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THIRD DIVISION

[G.R. No. 253429; October 6, 2021]

GENOVEVA S. SUAREZ, *Petitioner*, *v.* **PEOPLE OF THE PHILIPPINES AND THE BUREAU OF INTERNAL REVENUE,** *Respondents*.

D E C I S I O N

CARANDANG, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated November 19, 2019 and Resolution dated September 1, 2020 rendered by the Court of Tax Appeals (CTA) *En Banc* in CTA EB Crim. Case No. 066, which affirmed the conviction of Genoveva S. Suarez (petitioner), as Executive Vice-President of 21st Century Entertainment, Inc. (21st Century), for violation of Section 255 in relation to Sections 253(d) and 256 of the National Internal Revenue Code (NIRC) or the failure of 21st Century to pay its tax liabilities.

Facts of the Case

On August 21, 2008, the Office of the City Prosecutor of Manila filed an Information against petitioner for violation of Section 255, in relation to Sections 253(d) and 256 of the NIRC, committed as follows:

> That on or about January 23, 2004, and continuously up to present, in the City of Manila, Philippines, the said accused being then the President of 21st CENTURY ENTERTAINMENT, INC. with business address at Room 207 Tiaoqui Bldg., Sta. Cruz, Manila, and therefore the responsible officer of the said Corporation, to whom notices and demands were made by the Bureau of Internal Revenue, represented in this case by ATTY. HABARI LUCMAN BALT, to pay the Corporation's overdue tax obligations amounting to PhP747,964.49 under BIR

[1] *Rollo*, pp. 3-54.

[2] Id. at 61-75.

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Assessment Notice No. 31-2000, did then and there willfully, unlawfully and knowingly fail, refuse and neglect to pay the Bureau of Internal Revenue the said amount of PhP747,964.49 despite due notice and demand without formally protesting and appealing the same with the proper authority, to the damage and prejudice of the Government of the Republic of the Philippines sin (sic) the same sum of PhP747,964.49, Philippine currency.

CONTRARY TO LAW.[3]

On February 4, 2009, petitioner pleaded not guilty to the offense charged. During pre-trial, the prosecution and defense stipulated that petitioner is the Executive Vice-President of 21st Century at the time of the assessment.[4]

As culled from the records of this case, the facts are as follows:

On January 23, 2004, the Commissioner of Internal Revenue (CIR) issued Final Assessment Notices (FANs) and Final Letters of Demand (FLDs) to 21st Century, demanding payment for deficiency income tax, improperly accumulated earnings tax, minimum corporate income tax, expanded withholding tax, value-added tax, and compromise penalty, in the aggregate amount of ₱747,964.49 for taxable year 2000.[5]

On February 26, 2004, 21st Century, represented by its Vice-President, John S. Suarez, filed a Protest against the FLDs and requested the Bureau of Internal Revenue (BIR) for reinvestigation of the assessment issued against it. However, on December 5, 2005, the case docket of 21st Century was forwarded to the Chief Collection Division, for collection of the deficiency taxes because of 21st Century's failure to submit within 60 days from date of protest supporting documents to refute the assessment.[6]

On December 19, 2005, the Revenue District Officer (RDO) issued the First Notice of Delinquent Account to 21st Century

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[3] Id. at 83.

[4] Id. at 107.

[5] Id. at 81.

[6] Id. at 81-82.

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requiring it to settle its tax deficiencies. The RDO warned 21st Century that in case of failure to settle its tax obligations, the case shall be referred to the BIR legal division for appropriate action. On January 3, 2006, the RDO issued a Second Notice of Delinquent Account against 21st Century, informing the latter that the case has been referred to the BIR Legal Division. The RDO likewise reiterated that 21st Century should pay its tax deficiencies to avoid the issuance of a Warrant of Distraint and/or Levy (WDL) or Garnishment. Despite the foregoing notices, 21st Century still failed to settle its obligations; hence, on March 17, 2006, the BIR issued a Final Notice before Seizure addressed to Richard Suarez.[7]

On August 24, 2006, in a bid to prevent the seizure of 21st Century's properties, petitioner sent a Letter to the RDO requesting additional time to secure the services of an external accountant to assist 21st Century in organizing its accounting records so that it could provide the BIR evidence supporting its financial statements and income tax returns. Petitioner also expressed her willingness to settle 21st Century's tax liabilities, through compromise.[8] Despite this, the CIR, on November 28, 2006, issued a WDL against 21st Century.[9]

On March 7, 2007, the BIR issued a Warrant of Garnishment to Equitable-PCI Bank against the account of 21st Century, to no avail. Hence, on May 28, 2007, the RDO issued a Memorandum recommending the filing of proper case against 21st Century for failure to pay its delinquent tax liabilities.[10]

During the trial, the prosecution presented Ma. Paz Arcilla (Arcilla), Armando Macatangay (Macatangay) and Dionisio Singson (Singson) as its witnesses.

Arcilla, a revenue officer of the BIR, testified that she supervises the preparation, issuance, and monitoring of demand letters, final assessments, and transcripts of assessments of tax cases.

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[7] Id. at 82.

[8] Id.

[9] Id. at 83.

[10] Id.

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According to her, the original copies of the assessment notices and formal letters of demand were sent to the registered address of 21st Century and the same were duly received by 21st Century as evidenced by their filing of a protest letter to the FAN.[11]

Macatangay testified that he was the mailing custodian of the administrative division of the BIR. He caused the mailing of the assessment notices and other formal demand letters to 21st Century.[12]

Singson, on the other hand, stated that he was the revenue officer-seizure agent of the BIR in charge with the collection of the tax liabilities of 21st Century. According to Singson, he prepared the First, Second, and Final Notices for 21st Century to pay its tax liabilities but the latter failed to respond to all the notices. Subsequently, Singson prepared a Warrant of Levy and Distraint as well as a Warrant of Garnishment against 21st Century.[13]

After offer of evidence, the prosecution rested its case.

On April 7, 2016, petitioner filed a Motion for Leave of Court to File Demurrer to Evidence. However the motion was denied on April 14, 2016, for having been filed out of time. On the same date, petitioner waived presentation of evidence for her defense.[14]

Ruling of the Regional Trial Court

On June 2, 2016, the Regional Trial Court (RTC) of Manila, Branch 21, rendered its Decision[15] finding petitioner guilty beyond reasonable doubt of violation of Section 255 in relation to Sections 253(d) and 256 of the NIRC. The RTC likewise ordered petitioner to pay the tax liabilities of 21st Century.[16]

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[11] Id. at 108.

[12] Id. at 110.

[13] Id. at 110-111.

[14] Id. at 84.

[15] Id. at 107-117.

[16] Id. at 116.

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The RTC was convinced that the prosecution clearly established the criminal and civil liabilities of petitioner taking into consideration the testimonial and documentary evidence presented by the prosecution.[17]

According to the RTC, the prosecution was able to prove that 21st Century failed to pay its overdue tax obligations amounting to ₱747,964.49 for taxable year 2000 as evidenced by the FANs and FLDs duly served to it. The RTC likewise held that petitioner is 21st Century's responsible officer who may be held criminally liable for violation of the provisions of the NIRC. The RTC emphasized that petitioner judicially admitted being the Executive Vice-President of 21st Century at the time of assessment and petitioner even signed and issued a Reply Letter dated August 24, 2006 admitting that 21st Century's tax case has become a delinquent account and requesting for a reasonable time to pay their tax liabilities by way of compromise agreement.[18]

Aggrieved, petitioner filed a petition for review to the CTA.

Ruling of the Court of Tax Appeals in Division

On July 5, 2018, the CTA in Division issued its Decision[19] affirming the conviction of petitioner. However, the CTA in Division deleted the RTC's order for petitioner to pay the tax liabilities. Instead, it was 21st Century that was ordered to be civilly liable for the unpaid taxes.[20]

The CTA in Division agreed with the RTC that all the elements of failure to pay taxes were present in this case. According to the CTA in Division, the prosecution's testimonial and documentary evidence amply proved that 21st Century, as the corporate taxpayer, failed to pay its tax liabilities despite demand.[21] The CTA in Division further held that the second element of failure to pay

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[17] Id. at 113.

[18] Id. at 114-115.

[19] Id. at 80-98.

[20] Id. at 95-97.

[21] Id. at 89.

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taxes was present in this case since petitioner, as the Executive Vice-President of 21st Century at the time of assessment, is the responsible officer thereof. The CTA in Division found that petitioner's letter to the BIR, on behalf of 21st Century, asking for the extension to pay the tax liabilities of 21st Century and expressing her intent to settle the tax liabilities through compromise, proved her position as a responsible officer of 21st Century.[22] Lastly, the CTA in Division concluded that 21st Century's failure to pay its tax liabilities was willful. The CTA in Division emphasized that despite knowing about 21st Century's tax liabilities and despite the numerous chances given to it to pay such liabilities, petitioner, as the responsible officer of 21st Century, still failed to pay the same.[23]

Petitioner moved for reconsideration but her motion was denied in a Resolution[24] dated February 20, 2019. Insisting on her innocence, petitioner filed a petition for review to the CTA *En Banc*.

Ruling of the Court of Tax Appeals *En Banc*

On November 19, 2019, the CTA *En Banc* affirmed the ruling of the CTA in Division.[25]

For the CTA *En Banc*, it was undisputed that 21st Century is required by the NIRC to pay its taxes and that 21st Century failed to pay the same.[26] The CTA *En Banc* agreed with the conclusion of the CTA in Division that petitioner was a responsible officer of 21st Century who may properly be made liable for failure to pay taxes. The CTA *En Banc* took note of petitioner's judicial admission that she was the Executive Vice-President of 21st Century at the time of the assessment and that she even sent a Letter to the BIR to request extension of payment of the liabilities and expressed her

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[22] Id. at 91.

[23] Id. at 93.

[24] Id. at 100-106.

[25] Id. at 61-75.

[26] Id. at 69.

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willingness to enter into a compromise with the BIR. These acts, for the CTA *En Banc*, pointed to no other conclusion than that petitioner was in charge of settling 21st Century's tax liabilities. Therefore, a responsible officer thereof in so far as the provisions of the NIRC on failure to pay taxes are concerned.[27]

Petitioner filed a motion for reconsideration. However, the motion was denied in a Resolution dated September 1, 2020.

Undaunted, petitioner filed this Petition for Review on *Certiorari*[28] and Supplemental Petition.[29] Petitioner argues that the CTA should not have ordered 21st Century civilly liable for the tax liabilities as the latter was already dropped from the case as early as the trial before the RTC.[30] Petitioner also claims that the alleged tax deficiencies of 21st Century was not proven because no Preliminary Assessment Notice (PAN) was ever issued to the latter.[31] Lastly, petitioner insists that she is not a responsible officer of 21st Century who may be held criminally liable for failure to pay taxes.[32]

In its Comment,[33] the People of the Philippines and the BIR, through the Office of the Solicitor General, reiterate that petitioner's criminal and civil liabilities were duly proven by the prosecution.[34]

Issue

The issue in this case is whether petitioner, as the Executive Vice-President of 21st Century, may be held criminally liable for 21st Century's failure to pay its tax liabilities.

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[27] Id. at 71-72.

[28] Id. at 3-54.

[29] Id. at 442-460.

[30] Id. at 36.

[31] Id. at 445.

[32] Id. at 451.

[33] Id. at 479-493.

[34] Id. at 487.

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Ruling of the Court

The petition is meritorious.

Before delving into the substantive aspect of this case, the Court shall first deal with procedural matters.

The determination of the guilt of an accused hinges on how a court appreciates evidentiary matters in relation to the requisites of an offense. Determination of guilt is, thus, a fundamentally factual issue.[35] The Court is not a trier of facts. Petitioner's Rule 45 petition should therefore only raise questions of law and not of facts. However, in exceptional circumstances, such as when the trial court overlooked material and relevant matters, the Court will recalibrate and evaluate factual findings of the trial courts.[36]

In this case, the Court finds the need to reassess the finding of the RTC and CTA on petitioner's guilt.

Having discussed the procedural issue, the Court now focuses on the substantive aspect of the case.

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

> Section 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 the accurate information, who **willfully fails to pay such tax**, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, **be punished by a fine of not less than Ten thousand pesos (₱10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years**.
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> 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

[35] *Macayan, Jr. v. People*, 756 Phil. 202, 214 (2015).

[36] *People v. Esteban*, 735 Phil. 663, 671 (2014).

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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 (₱10,000) but not more than Twenty thousand pesos (₱20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years.

Section 253. General Provisions. –

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(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**.

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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 (₱50,000) but not more than One hundred thousand pesos (₱100,000).

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

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> withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations.[37]

There is no dispute about the presence of the first and second elements. It is the third element—whether petitioner is a "responsible officer" of 21st Century who may be indicted and convicted of failure to pay taxes and who willfully failed to pay such taxes—that is contentious.

As stipulated by both parties during the pre-trial and therefore conclusive as to them, petitioner was the Executive Vice-President of 21st Century at the time of the assessment. Section 253 of the NIRC expressly identified the following corporate officers who may be held liable for violations of the NIRC committed by the corporation: **partner, president, general manager, branch manager, treasurer, officer-in-charge, and the employees responsible for the violation**.

Obviously, as an Executive Vice-President, petitioner is not one of the corporate officers enumerated under the NIRC. However, the RTC and the CTA were convinced that petitioner falls under the category of **employees responsible for the violation** because of petitioner's Letter to the BIR asking for an extension of time to pay the tax liabilities of 21st Century, and signifying her intent, as representative of 21st Century, to settle the tax liabilities of the corporation through compromise. The RTC and the CTA concluded that this act is indicative of petitioner's significant role in the management of the affairs of 21st Century, and therefore, liable for the corporation's violation of the NIRC.

The Court is not convinced.

A corporation is an artificial being created by fiction of law.[38] 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.[39] As early as 1930 in the

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[37] *Rollo*, p. 69.

[38] REVISED CORPORATION CODE OF THE PHILIPPINES, Section 2.

[39] *Ching v. Secretary of Justice*, 517 Phil. 151, 177 (2006).

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case of *People v. Tan Boon Kong*,[40] 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*[41] *(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.
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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

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[40] 54 Phil. 607 (1930).

[41] Supra note 39.

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by their delictual acts is not a touchstone of their criminal liability. Benefit is not an operative fact.[42]

In *ABS-CBN v. Gozon (ABS-CBN)*,[43] 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**.[44]

This same doctrine was reiterated in *SEC v. Price Richardson Corporation*[45] 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.

In this case, petitioner's position as Executive Vice-President of 21st Century will not *per se* make her liable for the failure of 21st Century to pay its tax liabilities. In the words of Section 253 of the NIRC, petitioner must have been the employee or officer **responsible** for the violation.

Contrary to the conclusion arrived at by the RTC and CTA, petitioner's Letter to the BIR asking for an extension of time to pay the tax liabilities of 21st Century, and signifying her intent as representative of 21st Century to settle the tax liabilities of the

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[42] Id. at 177-178.

[43] 755 Phil. 709 (2015).

[44] Id. at 781.

[45] 814 Phil. 589 (2017).

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corporation through compromise, is not enough to pronounce her guilt beyond reasonable doubt. This single Letter does not suffice to prove that petitioner has actively participated in, or has failed to prevent the violation by 21st Century of the provisions of the NIRC.

As pointed out by petitioner, the prosecution, which has the burden of proving petitioner's guilt beyond reasonable doubt, failed to introduce any evidence that would show that petitioner's duties and responsibilities as Executive Vice-President of 21st Century allowed her to participate in 21st Century's failure to pay its tax liabilities. The records of the case is bereft of any evidence showing that petitioner's acts and omissions caused 21st Century to violate the provisions of the NIRC. The prosecution neither proved that it is within petitioner's power as Executive Vice-President of 21st Century to prevent any such violation. Absent proof that petitioner had any direct and active participation in the non-payment of 21st Century's tax liabilities, the Court cannot convict her of violation of the provisions of the NIRC.

On another note, it cannot be said that petitioner's Letter to the BIR, expressing her willingness to settle 21st Century's tax liabilities through compromise, may be received in evidence as an implied admission of her guilt pursuant to Section 28 of Rule 130 of the 2019 Amendment to the Revised Rules on Evidence.[46] The same Rule provides for exceptions, such that, in criminal cases, an offer of compromise for those involving quasi-offenses (criminal negligence) and those allowed by law to be compromised, cannot be received in evidence as an implied admission of the accused's guilt.

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[46] Section 28. Offer of compromise not admissible. – In civil cases, an offer of compromise is not an admission of any liability, and is not admissible in evidence against the offeror. Neither is evidence of conduct nor statements made in compromise negotiations admissible, except evidence otherwise discoverable or offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

In criminal cases, except those involving quasi-offenses (criminal negligence) or those allowed by law to be compromised, an offer of compromise by the accused may be received in evidence as an implied admission of guilt[.]

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Section 204 of the NIRC,[47] which provides authority to the CIR to, among others, enter into a compromise with taxpayers, explicitly states that "[a]ll criminal violations [of the NIRC] may be compromised except: (a) those already filed in court, or (b) those involving fraud." Thus, the NIRC itself allows compromise even for violations of its penal provisions.

Further, in *San Miguel Corporation v. Kalalo*,[48] involving a criminal case for violation of Batas Pambansa Blg. 22, the Court held that the accused's act of sending the Offer of Compromise prior to the filing of the criminal complaint was not made in the context of a criminal proceeding, and therefore, cannot be considered as an implied admission of guilt. Here, petitioner's alleged letter to the RDO expressing her willingness to settle the tax liabilities of 21st Century was sent on August 24, 2006. It was only on May 28, 2007 that the RDO issued a Memorandum recommending the filing of proper case against 21st Century for failure to pay its delinquent tax liabilities, while the Information was only filed on August 21, 2008 by the Office of the City Prosecutor of Manila. Thus, petitioner's offer of compromise cannot be received in evidence as an implied admission of guilt.

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

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[47] Section 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. – The Commissioner may –

(A) Compromise the payment of any internal revenue tax, when:

(1) A reasonable doubt as to the validity of the claim against the taxpayer exists; or

(2) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.

x x x x

(B) Abate or cancel a tax liability, when:

(1) The tax or any portion thereof appears to be unjustly or excessively assessed; or

(2) The administration and collection costs involved do not justify the collection of the amount due. **All criminal violations may be compromised except: (a) those already filed in court, or (b) those involving fraud[.]**

[48] 687 Phil. 376 (2012).

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of doubt, this Court is under a longstanding legal injunction to resolve the doubt in favor of the accused.[49]

WHEREFORE, the Petition for Review on *Certiorari* is **GRANTED**. The Decision dated November 19, 2019 and the Resolution dated September 1, 2020 rendered by the Court of Tax Appeals *En Banc* in CTA EB Crim. Case No. 066 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Genoveva S. Suarez is **ACQUITTED**.

Let entry of judgment be issued immediately.

SO ORDERED.

Leonen (Chairperson), Zalameda, Rosario, and *Dimaampao,*[*] *JJ.*, concur.

APPEARANCES OF COUNSEL

Marbibi & Associates Law Office for petitioner.
Office of the Solicitor General for respondents.

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[49] *People v. Cruz*, 736 Phil. 564 (2014).

[*] Designated as additional Member per Special Order No. 2839.