

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

JIMMY A. ANG and OLIVIA
N. ANG,

Petitioners,

CTA EB CRIM. NO. 096

Present:

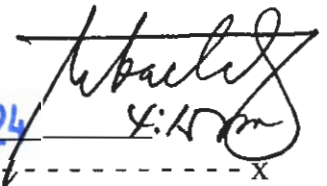
- versus -

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

PEOPLE OF THE
PHILIPPINES,
Respondent.

Promulgated:

FEB 22 2024




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DECISION

BACORRO-VILLENA, J.:

Before the Court is a Petition for Review¹ pursuant to Section 2(h), Rule 4² of the Revised Rules of the Court of Tax Appeals (RRCTA) filed by petitioners Jimmy A. Ang (**Jimmy**) and Olivia N. Ang (**Olivia**). Previously, petitioners were charged before the Metropolitan Trial Court (**MeTC**), Branch 19, Manila, with violation of Section 266³, in 

¹ Filed on 05 September 2022, *Rollo*, pp. 1-26

² **SEC. 2.** *Cases within the jurisdiction of the Court en banc.* - The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

...

(h) Decisions, resolutions or orders of the Regional Trial Courts in the exercise of their appellate jurisdiction over criminal offenses mentioned in subparagraph (f).

³ **Sec. 266.** *Failure to Obey Summons.* —

relation to Sections 5⁴, 14⁵, and 253(d)⁶ of the National Internal Revenue Code (NIRC) of 1997, as amended, or for the offense of Failure to Obey Summons. The case was docketed Criminal Case No. M-MNL-20-01885-CR-Roo-00, entitled *People of the Philippines v. Jimmy Ang y Achica and Olivia Neñeria y Ang*. After trial, the MeTC found petitioners (then accused) guilty of the crime charged. Upon appeal to the Regional Trial Court (RTC), Branch 21, Manila, the said court upheld their conviction. It affirmed *in toto* the MeTC's action.⁷

The antecedent facts follow.

Through Letter of Authority (LOA) SN: eLA201500092570⁸ (LOA-032-2018-00000076) dated 20 June 2018, Revenue Officer (RO) Ma. Andrea Cruz (Cruz) of the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 32, Revenue Region No. 6 – Manila was authorized to conduct an audit examination of The Value Systems Phils., Inc. (TVSPI). Petitioners Jimmy and Olivia are the latter's Chief Executive Officer (CEO) and Chief Financial Officer (CFO), respectively.

On 11 July 2019, a Subpoena *Duces Tecum*⁹ (SDT), signed by the BIR Regional Director, was issued to and served on petitioners, requiring them to appear before the Legal Division, 5th Floor BIR Building I, Solana St., Intramuros, Manila on 17 July 2019 at 10:00 o'clock in the morning. They were directed to submit the required books of accounts and other accounting records of TVSPI for taxable year (TY) 2017, to verify its possible tax liabilities for the said year. However, petitioners failed to comply. On 05 March 2020, an Information¹⁰ against them was filed before the MeTC. The Information reads:



⁴ Sec. 5. *Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons.* — ...

⁵ Sec. 14. *Authority of Officers to Administer Oaths and Take Testimony.* — ...

⁶ Sec. 253. *General Provisions.* — ...

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

...
⁷ Decision dated 10 February 2022. *rollo*, pp. 33-41.

⁸ Annex "C", *id.*, p. 44.

⁹ No. RR6-2019-0439, dated 03 July 2019. *id.*, p. 59.

¹⁰ Annex "T", *id.*, p. 91.


...

That on or about **July 17, 2019**, in the City of Manila, Philippines, the said [petitioners] being then the Chief Executive Officer and Chief Financial Officer, respectively, of **The Value System Phils., Inc., a business establishment with registered address at 3434 Ramon Magsaysay Blvd., Zone 063, Brgy. 627, Sta. Mesa, this City**, who were duly summoned and subpoenaed by the Bureau of Internal Revenue, represented by **Revenue Officer Ma. Andrea G. Cruz and Group Supervision Minda A. Cayago**, to testify, and produce their books of accounts and other accounting records for taxable period year 2017, or to furnish information as required by the Bureau of the Internal Revenue, did then and there willfully, unlawfully, and knowingly fail, refuse and neglect to appear, testify and produce the aforesaid documents and records for examination by the said Bureau of Internal Revenue despite notice and demand in violation of the said law.

Contrary to law.¹¹

...

At the trial before the MeTC (and after plaintiff presented its witness), petitioner Jimmy testified through his Judicial Affidavit. There, he admitted that, on 11 July 2019, RO Cruz went to their office to serve the subject SDT. RO Cruz was able to talk to Raquel Encinas (**Encinas**) who relayed the incident to him. In compliance with the SDT, he gave the instruction to Encinas to go to the BIR Legal Division, 5th Floor BIR Building I, Solana St., Intramuros, Manila on 17 July 2019 and present a Letter dated 15 July 2019 requesting for additional time (until 31 July 2019) to comply. He also asked Encinas to request RO Cruz to personally visit TVSPI to audit, assess, and inspect the records stated in the SDT. However, they did not receive any response from RO Cruz or from the BIR Legal Division.¹²

Petitioner Jimmy also admitted that they were not able to submit the books of accounts and accounting records on or before 31 July 2019, or within the extended period to do so. According to him, he only submitted all the documents to the BIR Legal Department (and forwarded copies thereof to RO Cruz) after the filing of the case with the MeTC.¹³ 


¹¹ Id.; Emphasis in the original text.

¹² Per RTC Decision, id., p. 34.

¹³ Id.

Further in his testimony, petitioner Jimmy explained that TVSPI had settled its tax liabilities for TY 2017 as evidenced by several Transmittal Letters from 2018 to 2019 sent to BIR as well as Tax Clearance Certificate dated 23 February 2018 and 09 March 2017.¹⁴

Encinas was also presented to the witness stand. She testified that, as TVSPI's Accounting/Administrative Assistant: (1) she is familiar with the instant case against petitioners; (2) her supervisor, Carmela Valena (**Valena**), received the LOA dated 20 June 2018; (3) Valena received the same, in her presence, from a messenger who did not introduce himself and she was requested to affix her signature therein; (4) Valena also received the Checklist of Requirements dated 26 June 2018 and signed in her presence; (5) she received from RO Cruz the First Notice dated 10 July 2018, and the Second and Final Notice dated 24 July 2018; (6) she admitted that, on 11 July 2019, RO Cruz served the SDT addressed to petitioners; (7) on her compliance with the said SDT, she declared that she was instructed to go to BIR Legal Office on 17 July 2019 and bring a letter¹⁵ dated 15 July 2019 requesting for additional time to comply; (8) she was also tasked to request RO Cruz to personally visit TVSPI to audit, assess, and inspect the records stated in the SDT, but they did not receive any response; (9) she confirmed that they failed to comply with the subject SDT, *i.e.*, to bring and submit TVSPI's 2017 books of accounts and other accounting records; (10) she also admitted that they were not able to submit the books of accounts and accounting records on 31 July 2019 pursuant to their letter of extension submitted to the BIR; and, (11) she claimed that they already complied with the submission of the required documents with the BIR as evidenced by a Transmittal Letter but she can no longer recall if she attached the said as exhibit letter to her Judicial Affidavit.¹⁶

Later, the MeTC found petitioners guilty beyond reasonable doubt of the crime charged. The dispositive portion of its Decision reads: 

...

WHEREFORE, premises considered, accused Jimmy Ang y Achica and Olivia Ang y Neñeria are hereby found guilty beyond reasonable doubt of Violation of Section 266 in relation to Sections 5, 14, 253(d) and 256 of the National Internal Revenue Code of 1997, as

¹⁴ Id.

¹⁵ Id., p. 84.

¹⁶ Id., pp. 34-35.

amended. [Petitioners] are ordered to suffer the straight penalty of ONE (1) YEAR imprisonment and pay a FINE of Five Thousand Pesos (Php5,000.00) each. The Value Systems Philippines, Inc. is likewise ordered to pay the FINE of Fifty Thousand Pesos (Php50,000[.00]).¹⁷

...

On appeal, the RTC affirmed the MeTC's Decision in *toto*. The dispositive portion of the RTC Decision states —

...


IN LIGHT OF ALL THE FOREGOING, the Decision dated April 29, 2021 of the court *a quo* "finding [petitioners] Jimmy Ang y Achica and Olivia Ang y Neñeria guilty beyond reasonable doubt of the crime of Violation of Section 266 in relation to Sections 5, 14, 253(d) and 256 of the National Internal Revenue Code of 1997, as amended. [Petitioners] are ordered to suffer the straight penalty of ONE (1) YEAR imprisonment and to pay a FINE of Five Thousand Pesos (Php5,000.00) each. The Value Systems Philippines, Inc. is likewise ordered to pay the FINE of Fifty Thousand Pesos (Php50,000[.00])" is AFFIRMED IN TOTO.

SO ORDERED.

...

When petitioners filed a Motion for Reconsideration (MR) of the foregoing Decision, the same was denied.¹⁸ On 05 September 2022, petitioners filed their Petition for Review¹⁹ before the Court *En Banc*.

Before Us, petitioners contend that both the MeTC and RTC erred gravely when they were convicted. They insist that: (1) the LOA issued against TVSPI had expired and the ROs concerned did not conduct an audit and submit a report thereon within the 120-day validity period of the LOA; (2) the SDT was irregularly issued; (3) the SDT was improperly served; and, (4) petitioners did not neglect compliance with the SDT's directive.

In a Resolution dated 24 October 2022²⁰, the Court *En Banc* ordered respondent to file a comment or opposition to the petition within ten (10) days from receipt thereof. On 16 January 2023, through 

¹⁷ id., pp. 33.

¹⁸ Order dated 11 May 2022, Annex "B", id., pp. 42-43.

¹⁹ Supra at note 1.


²⁰ *Rollo*, pp. 96-97.

the Office of the Solicitor General (OSG), respondent filed its Comment.²¹ Subsequently, petitioners filed a Reply on 24 January 2023.²² Finally, in a Resolution dated 22 February 2023²³, the case was submitted for decision.

As can be culled from petitioners' arguments in the petition, the issue in this case can be summarized as follows —

WHETHER PETITIONERS JIMMY A. ANG AND OLIVIA N. ANG ARE GUILTY OF VIOLATION OF SECTION 266 IN RELATION TO SECTIONS 5, 14, AND 253(D) OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED.

In support of this petition, petitioners maintain that the LOA was void and without effect for having been issued one (1) year and 27 days before the issuance of the SDT. They also contend that the SDT was invalid because it was served almost a year after the issuance of the Second and Final Notice in alleged violation of Revenue Memorandum Order (RMO) No. 45-2010²⁴ (which, according to petitioners, requires that a SDT be issued within 10 days from a taxpayer's receipt of the Second and Final Notice). Likewise, they argue that the SDT was irregularly served on them since it was Encinas who actually received it. Lastly, they maintain that they never neglected the SDT and Encinas actually appeared before the BIR on 17 July 2019 and that the required documents were subsequently submitted to the BIR on 11 August 2020.²⁵

In its Comment, respondent counters that it was able to prove the elements of the crime with which petitioners were charged. Furthermore, that despite petitioners' insistent attack on the supposed irregularities in the SDT's service, petitioner Jimmy, nevertheless, admitted that he received the said SDT. Respondent also argues that petitioners' subsequent submission to the required documents did not exempt them from the criminal charge as their non-compliance was already beyond dispute. 

²¹ Id., pp. 132-143. Previously, a Motion for Extension of Time to File Comment was filed on 15 November 2022, id., pp. 103-105.

²² See Reply (To Respondent's Comment dated January 13, 2023), id., pp. 112-130.

²³ Id., pp. 148-149.

²⁴ Revised Guidelines in the Requests for the Production of the Books of Accounts and/or Other Records and Documents and in the Issuance of Subpoena *Duces Tecum* for Failure of Taxpayers to Comply with the Requests.

²⁵ Annex "U", *rollo*, pp. 92-93.

The Court *En Banc*'s ruling follows.

At the onset it must be emphasized that the instant petition does not appear to be the proper forum for petitioners to directly challenge the LOA's validity as the case does not involve the assessment's propriety. Neither does its validity or invalidity matter considering that it is not an element of the crime charged. As the records clearly show, petitioners have been charged with a violation of Section 266 of the NIRC of 1997, as amended, which states:

...
Sec. 266. Failure to Obey Summons. — Any person who, being duly summoned to appear to testify, or to appear and produce books of accounts, records, memoranda or other papers, or to furnish information as required under the pertinent provisions of this Code, neglects to appear or to produce such books of accounts, records, memoranda or other papers, or to furnish such information, shall, upon conviction, be punished by a fine of not less than Five thousand pesos (P5,000) but not more than ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than two (2) years.
...

In relation thereto, Sections 5, 14, 253(d), and 256 of the same Code provides:

...
Sec. 5. Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons. — In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:
...

(C) To summon the person liable for tax or required to file a return, or any officer or employee of such person, or any person having possession, custody, or care of the books of accounts and other accounting records containing entries relating to the business of the person liable for tax, or any other person, to appear before the Commissioner or his duly authorized representative at a time and place specified in the summons and to produce such books, papers, records, or other data, and to give testimony;

...

Sec. 14. Authority of Officers to Administer Oaths and Take Testimony. — The Commissioner, Deputy Commissioners, Service Chiefs, Assistant Service Chiefs, Revenue Regional Directors, Assistant Revenue Regional Directors, Chiefs and Assistant Chiefs of Divisions, Revenue District Officers, special deputies of the Commissioner, internal revenue officers and any other employee of the Bureau thereunto especially deputed by the Commissioner shall have the power to administer oaths and to take testimony in any official matter or investigation conducted by them regarding matters within the jurisdiction of the Bureau.

...

Sec. 253. General Provisions. —

...

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

...

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).

...

As petitioners so state in their petition before Us, citing this Court's Decision in *Steven Go Lo v. People of the Philippines*²⁶ (Lo), the crime of Failure to Obey Summons only requires the concurrence of the following elements:

...

1. Offender is duly summoned;
2. Offender is summoned to appear and produce books of accounts, records, memoranda or other papers, or to furnish information required under the pertinent provisions of the 1997 NIRC, as amended;
3. Offender neglects to appear or to produce such documents; and



4. In case the offender is an artificial person, such as a partnership or corporation, the accused is its partner, president, general manager, branch manager, treasurer, officer-in-charge, or responsible officer or employee.

...

With the foregoing, the Court *En Banc* sees no further need to belabor itself with matters involving the LOA. Instead, its discussion will focus on the resolution of the actual issue in the case at hand. Thus, after a review of the records elevated to Us, We find no error in the assailed actions of the lower courts.

First, it is indisputable that petitioners were duly summoned. At this point, it is a futile exercise (and even irrelevant) to challenge Encinas' authority to receive the SDT on their behalf. As found by the lower courts, even petitioner Jimmy himself had admitted receipt of the SDT after Encinas had brought it to his attention. Moreover, the records show that it was also Encinas who received the BIR's First Notice²⁷, and Second and Final Notice.²⁸ Similarly, she is the same person who petitioners instructed to submit their letter requesting for an extension of time to comply (with the SDT). Petitioners also tasked Encinas to prepare all the transmittal letters²⁹ relative to TVSPI's submissions.

Furthermore, RMO No. 10-2013³⁰ provides a list of officers to whom an SDT may be served, to wit:

...

- 3.6 In case the request for issuance of SDT is found to be meritorious, the SDT shall be issued to the person liable for tax or required to file a return, or should the information or records be in the possession of a third party or office, then in that party's name, requiring the concerned person to appear and submit before the signatory of the SDT the mandated information/documents at an appointed time, date and place.

...



²⁷ Id., p. 72.

²⁸ Id., p. 73.

²⁹ Id., pp. 80-83 and "Annex "U", p. 92.

³⁰ Revised Guidelines and Procedures in the Issuance and Enforcement of Subpoenas Duces Tecum and the Prosecution of Cases for Non-Compliance Therewith.

- a. In case of corporations, partnerships or associations, the SDT shall be issued to the partner, president, general manager, branch manager, treasurer, registered officer-in-charge, **employee/s or other persons responsible for the custody of the books of accounts and other accounting records mandated to be submitted or information mandated to be provided.**³¹

...

As TVSPI's Assistant Accountant, Encinas, by the nature of her work and by her own acts, could clearly be considered **an employee responsible for TVSPI's financial records to whom the SDT may be properly served.** Even assuming for the sake of argument that Encinas had no *express* authority to act on TVSPI's behalf, petitioners' action of instructing her to go to the BIR to apply for an extension to comply with the SDT (and deal with matters relating to it) could also only be perceived as an "apparent authority" voluntarily granted unto her.

In *Violeta Tuidtud Banate, et al. v. Philippine Countryside Rural Bank (Liloan, Cebu), Inc., et al.*³², the Supreme Court explains "apparent authority" in the following wise:

...

The authority of a corporate officer or agent in dealing with third persons may be actual or apparent. Actual authority is either express or implied. The extent of an agent's express authority is to be measured by the power delegated to him by the corporation, while the extent of his implied authority is measured by his prior acts which have been ratified or approved, or their benefits accepted by his principal. The doctrine of "apparent authority," on the other hand, with special reference to banks, had long been recognized in this jurisdiction. The existence of apparent authority may be ascertained through:

- 1) the general manner in which the corporation holds out an officer or agent as having the power to act, or in other words, the apparent authority to act in general, with which it clothes him; or

- 2) the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, within or beyond the scope of his ordinary powers.

³¹ Emphasis supplied.

³² G.R. No. 163825, 13 July 2010; Citation omitted.

Accordingly, the authority to act for and to bind a corporation may be presumed from acts of recognition in other instances when the power was exercised without any objection from its board or shareholders.


...

With the above disquisitions, it becomes undeniable that no irregularity attended the service of the SDT on Encinas.

Second, the SDT demanded petitioners to appear and produce the documents before the BIR. A perusal of the SDT shows that the same was specifically addressed to petitioners as CEO and CFO, respectively, of TVSPI. The purpose for which the SDT was issued is likewise beyond question.

Third, petitioners willfully neglected to appear and produce the pertinent documents before the BIR. The records yield petitioners' full knowledge of the SDT and its contents, so that on the day they were required to appear, petitioner Jimmy instructed Encinas to go to the BIR. Unfortunately, such appearance was not to comply and present the documents that the SDT required but for Encinas to request for an extension of time (to present said documents). Such willful neglect is further evinced by petitioners' failure to produce the documents within the time prayed for in their letter of extension.

A reading of the letter³³ dated 15 July 2019 shows that petitioners requested that it be given until 31 July 2019 to produce the required documents. However, as petitioners themselves had declared and admitted, they only submitted said documents to the BIR on 11 August 2020 (over a year after their requested extension) when the criminal case against them was already pending before the MeTC. The existence of the third element is, thus, very evident in this case.

The declarations of petitioners are judicial admissions that bind them absolutely (in the absence of causes to override them). In the case of *Marito and Maria Fe Serna v. Tito and Iluminada Dela Cruz*³⁴, the Supreme Court ruled, thusly: 

³³ Annex "O", *rollo*, p. 58.

³⁴ G.R. No. 237291, 01 February 2021; Citations omitted.

...

It is well settled that an admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. Judicial admissions are legally binding on the parties making them. Jurisprudence, however, provides the admitting party some leeway to vary or override such admissions, provided the matter was identified as an issue and the admitting party presents contrary evidence during trial. ...

...

Similarly, judicial admissions are evidence against the party who made them. They are considered conclusive and binding as to the party making such judicial admission. A judicial admission bars the admitting party from disputing it.³⁵

Fourth, petitioners were independently and separately charged as principals. They were charged as responsible officers of TVSPI since they are the CEO and CFO, respectively, of the said corporation.

As regards petitioners' conviction of the crime charged, the Court *En Banc* sees no cogent reason to disturb the factual findings of the trial court; it being the trier of facts firsthand. In *People of the Philippines v. Loreto Talmesa y Bagan*³⁶, the Supreme Court explains thusly -

...

Well settled is the rule that the matter of ascribing substance to the testimonies of witnesses is best discharged by the trial court, and the appellate courts will not generally disturb the findings of the trial court in this respect. Findings of the trial court which are factual in nature and which involve the credibility of witnesses are accorded with respect, if not finality by the appellate court, when no glaring errors, gross misapprehension of facts, and speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The reason is quite simple: the trial judge is in a better position to ascertain the conflicting testimonies of witnesses after having heard them and observed their deportment and mode of testifying during the trial. The task of taking on the issue of credibility is a function properly lodged with the trial court. Thus, generally, the Court will not reexamine or reevaluate evidence that had been analyzed and ruled upon by the trial court.

...



³⁵ See *Tranquilino Agbayani v. Lupa Realty Holding Corporation*, G.R. No. 201193, 10 June 2019, citing 29A Am. Jur. 2d, Evidence §§ 770-771.

³⁶ G.R. No. 240421, 16 November 2020, Citation omitted.

Notwithstanding the foregoing disquisition, We take exception from the RTC's decision to adopt the MeTC's imposition of penalty of a fine on TVSPI. Clearly, the Information did not charge TVSPI as it was never included as an accused nor was the corporation impleaded in the criminal proceedings before the MeTC. It is a well-established principle in corporation law that a corporation is a juridical entity which is vested with a legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it³⁷ and if it is not impleaded in a suit, it cannot be subject to the court's processes.³⁸ It is noted that indictment of a corporation is *not* an element of the crime.

Furthermore, a corporation as being of legal fiction has no will of its own and can act only through its officers and agents.³⁹ The elements of the crime; particularly the neglect to appear or to produce documents when summoned, can only be attributed to the natural persons responsible for the corporation's course of action.

In the more recent case of *Kingsam Express, Inc. v. People of the Philippines*⁴⁰ (KEI), the Supreme Court categorically declared that –

...

If the crime is committed by a corporation or other juridical entity, the directors, officers, employees or other officers responsible for the offense shall be charged and penalized for the crime. This is so since a corporation is a juridical entity created by law. It can act only through its board of directors or officers, in conformity with its articles of incorporation and by laws. Consequently, **corporate officers or employees through whose act, default or omission the corporation commits a crime are themselves individually guilty of the crime.**

... As an artificial being existing by legal fiat, it does not have the faculty of cognition that triggers the constitutional right to be informed of the nature and cause of the charges against it; hence, the need to prosecute the responsible officers for the corporate criminal act. With this in mind, We rule that KEI need not be arraigned separately since Santos, its president and responsible officer, was already arraigned. The arraignment of Santos is sufficient to put the

³⁷ *Heirs of Fe Tan Uy v. International Exchange Bank*, G.R. No. 166282, 13 February 2013.

³⁸ See *Kukan International Corporation v. Hon. Amor Reyes, et al.*, G.R. No. 182729, 29 September 2010.

³⁹ *The People of the Philippines v. Tan Boon Kong*, G.R. No. 32652, 15 March 1930.

⁴⁰ G.R. No. 254086 (Notice), 07 September 2022; Emphasis supplied.


corporation on notice that it is being prosecuted for a violation of the law.

...

Notably, the Supreme Court, in laying down the elements of the present criminal charge in *Lo*⁴¹, states clearly that if the offender is an artificial person, “the accused is its ... president, general manager, branch manager, treasurer, officer-in-charge, or responsible officer or employee”.

In sum, if the prevailing rule is that there is no requirement to implead the corporation or even arraign the same (as it suffices that the **corporate officers or employees through whose act, default or omission the corporation commits a crime are themselves individually guilty of the crime**), there is no legal basis to impose any penalty on the erring corporation itself. The lower courts, in effect, violated substantive due process deeply enshrined in Section 1 Article III of the 1987 Constitution.⁴² Albeit somehow limited, it is a basic rule that this constitutional guaranty extends even to corporations.⁴³ Therefore, it is but just that the penalties imposed on TVSPI be removed.

WHEREFORE, in view of the foregoing, the instant Petition for Review filed by petitioners Jimmy A. Ang and Olivia N. Ang on 05 September 2022 is hereby **DENIED** for lack of merit, insofar as it seeks the reversal of petitioners’ conviction for violating Section 266 of the National Internal Revenue Code of 1997, as amended. Thus, the penalty of one (1) year imprisonment and payment of a fine imposed on both petitioners in the amount of Five Thousand Pesos (₱5,000.00) is **AFFIRMED**.

However, the penalty of Fine amounting to Fifty Thousand Pesos (₱50,000.00) imposed on The Value Systems Philippines, Inc. is **WITHDRAWN** and **SET ASIDE**. 

⁴¹ Supra at note 26.


⁴² Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.


⁴³ See *White Light Corporation, et al. v. City of Manila, represented by Mayor Alfredo S. Lim*, G.R. No. 122846, 20 January 2009.


SO ORDERED.

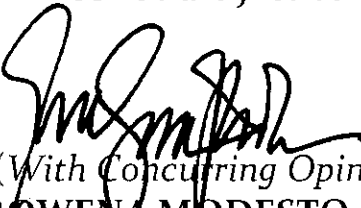

JEAN MARIE A. BACORRO-VILLENA
Associate Justice


WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice



MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


(With Concurring Opinion)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice

(On Official Business)
LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER FLORES
Associate Justice

(On Official Business)
HENRY S. ANGELES
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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

JIMMY A. ANG and OLIVIA N. ANG,
ANG,

Petitioners, Present:

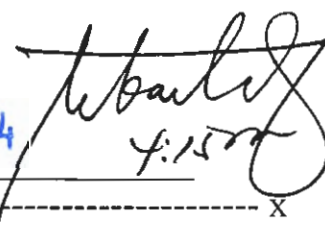
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BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, JJ.

-versus-

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

FEB 22 2024



X

X

CONCURRING OPINION

MODESTO-SAN PEDRO, J.:

I concur with the Decision in (a) denying the instant Petition for Review; (b) affirming the penalty of one-year imprisonment and a fine in the amount of PhP5,000.00; and (c) withdrawing and setting aside the fine amounting to PhP50,000 imposed on The Value Systems Philippines, Inc.

However, I am of the opinion that the *National Internal Revenue Code of 1997, as amended* (“NIRC”), imposes too harsh a penalty on violations of *Section 266* thereof.

To review, the *NIRC* imposes a penalty of (a) a fine of at least PhP5,000.00 but at most PhP10,000.00; and (b) imprisonment for at least one year but at most two years, for a failure to obey summons issued by the Bureau of Internal Revenue (“BIR”). The *ponencia* correctly applied this provision to the case at bar.

I believe that this penalty, however, should be compared to the penalty for failing to obey a subpoena issued by a court, the judicial equivalent of failing to obey the BIR's summons.

Under *Rule 21, Section 9 of the Rules of Court*, a failure to obey a subpoena issued by a court shall be deemed contempt of the issuing court. Such failure is specifically a form of indirect contempt, under *Rule 77, Section 3(b) of the Rules of Court*, as it constitutes "[d]isobedience of or resistance to a lawful writ, process, order, or judgment of a court." Finally, *Rule 77, Section 7 of the Rules of Court* sets the potential punishments for indirect contempt. Disobeying a subpoena issued by a lower court is punishable by (a) a fine of at most PhP5,000.00; (b) imprisonment for at most one month; *or* (c) both. Meanwhile, disobeying a subpoena issued by the Regional Trial Court ("RTC") or higher is punishable by (a) a fine of at most PhP30,000.00; (b) imprisonment for at most six months; *or* (c) both.

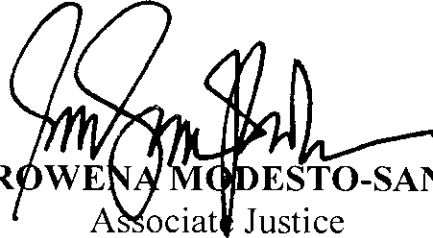
The above, with the penalties for disobeying the BIR's summons, are summarized in the table below, for easy comparison:

Issuing Body	BIR	Lower Court	RTC or Higher
Type of Penalty	Fine <i>and</i> Imprisonment	Fine, Imprisonment, or Both	Fine, Imprisonment, or Both
Minimum Fine	PhP5,000.00	PhP0.00	PhP0.00
Maximum Fine	PhP10,000.00	PhP5,000.00	PhP30,000.00
Minimum Duration of Imprisonment	One Year	No Imprisonment	No Imprisonment
Maximum Duration of Imprisonment	Two Years	One Month	Six Months

Note that while a failure to obey the BIR's summons results in both a fine and imprisonment, a failure to obey a court's subpoena could lead to a fine *only* or imprisonment *only*. Note further disobeying the BIR's summons would lead to imprisonment for an entire year *at minimum*, whereas disobeying a subpoena issued by the RTC or higher would lead to imprisonment for only six months *at maximum*. In other words, failing to obey the BIR's summons can lead to a penalty even harsher than that for failing to obey a subpoena issued by the courts, even one issued by the Supreme Court itself.

I find this discrepancy unjust, unreasonable, and inequitable. While I concur with the penalty imposed by the *ponencia*, insofar as it is in accordance with the law, I thus recommend that the penalty imposed by the law itself, *Section 266 of the NIRC*, be revisited by legislators to bring it more in line with the penalties for failing to obey a court-issued subpoena. ♪

All told, I VOTE to **DENY** the instant Petition for Review; **AFFIRM** the penalty imposed on accused; and **WITHDRAW** and **SET ASIDE** the penalty imposed on The Value Systems Philippines, Inc.

A handwritten signature in black ink, appearing to read 'M. Modesto-San Pedro', written over the printed name below.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice