domestic Insurance Company of the Philippines, Inc.* (GDICPI) for all internal revenue taxes for CY 2009:

- *Letter of Authority* (LOA) LOA-2009-00021809 dated May 5, 2010⁷⁸
- *First Request for Presentation of Records* dated May 6, 2010⁷⁹
- *Second Request for Presentation of Records* dated May 14, 2010⁸⁰
- *3rd and Final Request for Presentation of Records* dated May 24, 2010⁸¹
- *Letter of Authority* (LOA) LOA-034-2101-00000285 / eLA201000012788 dated September 9, 2010⁸²
- *Subpoena Duces Tecum* (SDT No. RR6-2011-0404)⁸³
- *Notice of Informal Conference* dated April 30, 2012⁸⁴
- PAN dated March 25, 2013⁸⁵

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⁷⁶ *Guilbemer Franco v. People of the Philippines*, G.R. No. 191185, February 1, 2016.

⁷⁷ *Mayor Amado Corpuz, Jr. v. People of the Philippines and Sandiganbayan*, G.R. Nos. 212656-57, November 23, 2016.

⁷⁸ Exhibit P-10, Division Docket (O-741), Volume I, p. 318.

⁷⁹ Exhibit P-13, *Id.*, p. 91.

⁸⁰ Exhibit P-14, *Id.*, p. 319.

⁸¹ Exhibit P-15, *Id.*, p. 93.

⁸² Exhibit P-11, *Id.*, p. 89.

⁸³ Exhibit P-58, *Id.*, p. 326.

⁸⁴ Exhibit P-16, *Id.*, p. 94.

⁸⁵ Exhibit P-25, *Id.*, pp. 322-323.

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- (4) *Assessment Notices* dated May 29, 2013,⁸⁶ and,
- *FLD* signed by Simplicio A. Madulara, OIC-Regional Director with attached *Details of Discrepancies*⁸⁷

Yet, in all the four (4) *Informations* filed by the prosecution, the corporation that was ultimately named and charged was *Great Domestic Insurance Company of the Philippines* (GDICP), without the “Inc.”.⁸⁸

This discrepancy between the name of the corporation that was audited and assessed by the BIR and the name of the corporation that was indicted in court brings into question the *identity* of the accused corporation.

As discussed, the prosecution is burdened to prove *corpus delicti* beyond reasonable doubt either by direct evidence or by circumstantial or presumptive evidence. *Corpus delicti* consists of *two things*: first, the criminal act and second, accused’s agency in the commission of the act.⁸⁹ Establishing the identity of the accused is, therefore, of paramount importance because the prosecution has to prove *beyond reasonable doubt* the fact that the accused corporation was culpable as the perpetrator of the crime penalized in Section 255.

The discrepancy casts doubt into *which* corporate taxpayer properly underwent investigation, audit and assessment and was found to be liable for deficiency taxes by the BIR and which one was eventually indicted for failure to pay its tax liabilities. On the whole, the pieces of evidence offered during trial, *precisely because of this discrepancy*, do not fulfill the test of *moral certainty* and, therefore, are insufficient to support a judgment of conviction.

It will be recalled that the court *a quo*, on account of the noted discrepancies in the name of the accused Marcelesa F. Sarto / Marcelisa F. Sarto / Mercelisa F. Sarto, *dismissed* the cases against her.⁹⁰ Clearly, this discrepancy in the name of the accused corporation would warrant the same in the interest of justice.

In criminal cases, the overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt. If there exists *even one iota of doubt*, this Court is under a longstanding legal injunction to resolve the doubt in favor of the accused.⁹¹

⁸⁶ Exhibits P-4 to *Id.*, pp. 193-196.

⁸⁷ Exhibit P-8, *Id.*, pp. 197-200.

⁸⁸ Division Docket (O-741), Volume I, pp. 8-10; Division Docket (O-742), pp. 8-10; Division Docket (O-743), pp. 8-10; and, Division Docket (O-744), pp. 8-10.

⁸⁹ *Salvador Yapyuco y Enriquez v. Honorable Sandiganbayan and People of the Philippines*, G.R. Nos. 120744-46, 122677 and 122776, June 25, 2012.

⁹⁰ *Please see* Resolution dated December 20, 2019, Division Docket (O-741), Volume I, pp. 214-216; Resolution dated February 20, 2020, *Id.*, pp. 355-362; and, Resolution dated August 3, 2020, *Id.*, pp. 426-434.

⁹¹ *Genoveva S. Suarez v. People of the Philippines and Bureau of Internal Revenue*, G.R. No. 253429, October 6, 2021.

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(2) *Void assessment due to the absence of an LOA authorizing the new ROs*

Even granting that there exists no issue on the identity of the accused corporation, it bears stressing that the audit and assessment conducted by the BIR suffers from an infirmity, which renders it *void*.

A review of the records of the case discloses that LOA-2009-00021809 dated May 5, 2010⁹² and LOA-034-2010-00000285 / eLA201000012788 dated September 9, 2010⁹³ specifically authorized RO Divina S. Santos to examine GDICPI's books of accounts for taxable year 2009.

However, in a *Memorandum of Assignment* dated January 24, 2011 the continuation of the investigation/audit of GDICPI was transferred to ROs Fremarie L. Aquino and Abelardo B. Camba to replace RO Santos.⁹⁴ Thus, it appears that RO Santos was not the revenue examiner who actually conducted the audit but ROs Aquino and Camba, by virtue of this *Memorandum of Assignment*.

The reassignment of GDICPI's examination to new ROs necessitates the issuance of a new LOA. This is clear under Revenue Memorandum Order (RMO) No. 43-90 or "An Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit," which provides that:

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

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5. Any re-assignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As. (*Underscoring supplied*)

In this case, no new LOA was issued by the BIR naming ROs Aquino and Camba as the new examiners. Their authority was anchored only on the *Memorandum of Assignment* signed by Revenue District Officer Petronilo C. Fernando which, in effect, amended the LOAs signed by the Regional Director.⁹⁵

Section 13 of the NIRC requires that a revenue officer must be validly authorized before conducting an audit of a taxpayer:

"Sec. 13. *Authority of a Revenue Officer.* — Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within

⁹² Exhibit P-10, Division Docket (O-741), Volume I, p. 318.

⁹³ Exhibit P-11, Division Docket (O-741), Volume I, p. 89.

⁹⁴ Exhibit P-12, Division Docket (O-741), Volume I, p. 90.

⁹⁵ Exhibit P-12, Division Docket (O-741), Volume I, p. 90.

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.” (Underscoring supplied)

In addition, under RMO No. 43-90, only the following officers may validly issue a LOA:

“D. Preparation and issuance of L/As.

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

Clearly, the new ROs were not authorized by a new LOA to conduct an audit of GDICPI’s books of accounts for taxable year 2009.

Recently, in *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*,⁹⁶ the Supreme Court invalidated a CY 2009 BIR assessment for lack of an LOA authorizing the RO, thus:

“The lack of a valid LOA authorizing Revenue Officer Bagausan to conduct an audit on petitioner makes the assessment void.

An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.

In *Commissioner of Internal Revenue v. Sony Philippines, Inc.* the Court nullified the deficiency VAT assessment made against Sony Philippines because the revenue officers went beyond their authority when they based the assessment on records from January to March 1998 or using the fiscal year which ended in March 31, 1998 when the LOA covered only ‘the period 1997 and unverified prior years.’ According to the Court:

Clearly, there must be a **grant of authority before any revenue officer can conduct an examination or assessment.** Equally important is that the revenue officer so authorized must not go beyond the authority given. In the **absence of such an authority, the assessment or examination is a nullity.** (Emphasis supplied)

In *Medicard Philippines, Inc. v. CIR*, the Court nullified the deficiency VAT assessment against Medicard Philippines because there was no LOA

⁹⁶ G.R. No. 241848, May 14, 2021.

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issued by the CIR prior to the issuance of PAN and FAN. The Letter of Notice earlier sent to Medicard Philippines was not validly converted into a LOA. According to the Court in *Medicard Philippines*:

What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. **Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.** (*Emphasis supplied*)

Here, as comprehensively discussed, there was no new LOA issued by the CIR or his duly authorized representative giving revenue officer Bagausan the power to conduct an audit on petitioner's books of accounts for taxable year 2009. The importance of the lack of the revenue officer's authority to conduct an audit cannot be overemphasized because it goes into the validity of the assessment. The lack of authority of the revenue officers is tantamount to the absence of a LOA itself which results to a void assessment. Being a void assessment, the same bears no fruit.

Lastly, as stated in Presiding Justice Del Rosario's dissenting opinion on the CTA *En Banc*'s decision, the failure of petitioner to raise at the earliest opportunity, the lack of the revenue officer's authority, does not precluded the Court from considering the same because the said issue goes into the intrinsic validity of the assessment itself.

WHEREFORE, the Petition for Review on Certiorari is hereby **GRANTED**. The Decision dated February 12, 2018 and the Resolution dated July 24, 2018 rendered by the Court of Tax Appeals En Banc in EB Case No. 1513 are **SET ASIDE**. The Formal Letter of Demand with Details of Discrepancies and Assessment Notices issued against petitioner Himlayang Pilipino Plans, Inc. are hereby **DECLARED UNAUTHORIZED** for having been issued without a Letter of Authority by the Commissioner of Internal Revenue or his duly authorized representative." (*Underscoring supplied and citations omitted*)

In *Commissioner of Internal Revenue v. McDonald's Realty Philippines Corp.* (McDonald's),⁹⁷ the Supreme Court held that the "practice of reassigning or transferring revenue officers originally named in the Letter of Authority (LOA) and substituting or replacing them with new revenue officers to continue the audit or investigation without a separate or amended LOA (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the Commissioner of Internal Revenue (CIR) or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing Bureau of Internal Revenue (BIR) rules and regulations on the requirement of an LOA in the grant of authority by the CIR or his duly authorized representative to examine the taxpayer's books of accounts." Thus, the Supreme Court in *McDonald's* affirmed the CTA in *invalidating* the CY 2006 assessment.

⁹⁷ G.R. No. 242670, May 10, 2021.

All told, the reassignment of the audit of GDICPI to the new ROs, without the issuance of a new LOA for the new ROs, renders the assessment void. A void assessment bears no fruit.⁹⁸ It does not give rise to a *legal obligation* on the part of GDICPI to pay any deficiency tax due. Neither does it give rise to any *legal right* on the part of the BIR to *collect* from the taxpayer.

More specifically, without a *valid* assessment for the deficiency income tax, value-added tax, expanded withholding tax and documentary stamp tax against the accused corporation, there is no evidence to support a finding that said corporation was liable to pay tax, as required in the first element of Section 255 of the NIRC.

Accordingly, the alleged failure of the accused corporation to pay deficiency taxes based on a void assessment does *not* give rise to a criminal liability.

The failure of the prosecution to establish the first element of the violation of Section 255 in relation to Sections 253(d) and 256 of the NIRC also extinguished the civil liability arising from the crime.

Section 7(b)(1) of Republic Act No. 9282⁹⁹ states that the *civil action* for the recovery of civil liability of the accused/respondent corporation and Lamces is deemed instituted with the filing of the criminal cases against them before the court *a quo*, thus:

“SEC. 7. *Jurisdiction.* - The CTA shall exercise:

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

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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*

⁹⁸ *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

⁹⁹ AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

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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 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.

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Based on the foregoing, what was instituted with the criminal cases filed in the court *a quo* was the civil action to recover the civil liability arising from the crime,¹⁰⁰ *i.e.* violation of Section 255 in relation to Sections 253(d) and 256 of the NIRC.

In this case, considering the Court’s finding that the prosecution *failed* to prove the first element of the crime, which requires that the corporate taxpayer was liable to pay tax under the NIRC, there can be no conviction of the crime charged. The *omission* punished under Section 255 in relation to Sections 253(d) and 256 of the NIRC from which the civil liability may arise did *not* exist. This is explicit in Section 253(a) of the NIRC:

“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.”

Accordingly, the absence of the crime also extinguished the civil liability arising from it.¹⁰¹

¹⁰⁰ See *Macario Lim Gaw, Jr. v. Commissioner of Internal Revenue*, G.R. No. 222837, July 23, 2018.

¹⁰¹ *Lucio Francisco v. Crispulo Onrubia*, G.R. No. 22063, September 30, 1924.

WHEREFORE, with the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Resolutions dated November 5, 2021 and March 24, 2022 are **AFFIRMED**. Respondent Jemma L. Lamces is also **ABSOLVED** of any civil liability *ex delicto*.

SO ORDERED.



MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:



ROMAN G. DEL ROSARIO
Presiding Justice

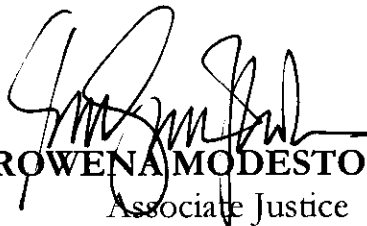


CATHERINE T. MANAHAN
Associate Justice

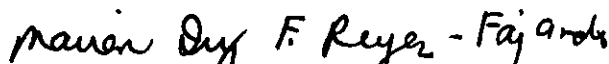
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JEAN MARIE A. BACORRO-VILLENA
Associate Justice



MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice



MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
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