



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE
PHILIPPINES,

Petitioner,

-versus-

E & D PARTS SUPPLY, INC. and
MARGARET L. UY,

Respondents.

G.R. No. 259284

Present:

LEONEN, S.A.J., *Chairperson*,
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO, JR., *JJ.*

Promulgated:

JAN 24 2024

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DECISION

M. LOPEZ, J.:

The acquittal of the taxpayer-accused in the criminal case for tax laws violation will not necessarily result in the obliteration of the civil liability for deficiency taxes relative to the criminal case since the duty to pay the tax is imposed by law prior to and independently of any attempts of the taxpayer to evade payments.¹

¹ See *People v. Mendez*, G.R. Nos. 208310-11 and 208662, March 28, 2023 [Per J. M. Lopez, *En Banc*]. See also *People v. Arnault*, 92 Phil. 252, 257-258 (1952) [Per J. Montemayor, First Division]; *People v. Tierra*, 120 Phil. 1461, 1467-1468 (1964) [Per C.J. Bengzon, Second Division]; *Republic v. Patanao*, 127 Phil. 105, 108-109 (1967) [Per J. Angeles, *En Banc*]; and *Lim, Sr. v. Court of Appeals*, 268 Phil. 680, 691 (1990) [Per C.J. Fernan, Third Division].

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Before the Court is a Petition for Review on *Certiorari*² assailing the Decision³ dated July 5, 2021 and the Resolution⁴ dated February 22, 2022 of the Court of Tax Appeals (CTA) in CTA EB Crim. Case No. 075. The CTA *En Banc* affirmed the CTA Division⁵ in ruling that E & D Parts Supply, Inc. (E & D) could not be civilly liable for deficiency taxes under Section 255⁶ of the Tax Code because of its acquittal in the criminal action.

ANTECEDENTS

E & D, Cipriano C. Uy (Cipriano), and Margaret L. Uy (Margaret) were charged with violation of Section 255 in relation to Sections 253(d)⁷ and 256⁸ of the Tax Code in two separate Informations filed before the CTA:⁹

Criminal Case No. O-670

The undersigned Senior Assistant State Prosecutor of the Department of Justice hereby accuses E & D Parts Supply, Inc., Cipriano C. Uy[,] and Margaret L. Uy . . . of Willful Failure to Pay Income Tax deficiency for taxable year 2006, in violation of Section 255, in relation to Sections 253 (d) and 256, all of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

² *Rollo*, pp. 13–38.

³ *Id.* at 52–65. Penned by Associate Justice Ma. Belen M. Ringpis-Liban, with the concurrence of Presiding Justice Roman G. Del Rosario, and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Catherine T. Manahan, Jean Marie A. Bacorro-Villena, and Maria Rowena Modesto-San Pedro, *En Banc*, Court of Tax Appeals, Quezon City.

⁴ *Id.* at 67–69. With the additional concurrence of Associate Justices Marian Ivy F. Reyes-Fajardo and Lanee S. Cui-David.

⁵ *Id.* at 98–110. The Resolution dated September 5, 2019 in CTA Crim. Case Nos. O-670 & O-671 was penned by Associate Justice Catherine T. Manahan, with the concurrence of Presiding Justice Roman G. Del Rosario and Associate Justice Esperanza R. Fañon-Victorino.

⁶ Section 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* — Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

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 an 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.

⁷ Section 253. *General Provisions.* —

. . . .

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

⁸ Section 256. *Penal Liability of Corporations.* — Any corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees, shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000).

⁹ *Rollo*, pp. 53–55.

“That on or about June 22, 2010, and thereafter, in Manila, and within the jurisdiction of this Honorable Court, accused E & D Parts Supply, Inc., a domestic corporation duly registered with the Securities and Exchange Commission, and with business address at Perez St., Paco, Manila, through its chairman and treasurer, accused Cipriano C. Uy and Margaret L. Uy, respectively, required by law to file Income Tax Return (ITR), and to pay corresponding income tax, did then and there, willfully, unlawfully[,] and knowingly, fail to pay deficiency income tax in the amount of Fourteen Million Two Hundred Fifty One Thousand Eight Hundred Eighteen Pesos and Fifty Centavos (P14,251,818.50), exclusive of interests, for taxable year 2006, despite receipt of the Preliminary Assessment Notice (PAN) and Final Assessment Notice (FAN), issued after tax investigation, including prior and post notices, the latest being in the nature of final notice before suit issued by the Bureau of Internal Revenue on June 22, 2010, and their failure to file and [sic] protest on said deficiency tax assessment within the prescribed period, to the damage and prejudice of the Government of the Republic of the Philippines.

CONTRARY TO LAW.”¹⁰

Criminal Case No. O-671

The undersigned Senior Assistant State Prosecutor of the Department of Justice hereby accuses E & D Parts Supply, Inc., Cipriano C. Uy, and Margaret L. Uy, of Willful Failure to Pay Value-Added Tax (VAT) deficiency for taxable year 2006, in violation of Section 255, in relation to Sections 253(d) and [sic] 256, of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

“That on or about June 22, 2010, and thereafter, in Manila, and within the jurisdiction of this Honorable Court, accused E & D Parts Supply, Inc., a domestic corporation duly registered with the Securities and Exchange Commission, and with business address at 1143-B Perez St., Paco, Manila, through its chairman and treasurer, accused Cipriano C. Uy and Margaret L. Uy, respectively, required by law to file Value-Added Tax (VAT) Return, and to pay the corresponding income tax [sic], did then and there, willfully, unlawfully, and knowingly, fail to pay aggregate deficiency VAT in the amount of Four Million Nine Hundred Thirty Thousand Seven Hundred Thirty Four Pesos and Eighty Five Centavos (P4,930,734.85), exclusive of interests, corresponding to the four (4) quarters of taxable year 2006, despite receipt of the Preliminary Assessment Notice (PAN) and Final Assessment Notice (FAN) issued after tax investigation, including prior and post notices, the latest being in the nature of final notice before suit issued by the Bureau of Internal Revenue on June 22, 2010, and their failure to file any protest on said deficiency tax assessment within the prescribed period, to the damage and prejudice of the Government of the Republic of the Philippines.

CONTRARY TO LAW.”¹¹

Margaret pleaded not guilty in Criminal Case No. O-670. During her arraignment, Margaret’s counsel *de parte* manifested that Cipriano already died and presented the certified true copy of his death certificate. The People,

¹⁰ *Id.* at 53–54.

¹¹ *Id.* at 54–55.

through the Office of the Solicitor General (OSG), confirmed Cipriano's name on the death certificate and interposed no objection to dismissing the case against him. As such, the case against Cipriano was ordered dismissed. Thereafter, Criminal Case No. O-671 was consolidated with Criminal Case No. O-670.¹²

Upon her arraignment in Criminal Case No. O-671, Margaret likewise pleaded not guilty. Meanwhile, the second case against Cipriano was also dismissed due to his death.¹³ Trial then ensued.

After the presentation of all the prosecution's evidence, the accused filed a Demurrer to Evidence.¹⁴ They claimed that *first*, the prosecution failed to prove that Margaret is a responsible officer of E & D; *second*, the tax assessments were void for being issued without a valid Letter of Authority (LOA); *third*, the prosecution failed to prove that E & D duly authorized the person who received the assessment notices; and *lastly*, the prosecution did not prove willful failure to pay the assessed deficiency taxes.¹⁵

The prosecution failed to file its comment on the Motion.¹⁶

On September 5, 2019, the CTA Division issued a Resolution¹⁷ granting the accused's Demurrer to Evidence. The CTA ruled that the penal liability for violating Section 255 of the Tax Code devolved on the responsible officers of the corporation. In this case, the documentary evidence presented by the prosecution did not show that Margaret was one of E & D's responsible officers. Without any proof of Margaret's role or position in E & D, she cannot be held criminally liable for the alleged acts of the corporation.¹⁸ Accordingly, Criminal Case Nos. O-670 and O-671 were dismissed on the ground of insufficiency of evidence, thus:

In view of the foregoing, the *Motion for Leave of Court to file Demurrer to Evidence and to Admit Attached Demurrer to Evidence* filed on July 1, 2019 is hereby **GRANTED**.

Accused's *Demurrer to Evidence* is also **GRANTED**. Accordingly, CTA Criminal Case Nos. O-670 and O-671 are **DISMISSED** on the ground of insufficiency of evidence.

SO ORDERED.¹⁹ (Emphasis in the original)

¹² *Id.* at 55.

¹³ *Id.*

¹⁴ *Id.* at 172–187, Motion for Leave of Court to File Demurrer to Evidence and to Admit Attached Demurrer to Evidence dated July 1, 2019.

¹⁵ *Id.* at 172–173.

¹⁶ *Id.* at 56.

¹⁷ *Id.* at 98–110.

¹⁸ *Id.* at 107.

¹⁹ *Id.* at 110.

The People sought partial reconsideration,²⁰ but the CTA Division denied it in its Resolution²¹ dated February 5, 2020. The CTA stressed that the granting of the Demurrer and the consequent acquittal of Margaret were primarily based on its finding that the prosecution failed to present sufficient evidence to support a verdict of guilt against the accused. With the dismissal of the criminal action, the corresponding civil action was likewise dismissed because the act or omission from which the civil liability might arise did not exist.²² Thus, the CTA ruled:

WHEREFORE, in light of the foregoing considerations, the *Motion for Partial Reconsideration (Re: Resolution dated September 5, 2019)* posted by plaintiff on October 1, 2019 is **DENIED** for lack of merit. The accused are likewise declared not civilly liable to pay the following amounts:

1. Deficiency income tax for taxable year 2006 in the amount of P22,137,734.48, inclusive of surcharge and interest;
2. Deficiency value-added tax for taxable year 2006 in the amount of P7,889,175.76, inclusive of surcharge and interest; and
3. Penalties, surcharges, deficiency interest and delinquency interest, until fully paid pursuant to Sections 248 and 249 of the 1997 NIRC, as amended.

SO ORDERED.²³ (Emphasis in the original)

Aggrieved, the People filed a Petition for Review²⁴ before the CTA *En Banc* docketed as CTA EB Crim. No. 075.

On July 5, 2021, the CTA *En Banc* rendered its Decision²⁵ denying the People's Petition. It held that before a person can be charged as a responsible officer of a corporation, it must be shown that they are an officer of the accused corporation during the period subject of the case. The evidence of the prosecution did not show Margaret's position or designation in E & D. Hence, she is entitled to acquittal. Margaret's acquittal removed the essential element of "willfulness" in the non-payment of deficiency tax of the accused corporation. Therefore, E & D could not be held civilly liable under Section 255 of the Tax Code. The CTA disposed:

WHEREFORE, premises considered, the Petition for Review is **DENIED for lack of merit**. Accordingly, the Resolutions dated September 5, 2019, and February 5, 2020 are **AFFIRMED**.

²⁰ *Id.* at 188-192.

²¹ *Id.* at 122-129.

²² *Id.* at 124-128.

²³ *Id.* at 129.

²⁴ *Id.* at 78-90.

²⁵ *Id.* at 52-65.

SO ORDERED.²⁶ (Emphasis in the original)

The CTA *En Banc* denied the People's Motion for Reconsideration²⁷ in a Resolution²⁸ dated February 22, 2022.

Hence, this recourse.

The People, through the OSG, posits that E & D's liability to pay the assessed deficiency taxes is separate from its civil liability arising from the crime. Thus, notwithstanding the dismissal of the criminal cases against E & D, it is still liable to pay the assessed deficiency income and value-added taxes (VAT) for 2006 since these had become final and executory when E & D did not file its administrative protest.²⁹

In its Comment,³⁰ E & D echoed the CTA *En Banc* that its liability to pay the assessed deficiency taxes was extinguished by its acquittal in the criminal cases. Additionally, E & D asserts that it cannot be held liable for paying the deficiency taxes because the assessment covering the same is void after being issued without a LOA. E & D maintains that the revenue officer who continued the examination of its books of accounts and other accounting records was only clothed with a Memorandum of Assignment and not a LOA.³¹

ISSUE

Whether the acquittal of the taxpayer-accused in the criminal case for violating tax laws extinguishes their civil liability for deficiency taxes.

RULING

The petition lacks merit. The CTA properly dismissed the criminal cases against Margaret and E & D and aptly found that E & D is not liable to pay the assessed deficiency taxes. However, the Court clarifies that the exoneration of E & D from the liability to pay taxes is not due to its acquittal in the criminal cases.

²⁶ *Id.* at 64.

²⁷ *Id.* at 70-77.

²⁸ *Id.* at 67-69. The dispositive portion of the Resolution reads:

WHEREFORE, premises considered, the "Motion for Reconsideration (Re: Decision dated July 05, 2021)" is **DENIED** for lack of merit. The **assailed Decision** dated July 5, 2021 is **AFFIRMED**.

SO ORDERED. (Emphasis in the original)

²⁹ *Id.* at 31-35.

³⁰ *Id.* at 213-228.

³¹ *Id.* at 218-219, 224-227.

Margaret's acquittal in the criminal case was proper.

To secure a conviction under Section 255 in relation to Sections 253(d) and 256 of the Tax Code, the following elements must be established: (1) the corporate taxpayer is required by law to pay the tax; (2) the corporate taxpayer failed to pay the tax at the time or times required by law or rules and regulations; and (3) the accused, as the employee responsible for the violation, willfully failed to pay such tax at the time or times required by law or rules and regulations.³²

In *Suarez v. People*,³³ the Court explained the criminal liability of corporate officers for acts committed by the corporation:

A corporation is an artificial being created by fiction of law. By the corporation's nature as an abstract being, it cannot be arrested and imprisoned; hence, it cannot be penalized for a crime punishable by imprisonment. As early as 1930 in the case of *People v. Tan Boon Kong*, the Court already held that for crimes committed by a corporation, the responsible officers thereof would personally bear the criminal liability. This is because a corporation can act only through its officers and agents.

In *Ching v. Secretary of Justice* (Ching), the Court upheld the finding of probable cause and the filing of Informations for violation of Presidential Decree No. 115 or the Trust Receipts Law against petitioner Ching as the one who signed the trust receipts, on behalf of the corporation.

In *Ching*, the Court had the occasion to discuss the liability of corporate officers for acts committed by the corporation as follows:

A crime is the doing of that which the penal code forbids to be done, or omitting to do what it commands. A necessary part of the definition of every crime is the designation of the author of the crime upon whom the penalty is to be inflicted. When a criminal statute designates an act of a corporation or a crime and prescribes punishment therefor, it creates a criminal offense which, otherwise, would not exist and such can be committed only by the corporation. But when a penal statute does not expressly apply to corporations, it does not create an offense for which a corporation may be punished. On the other hand, if the State, by statute, defines a crime that may be committed by a corporation but prescribes the penalty therefor to be suffered by the officers, directors, or employees of such corporation or other persons responsible for the offense, only such individuals will suffer such penalty. Corporate officers or employees, through whose act, default or omission the corporation commits a crime, are themselves individually guilty of the crime.

³² *Suarez v. People*, G.R. No. 253429, October 6, 2021 [Per J. Carandang, Third Division].

³³ *Id.*

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The principle applies whether or not the crime requires the consciousness of wrongdoing. It applies to those corporate agents who themselves commit the crime and to those, who, by virtue of their managerial positions or other similar relation to the corporation, could be deemed responsible for its commission, if by virtue of their relationship to the corporation, they had the power to prevent the act. Moreover, all parties active in promoting a crime, whether agents or not, are principals. Whether such officers or employees are benefited by their delictual acts is not a touchstone of their criminal liability. Benefit is not an operative fact.

In *ABS-CBN v. Gozon*. . . the Court discussed that although corporate officers may be held liable for a crime committed under the Intellectual Property Code, their criminal liability stems from their active participation in the commission of the wrongful act. Hence, in *ABS-CBN*, the Court affirmed the finding of probable cause against two of GMA's executives for copyright infringement of *ABS-CBN's* news footage because of their positions as Head of News Operations and Program Manager. However, the Court excluded from the filing of Information other GMA corporate officers because:

Mere membership of the Board or being President per se does not mean knowledge, approval, and participation in the act alleged as criminal. There must be a showing of active participation, not simply a constructive one.

This same doctrine was reiterated in *SEC v. Price Richardson Corporation* where the Court stated that to be criminally liable for the acts of a corporation, there must be a showing that its officers, directors, and shareholders actively participated in or had the power to prevent the wrongful act.³⁴ (Citations omitted)

Here, the prosecution did not only fail to prove Margaret's active participation in the non-payment of E & D's alleged deficiency income tax and VAT for taxable year 2006. It also failed to prove Margaret's role in the corporation when the crime was supposedly committed. The CTA found that the prosecution did not present proof to identify any of the officers of E & D.³⁵ Absent any evidence that Margaret had any direct and active participation in the alleged criminal violation, the CTA correctly acquitted her of the crimes charged.

Likewise, the CTA aptly held that Margaret was not civilly liable for the deficiency taxes assessed by the BIR. It must be remembered that while it was Margaret who was indicted for criminal violation of the Tax Code as the alleged responsible officer of the corporation, the deficiency taxes pertained to the corporation E & D. Taxes are personal to the taxpayer. In the case of corporations, liability for deficiency taxes cannot generally be imposed on the corporate officers or its stockholders for this will violate the principle that a

³⁴ *Id.*

³⁵ *Rollo*, pp. 60-61, 107.

corporation has a personality separate and distinct from the persons constituting it.³⁶ Here, the prosecution failed to prove the existence of an exception to the general rule.

Margaret's acquittal in the criminal case does not excuse E & D from its civil liability for unpaid taxes.

However, Margaret's acquittal does not necessarily result in the obliteration of the civil liability of E & D for unpaid income tax and VAT for taxable year 2006.

It is well-settled that the acquittal of the accused does not automatically preclude a judgment against him on the civil aspect of the case. The extinction of the penal action does not carry with it the extinction of the civil liability where: (a) the acquittal is based on reasonable doubt as only preponderance of evidence is required; (b) the court declares that the liability of the accused is only civil; and (c) the civil liability of the accused does not arise from or is not based upon the crime of which the accused is acquitted.³⁷

The taxpayer's obligation to pay the tax is created by law; it does not arise from the offense of tax evasion.³⁸ Accordingly, acquittal of the accused or the dismissal of the criminal case for tax laws violation will not result in the extinction of their civil liability for deficiency taxes.³⁹

In *Republic v. Patanao*,⁴⁰ Patanao sought the dismissal of the complaint for collection of deficiency taxes because he had been acquitted in the criminal cases for failure to file income tax returns and non-payment of income tax. The Court reversed the lower court which ruled in Patanao's favor. We held that the acquittal of the taxpayer in the criminal proceeding does not necessarily entail exoneration from the liability to pay taxes, thus:

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 satisfy his [or her] 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. . . . Considering that the Government cannot seek satisfaction of the

³⁶ See *Proton Pilipinas Corp. v. Republic*, 535 Phil. 521, 537 [Per J. Chico-Nazario, First Division].

³⁷ *Dy v. People*, 792 Phil. 672, 684-685 (2016) [Per J. Jardeleza, Third Division]; *Rimando v. Spouses Aldaba*, 745 Phil. 358, 362-363 (2014) [Per J. Perlas-Bernabe, First Division]; and *Dayap v. Sendiong*, 597 Phil. 127, 141 (2009) [Per J. Tinga, Second Division].

³⁸ See *Gaw, Jr. v. Commissioner of Internal Revenue*, 836 Phil. 773, 789 (2018) [Per J. Tijam, First Division].

³⁹ *Id.*, citing *Republic v. Patanao*, 127 Phil. 105, 108-109 (1967) [Per J. Angeles, *En Banc*].

⁴⁰ 127 Phil. 105, 105-110 (1967) [Per J. Angeles, *En Banc*].

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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 [or her] liability to pay the taxes. It is error to hold, as the lower court has held that 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.**⁴¹ (Emphasis supplied, citations omitted)

Similarly, in *Proton Pilipinas Corporation v. Republic*,⁴² we explained that the civil liability arising from crime is distinct from the civil liability to pay taxes:

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 business, and not because of any criminal act committed by him.**⁴³ (Emphasis supplied)

The same principle was applied in *Gaw, Jr. v. Commission on Internal Revenue*⁴⁴ and *People v. Italcara Pilipinas, Inc.*,⁴⁵ where we reiterated that the obligation to pay taxes arises from law not delict. The obligation to pay taxes is independent of any criminal charge filed against the taxpayer for failing to comply with their duty to the State.

In this case, E & D's acquittal in the criminal cases for violation of the Tax Code did not release it from its obligation to pay the deficiency taxes as this obligation did not arise from delict but is based on law. The dismissal of

⁴¹ *Id.* at 108-109.

⁴² 535 Phil. 521, 532-533 (2006) [Per J. Chico-Nazario, First Division].

⁴³ *Id.*

⁴⁴ 836 Phil. 773, 789 (2018) [Per J. Tijam, First Division].

⁴⁵ G.R. No. 222280, January 18, 2023 [Notice, Third Division].

the criminal cases extinguished only its civil liability *ex delicto*. Therefore, the government is not precluded from collecting deficiency taxes from E & D.

The assessment is void

Nevertheless, E & D is not liable for deficiency income tax and VAT because the assessment is void for being issued without a valid LOA.

A LOA is the authority given to the appropriate revenue officer to perform assessment functions. It empowers or enables a revenue officer to examine a taxpayer's books of account and other accounting records to collect the correct amount of tax.⁴⁶ Under Sections 6, 10, and 13 of the Tax Code, the examination of a taxpayer may only be undertaken by the Commissioner of Internal Revenue (CIR) or by his or her duly authorized representative through a LOA:

Section 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —

(A) Examination of Return and Determination of Tax Due. --- After a return has been filed as required under the provisions of this Code, the **Commissioner or his [or her] duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax[.]**

....

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

....

(c) **Issue Letters of Authority** for the examination of taxpayers within the region[.]

....

Section 13. *Authority of a Revenue Officer.* — Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, **pursuant to a Letter of Authority issued by the Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the

⁴⁶ *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, 808 Phil. 528, 539 (2017) [Per J. Reyes, Third Division].

same manner that the said acts could have been performed by the Revenue Regional Director himself. (Emphasis supplied)

The duly authorized representatives of the Commissioner include the Deputy Commissioners, the Revenue Regional Directors, and such other officials as may be authorized by the CIR.⁴⁷

In *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*⁴⁸ the Court emphasized that a LOA is a special authority granted to a particular officer. Hence, it could not be supplanted by a mere memorandum of assignment or an equivalent document:

To comply with due process in the audit or investigation by the BIR, the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his [or her] books of accounts. The only way for the taxpayer to verify the existence of that authority is when, upon reading the LOA, there is a link between the said LOA and the revenue officer who will conduct the examination and assessment; and the only way to make that link is by looking at the names of the revenue officers who are authorized in the said LOA. If any revenue officer other than those named in the LOA conducted the examination and assessment, taxpayers would be in a situation where they cannot verify the existence of the authority of the revenue officer to conduct the examination and assessment. Due process requires that taxpayers must have the right to know that the revenue officers are duly authorized to conduct the examination and assessment, and this requires that the LOAs must contain the names of the authorized revenue officers. In other words, identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment.

The petitioner wants the Court to believe that once an [sic] LOA has been issued in the names of certain revenue officers, a subordinate official of the BIR can then, through a mere memorandum of assignment, referral memorandum, or such equivalent document, rotate the work assignments of revenue officers who may then act under the general authority of a validly issued LOA. But **an [sic] LOA is not a general authority to any revenue officer. It is a special authority granted to a particular revenue officer.**

The practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting them with new revenue officers who do not have a separate LOA issued in their name, is in effect a usurpation of the statutory power of the CIR or his [or her] duly authorized representative. The memorandum of assignment, referral memorandum, or such other equivalent internal document of the BIR directing the reassignment or transfer of revenue officers, is typically signed by the revenue district officer or other subordinate official, and not signed or issued by the CIR or his [or her] duly authorized representative under

⁴⁷ *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*, G.R. No. 242670, May 10, 2021 [Per J. J.Y. Lopez, Third Division].

⁴⁸ *Id.*

Sections 6, 10(c)[,] and 13 of the NIRC. Hence, **the issuance of such memorandum of assignment, and its subsequent use as a proof of authority to continue the audit or investigation, is in effect supplanting the functions of the LOA, since it seeks to exercise a power that belongs exclusively to the CIR himself or his duly authorized representatives.**

Section D(5) of RMO No. 43-90 dated September 20, 1990 provides:

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.⁴⁹ (Emphasis supplied, citations omitted)

The Court emphasized in *McDonald's* that:

[T]he practice of reassigning or transferring revenue officers originally named in the 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 CIR or his [or her] duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing BIR rules and regulations on the requirement of an [sic] LOA in the grant of authority by the CIR or his [or her] duly authorized representative to examine the taxpayer's books of accounts.⁵⁰

Records show that LOA No. 2007 00000616 was issued to E & D's authorized Revenue Officer (RO) Dominga G. Madula to audit E & D's books of accounts for taxable year 2006. E & D's case was subsequently reassigned to RO Reinhard Dale A. Anaban (RO Anaban). However, no new LOA was issued in RO Anaban's name to continue the audit of E & D's books of accounts. His authority was merely anchored upon a Memorandum of Agreement signed by Revenue District Officer Teodoro A. Huelva of Revenue District No. 34.⁵¹

Absent a LOA issued by the CIR or its duly authorized representatives, RO Anaban did not possess any authority to audit E & D's books of accounts. The importance 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 officer is equivalent to the absence of a LOA itself

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Rollo*, pp. 177-180.

which results in a void assessment. Being a void assessment, the same bears no fruit.⁵²

All told, the assessment for deficiency income tax and VAT for taxable year 2006 against E & D is void for having been issued without a valid LOA. Consequently, E & D cannot be held liable for the payment of deficiency taxes assessed therein. Hence, the dismissal of the case against E & D is in order.

ACCORDINGLY, the Petition is **DENIED**. The Decision dated July 5, 2021 and the Resolution dated February 22, 2022 of the Court of Tax Appeals *En Banc* in CTA EB Crim. Case No. 075 are **AFFIRMED**.

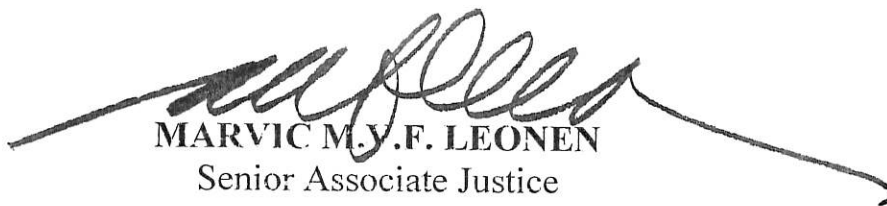
SO ORDERED.



MARION LOPEZ
Associate Justice

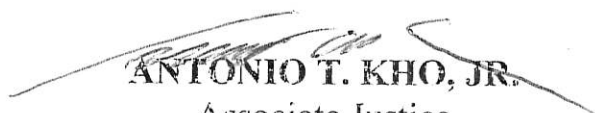
⁵² *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, G.R. No. 241848, May 14, 2021 [Per J. Carandang, First Division].

WE CONCUR:


MARVIC M.V.F. LEONEN
Senior Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice


JHOSEP Y. LOPEZ
Associate Justice


ANTONIO T. KHO, JR.
Associate Justice

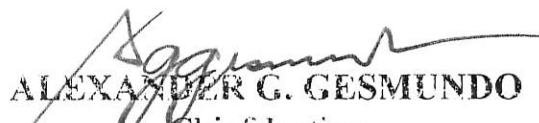
ATTESTATION

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


MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice