REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*

-versus-

JOEL C. MENDEZ, *Accused.*

CTA CRIM. CASE NO. O-013
For: Violation of Section 255 of R.A. No. 8424

x - x

PEOPLE OF THE PHILIPPINES, *Plaintiff,*

-versus-

JOEL C. MENDEZ, *Accused.*

CTA CRIM. CASE NO. O-015
For: Violation of Section 255 of R.A. No. 8424

Members:
CASTAÑEDA, JR., Chairperson
CASANOVA, and
MINDARO-GRULLA, *JJ.*

Promulgated:
JAN 0 5 2011
9:00 a.m.

x -- x

DECISION

CASTAÑEDA, JR., *J.:*

STATEMENT OF FACTS

Accused Joel C. Mendez is charged before this Court with the crime of violation of Section 255 of Republic Act (R.A.) No. 8424, otherwise known as the "Tax Reform Act of 1997", as amended, under the following Amended Informations, which read as follows:

Criminal Case No. O-013

"That on or about the 15th day of April 2003, at Quezon City, and within the jurisdiction of this Honorable Court, the above-named accused, a duly registered taxpayer, and sole proprietor of 'Weigh Less Center', 'Mendez Body and Face Salon and Spa', and 'Mendez Body and Face Skin Clinic', with principal office at No. 31 Roces Avenue, Quezon City, and with several branches in Quezon City, Makati City, San Fernando, Pampanga and Dagupan City, did then and there, willfully, unlawfully and feloniously, fail to file his income tax return (ITR) with the Bureau of Internal Revenue for taxable year 2002, to the damage and prejudice of the Government in the estimated amount of P1,522,152.14, exclusive of penalties, surcharges and interest.

CONTRARY TO LAW."

Criminal Case No. O-015

"That on or about the 15th of April 2004, at Dagupan City, and within the jurisdiction of this Honorable Court, the above-named accused, a duly registered taxpayer, and sole proprietor of 'Weigh Less Center', 'Mendez Body and Face Salon and Spa', and 'Mendez Body and Face Skin Clinic', with several branches in Quezon City, Makati City, San Fernando, Pampanga and Dagupan City, engaged in the business of cosmetic surgery and dermatology, willfully, unlawfully and feloniously, did then and there, fail to supply correct and accurate information in his income tax return (ITR) for taxable year 2003 filed in the Revenue District of Calasiao, Pangasinan, by making it appear under oath that his income for taxable year 2003 was derived mainly from his branch in Dagupan City, and failing to declare his consolidated income from his other 'Weigh Less Center', 'Mendez Body and Face Salon and Spa', and 'Mendez Body and Face Skin Clinic' branches, to the damage and prejudice of the Government in the estimated amount of P2,107,023.65, exclusive of penalties, surcharges and interest.'

CONTRARY TO LAW." *gr*

On January 30, 2006[1] and March 20, 2006[2], this Court issued Warrants of Arrest against the accused in Criminal Case Nos. O-013 and O-015, respectively.

Accused voluntarily surrendered before this Court and posted the required bail bond for his provisional liberty, by way of cash bonds in the amount of P20,000.00 each, in Criminal Case No. O-013 on February 10, 2006[3] and in Criminal Case No. O-015 on March 29, 2006[4].

Upon arraignment in both cases, accused, assisted by his defense counsel *de parte*, entered a plea of "Not Guilty" to the crimes charged.[5]

On September 27, 2006 and October 2, 2006, the Preliminary Conference were held. During pre-trial, CTA Crim. Case No. O-013 and CTA Crim. Case No. O-015 were consolidated as per agreement by the parties.

Trial proceeded, wherein the prosecution presented both testimonial and documentary evidence.

The prosecution presented twenty (20) witnesses to establish accused's culpability, namely: Atty. Grace B. Cruz, Ms. Clavelina S. Nacar, Messrs. Romeo E. Naranjo, Von M. Lentejas, Alex C. Perez, Atty. Mahinardo G. Mailig, Messrs. Florante Aninag, Joseph Catapia, Ms. Perlita R. De Lara, Mr. Joseph Rodriguez, Ms. Arabelle O. Petilla, Ms. Emma C. Asusano, Messrs. Jose Villareal, Elias S. Olasiman, Atty. Salvador C. Alcuino, Jr., Ms. Norilyn Caborda, Mr. Benjamin Molina, Jr., Ms. Menchie De Leon, Ms. Josefina Wan Remollo, and Mr. Alexander D. Martinez. The prosecution also

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1 CTA Crim. Case No. O-013, docket, p. 179.
2 CTA Crim. Case No. O-015, docket, p. 176.
3 CTA Crim. Case No. O-013, docket, p. 191.
4 CTA Crim. Case No. O-015, docket, p. 185.
5 Resolutions dated March 22, 2006 and April 19, 2006.

presented its documentary evidence marked as Exhibits "A" to "L^{6}", which were admitted by this Court as evidence for the prosecution.[6]

On March 24, 2008, accused filed his "Demurrer to Evidence," which the Court denied in a Resolution dated August 15, 2008.[7]

For its part, the defense presented evidence, which consists of the testimonies of the accused himself, Ms. Cherry Perez, and Ms. Ma. Lita D. Gregorio; and documentary evidence marked as Exhibits "1" to "39-A." The said exhibits were admitted as evidence for the accused, except Exhibits "17", "20", "32", and "34"; which were denied admission in a Resolution dated January 26, 2010 for failure of the accused's counsel to present the originals thereof for comparison.[8]

On October 5, 2010, a Resolution was issued by this Court submitting the case for decision,[9] considering that the accused had already filed his "Memorandum" on March 1, 2010[10] and that the prosecution had also filed its "Memorandum"[11] through registered mail on September 14, 2010 and received by this Court on September 30, 2010.

<u>Evidence for the Prosecution</u>

Atty. Grace Belarmino-Cruz, one of the Revenue Officers assigned in the National Investigation Division (NID) of the Bureau of Internal Revenue (BIR), testified that in a Memorandum dated September 8, 2004, the NID Chief, Atty. Arnel SD. Guballa, referred to her investigating team the case of

6 CTA Crim. Case Nos. O-013 and O-015, Vol. 3, docket, pp. 1942-1944 and 2039-2040.
7 *Ibid.*, pp, 2073-2083.
8 *Ibid.*, pp. 2405-2406 and 2476-2478.
9 *Ibid.*, p. 2563.
10 *Ibid.*, pp. 2444-2461.
11 *Ibid.*, pp. 2509-2562.

taxpayer Dr. Joel C. Mendez for appropriate action. The case was precipitated by a confidential letter-complaint against the subject-taxpayer for alleged non-issuance of official receipts for services rendered.[12]

On the basis of the initial investigation and recommendation, a Letter of Authority (LOA) No. 2001-00002438[13] dated November 8, 2004 was issued for the examination of books of accounts and other accounting records for the period covering taxable years 2001, 2002 and 2003 of accused Dr. Joel Cortez Mendez. According to Atty. Cruz, the said LOA was served on November 10, 2004 together with the First Letter-Notice[14] for the production of books of accounts and accounting records. The said LOA was duly received by Cherry Perez, who allegedly represented herself as the authorized representative of accused Dr. Mendez. Despite receipt of the First Letter-Notice, accused Dr. Mendez did not submit the required documents, as specified in the said notice. As a consequence, a Second Letter-Notice[15] and a Final Request[16] for presentation and/or production of the required records/documents were served upon the accused Dr. Mendez, and duly received on November 24, 2004 and January 11, 2005, respectively, thru his accountant and employee named Richard Bianan and Carla Yadao.

Due to the failure of the accused to present or produce the needed records and documents for examination despite several notices, the investigation proceeded through "Third Party Information" and the "Best

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12 Exhibit "WWW"; TSN. November 6, 2006, pp. 6-11.
13 Exhibit "A".
14 Exhibit "B".
15 Exhibit "C".
16 Exhibit "D".

Evidence Obtainable Rule" allowed under Section 5(B), in relation to Section 6(A) and (B) of the Tax Code of 1997.

In the course of gathering information and best obtainable evidence pertaining to the accused, the team verified certain data and information from the BIR Integrated Tax System (BIR-ITS) and different government agencies, including private offices and entities.

Verification of the business activities of accused Dr. Joel C. Mendez disclosed that he has been operating as a single proprietor, doing business for taxable years 2001, 2002, and 2003 under the following trade names and addresses:

a. Mendez Body and Face Salon and Spa - 31-B A. Roces Avenue, Quezon City, registered with RDO No. 39-South Quezon City on May 6, 2002;[17]

b. Mendez Body and Face Salon and Spa - B-3, 3/F New Farmers Plaza, Cubao, Quezon City, registered with RDO No. 40-Cubao on October 24, 2003;[18]

c. Mendez Body and Face Skin Clinic - The Plaza Building, Greenbelt, Ayala Center, Makati City, registered with RDO No. 47-East Makati on April 30, 2004;[19]

d. Weigh Less Center - SM City, San Fernando, Pampanga, registered with RDO No. 21-San Fernando, Pampanga on January 17, 2003;[20] and

e. Mendez Weighless Center - 2/F CSI Mall, Lucao District, Dagupan City, registered with RDO No. 4-Calasiao, Pangasinan on May 16, 2003.[21]

Verification of the tax records from the BIR-ITS revealed that accused Dr. Mendez did not file his income tax returns for taxable years 2001 and

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17 Exhibit "O".
18 Exhibit "EEE".
19 Exhibit "RRR".
20 Exhibit "AAA".
21 Exhibit "MMM".

2002. This was corroborated by the direct testimonies of the following Revenue District Officers who issued the corresponding certifications evidencing the failure of the accused to file his income tax returns for taxable years 2001 and 2002:

a. Revenue District Officer Clavelina S. Nacar of RDO No. 39-South Quezon City - Certification dated February 22, 2005;[22]

b. Revenue District Officer Romeo E. Naranjo of RDO No. 40-Cubao, Quezon City – Certification dated March 7, 2005;[23] and

c. Revenue District Officer Florante R. Aninag of RDO No. 21-San Fernando, Pampanga – Revenue Certification dated February 22, 2005.[24]

Mr. Alex C. Perez, Chief of the Document Processing Section of Revenue District No. 39–South Quezon City, corroborated the testimony of Atty. Cruz and identified the Certification dated March 9, 2005, attesting that accused Dr. Mendez has no record on file as to his Annual Income Tax Return for taxable years 1995 to 2000 per its office ITS inquiry despite the existence and operation of his business, Weigh Less Center.[25]

During the investigation, it was further gathered that the accused filed his income tax return for taxable year 2003 with Revenue District Office (RDO) No. 4-Calasiao, Pangasinan, for his Mendez Weigh Less Center located at CSI City Mall, Lucao District, Dagupan City despite the existence of his principal place of business at 31 Roces Avenue, Quezon City, as evidenced by the Certification dated February 23, 2005 and the letter dated August 15, 2006 issued by Mr. Joseph M. Catapia, Revenue District Officer

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[22] Exhibit "G"; TSN, November 13, 2006, pp. 11-16.
[23] Exhibit "EEE"; TSN, November 13, 2006, pp. 33-34.
[24] Exhibit "BBB"; TSN, November 27, 2006, pp. 21-23.
[25] Exhibit "F^{5}"; TSN, November 13, 2006, pp. 59-60.

of RDO No. 4, and income tax return of the accused. Said certification was also identified during trial by Mr. Joseph M. Catapia himself.[26]

The team was also able to establish that the filing by the accused of his income tax return with Revenue District Office No. 4 was irregular and was intended to evade payment of correct taxes since accused Dr. Mendez, operating as a single proprietor of different businesses, is required to file consolidated income tax return, *viz.*, an income tax return containing the summary of his income from all sources or business operations in and outside Metro Manila in accordance with Section 51(A)(4)(a) and (B).

The team likewise found that the non-filing of accused Dr. Mendez of his income tax returns for taxable years 2001 and 2002 was willful and done with deliberate intent to evade payment of taxes, considering that the accused had been operating several businesses for income and making capital investments as early as 1993.

As a result of the investigation and documentary evidence gathered, it was established that despite having practiced his profession through the operation of his businesses, accused failed to file his income tax returns for taxable years 2001 and 2002, and under declared in 2003.

Mr. Von Lentejas testified[27] that as a specialist at the Public Reference Unit of the Securities and Exchange Commission (SEC), he signed authenticated copies of documents issued by the said Unit and he had the occasion to examine certified copies of the following documents:

1. SEC Registration No. A1996-06633 of Weigh Less Center, Co., dated September 23, 1996, together with Articles of

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26 Exhibits "MMM", "NNN", and "K5"; TSN, January 22, 2007, pp. 14-23.
27 TSN, November 20, 2006, pp. 14-21.

Partnership of Weigh Less Center Co., dated September 10, 1996;[28]

2. SEC Reg. No. AP093-001258 of Sabili Mendez Medical Services Co., dated August 11, 1993, together with Articles of Partnership of Sabili Mendez Medical Services Co., dated August 3, 1993;[29]

3. SEC Registration No. AP093-001258 of Mendez Medical Services Co., (formerly Sabili Mendez Medical Services Co.) dated August 8, 1996, together with Articles of Partnership of Mendez Medical Services Co., dated June 5, 1996;[30]

4. SEC Registration No. AP096-00270 of Dr. Mendez Industrial and Lying-In Clinic Ltd. Co., dated February 6, 1996, together with Articles of Partnership of Dr. Mendez Industrial and Lying-In Clinic Ltd. Co., dated January 23, 1996;[31]

5. SEC Registration No. AS094-000937 of Primehealth Card Services, Incorporated, dated February 1, 1994, together with Articles of Incorporation of Primehealth Card Services, Incorporated, dated January 13, 1994;[32]

6. SEC Registration No. AP096-00909 of Oro Cup, Co., dated May 2, 1996, together with Articles of Partnership of Oro Cup, Co., dated April 22, 1996;[33]

7. SEC Registration No. AP096-00184 of Oro Glass and Aluminum Supply Ltd. Co., dated January 26, 1996, together with Articles of Partnership of Oro Glass and Aluminum Supply Ltd. Co., dated January 25, 1996;[34]

8. SEC Registration No. AP096-00294 of The New Millenium Network Ltd. Co., dated February 7, 1996, together with Articles of Partnership of The New Millenium Network Ltd. Co, dated February 5, 1996;[35] and

9. SEC Registration No. A200111706 of The Big and Small Art Co., dated August 8, 2001, together with Articles of ge

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28 Exhibits "QQ" to "QQ-6".
29 Exhibits "RR" to "RR-6".
30 Exhibits "SS" to "SS-6".
31 Exhibits "TT" to "TT-6".
32 Exhibits "UU" to "UU-13".
33 Exhibits "VV" to "VV-6".
34 Exhibits "WW" to "WW-6".
35 Exhibits "XX" to "XX-6".

Partnership of the Big and Small Art Co., dated May 24, 2001.[36]

The above-enumerated documents, which were derived from the records of the SEC, corroborate Atty. Cruz's testimony that accused Dr. Mendez made several investments as early as the year 1993.

Also, from the foregoing documents, the prosecution concluded that the accused has been engaged in the practice of his profession since 1996 through Weigh Less Center, Co., registered as a partnership on September 23, 1996 for the purpose of conducting medical program aimed at assisting clients to lose weight and to maintain their ideal body weight afterwards.

In connection thereto, Atty. Cruz also testified that when her team conducted ocular inspection of the different Weigh Less Center branches, particularly, the Mendez Medical Group Weigh Less Center located at The Plaza Building, Greenbelt, Ayala Center, Makati City, they noticed a colored poster containing the phrase "Since 1996 Dr. Joel Mendez."[37]

The investigating team also obtained from the Notarial Section of the Office of the Clerk of Court of the Regional Trial Court (RTC) of Quezon City a certified true copy of the Contract of Lease that was executed in Quezon City on July 12, 2001, between Dr. Mendez, as Lessee, and Ma. Lita Gregorio, as Lessor; showing that the lease pertains to the period "August 15, 2001 to August 14, 2007", covering the whole building with a total floor area of 220 square meters, more or less, for a monthly rental of P27,000.00, for the

36 Exhibits "YY" to "YY-6".
37 TSN, November 6, 2006, pp. 6-11; Exhibit "W W W-4", par. 18, p. 617, Division Docket.

purpose of establishing a health clinic and art gallery located at 31-G A. Roces Ave., Quezon, City.[38]

In order to prove that the accused was earning income from taxable years 2001 to 2003 through operation of his different branches of Weigh Less Center, Body and Face Salon and Spa, and Face Skin Clinic, the prosecution also presented certified true copies of the various advertisement placements made by the accused with different major publications, specifically, those evidencing the sixty (60) advertisements he placed with the Philippines Star from April 16 to October 31, 2001, two hundred thirty-five (235) advertisements from January to December 18, 2002, and ninety-six (96) from January 6 to December 17, 2003.[39]

The prosecution likewise submitted in evidence records of newspaper clippings secured from PhilStar Daily, Inc., which revealed that accused Dr. Mendez had Weigh Less Center branches in operation at different addresses as per advertisement in the newspaper, The Philippine Star.[40]

Furthermore, the information obtained from the Department of Trade and Industry (DTI) indicated that Dr. Mendez had businesses registered under his name as owner on May 26, 2003, July 31, 2003, and September 17, 2003, based on the Certification issued by Ms. Emma C. Asusano, DTI-NCR Regional Caretaker. Said certification was also presented, identified and admitted by this Court.[41]

The prosecution also presented the letter-reply issued by Arabelle O. Petilla, the Chief of the Records Section of the Management Information

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38 Exhibit "N".
39 Exhibits "P" to "R-7".
40 Exhibits "T", "U", "V", "W", "X" to "X-2", and "OOO".
41 Exhibits "ZZ", "DDD", and "HHH".

Division of the Land Transportation Office (LTO) as regards the various vehicles purchased during 1996, 2000, 2001, 2002, and 2003 by the accused duly registered under his name.[42] Ms. Petilla indicated that the information contained therein is based on the LTO Information Technology System database.

To further bolster its stance that the accused was earning income from the year 2001 to 2003, the prosecution presented the original copy of the Letter dated July 19, 2005, issued by Atty. Salvador A. Alcuino, Jr., Senior Legal Counsel of the Legal Affairs Department of Philippine Airlines, including the Summary of Gross Fares paid by the accused for his travels abroad for taxable years 2001, 2002, and 2003.[43] In addition, a Certification from the Bureau of Immigration shows that accused Dr. Mendez made forty-one (41) travels from 1995 to 2000; five (5) foreign travels in 2001; five (5) foreign travels in 2002, and twenty-two (22) foreign travels in 2003.[44]

Lastly, the prosecution presented the Computation of Expenditures under the Contract of Lease dated July 12, 2001, the Computation of Expenditures under Contract of Lease dated July 18, 2003, and the Computation of Deficiency Tax for December 31, 2002 and December 31, 2003 (with the affidavits attesting to the same), for the purpose of proving the expenditures of the accused, that the accused was earning income from his Weigh Less Center branches for the years 2002 and 2003, and the deficiency income tax liability of the accused based on the best evidence obtainable.[45] Jc

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42 Exhibits "AA" to "AA-3".
43 Exhibits "Z" to "Z-10".
44 Exhibits "Y" to "Y-3".
45 Exhibits "J^6" to "J^6-6".

On the basis of the data and documentary evidence gathered, the investigating team proceeded to compute the estimated amount of income that accused Dr. Mendez earned for taxable years 2001, 2002, and 2003 based on his net worth and expenditures.

Applying the net worth and expenditures method, their computation yielded the following results:

> "a. For taxable year 2001, accused Dr. Joel C. Mendez earned an income <u>from various sources but did not report the same to the prejudice of the government</u> in the estimated amount of Php1,089,439.08;
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> b. For taxable year 2002 accused Dr. Joel C. Mendez earned an income <u>from various sources but did not report the same to the prejudice of the government</u> in the estimated amount of Php1,522,152.14;
>
> c. For taxable year 2003, evidence shows that accused Dr. Joel C. Mendez earned an income from different sources but failed to supply correct information and declared instead a net loss in the amount of Php38,893.91 to the prejudice of the government.

<u>Evidence for the Defense</u>

The first witness for the accused, Ms. Cherry Perez, an Accounting Staff of Weigh Less Center, Roces Branch, testified[46] that sometime in November of the year 2004, while she was still a medical staff at the said branch, representatives from the Bureau of Internal Revenue came to the center looking for Dr. Mendez. The representatives from the BIR asked her to receive the Letter of Authority and the First Notice to Submit Documents upon learning that the accused was not around, despite informing them that she has no authority to receive it, for and on behalf, of Dr. Mendez. She gave the

[46] TSN, January 14, 2009, pp. 7-9; TSN, February 16, 2009, pp. 8-11.

documents to their then accountant, Mr. Richard Bianan, but he was not able to forward said documents to Dr. Mendez. As a result, Dr. Mendez was surprised to learn that a Letter of Authority and a First Notice were served way back in November 2004, as he came to know of said service only in February 2005.

Accused Dr. Mendez testified[47] that he is a doctor by profession and run several clinics under the banner of Mendez Medical Group. He is engaged in medical business. He further testified that Letter of Authority No. 00002438 dated November 8, 2004 was not personally served on him and was only made aware of its existence sometime late February 2005, when he was informed by his staff that persons representing themselves as "assessors" went to his office demanding for a copy of certain assessment.

The accused narrated[48] that sometime late of February 2005, as he was leaving his office, he saw the representatives from the BIR in his office. The BIR representatives told him about the said "assessment" to which the accused replied that he has not received any. The BIR representatives went back to his Office and were met by Ms. Rose Zhamar Bejar, his staff, this time with a laptop computer. According to the accused, Melvin Mondigo, a member of the investigating team, then showed Ms. Bejar a file copy of the said LOA from his computer and told her that if she wanted a copy, he could copy it in a diskette. He then instructed Ms. Bejar *"kumpletuhin nyo yang mga nakalagay diyan at tawagan mo ako kapag kumpleto na,"* giving his cell phone number and office number, and secured the telephone numbers of the office.

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47 Exhibit "38"; TSN, May 4, 2009, pp. 9-19.
48 Ibid.

Atty. Grace Belarmino-Cruz, one of the BIR representatives, then tried to contact the accused's accountant/bookkeeper, Mr. Richard Bianan.

Based from the testimony[49] of the accused, Mr. Bianan, who was entrusted with all documents and records in relation to the business, deliberately concealed these notices from the accused to avoid discovery that he has not been remitting or paying to the BIR sums of money which the accused entrusted to him to pay the tax obligations of the accused.

He further testified that Mr. Richard Bianan has been charged with multiple counts of Estafa. He also stated that he issued checks and vouchers in Mr. Richard Bianan's name for the payment of taxes and other obligations.[50]

Furthermore, sometime in February 2005, the accused allegedly caught Mr. Bianan stealing cosmetic products and other valuables from the clinic and consequently filed complaint with the police authorities. According to him, Mr. Bianan was then charged by Inquest Prosecutor Primo G. Sio, Jr. of the Office of the City Prosecutor of Quezon City with the crime of Qualified Theft.[51] It was during one of their jail visits that Mr. Bianan allegedly confessed to them about the non-payment of his tax obligations.

In addition, he also testified[52] that he leased the property located in A. Roces Avenue, Quezon City on July 12, 2001, but Weigh Less Center-Roces Avenue Branch only started its operation on or about March 4, 2003. The delay in operation was supposedly due to the fact that the property is a two-floor residential unit that is not designed at all as office space and that he had

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49 Ibid.
50 Exhibits "7" to "21"; ibid.
51 Exhibit "35"; TSN, May 4, 2009, pp. 9-19.
52 Exhibit "39";TSN, June 17, 2009..

to cause its renovation as his personal funds would allow. Due to limited funds, the construction took a while before the same was completed. The delay was also caused by the problem with building authorities inasmuch as the renovation was done without a permit.

Accused also made a statement that the idea of putting up clinics came up in 1996, but due to financial problems and because his focus then was art, the clinics materialized only after several years. As regards the vehicles he allegedly purchased from the years 2001 to 2003, he said that the said vehicles were obtained through bank loans. He explained that the newspaper advertisements were intended to generate public awareness in the business. While he did attend to some celebrities, he did not charge them any fee. They had a simple understanding that he would do certain medical services for his celebrity clients and in return, they would endorse his future business. The idea is that his future business is advertised through the publicity generated by the treatments of celebrities.[53]

The third witness for the defense was Ma. Lita Gregorio who testified that she is the owner and lessor of the 2-storey commercial building with an area of 220 square meters located at 31-G, A. Roces Avenue, Quezon City.[54] She stated that she entered into a six-year contract of lease with Dr. Mendez with a monthly rental of P25,000.00. Ms. Gregorio said that it was on August 15, 2001 that Dr. Mendez actually occupied subject property and started to gradually introduce major improvements. It was not until in the latter part of the year 2002 that the renovation was completed. Ms. Gregorio corroborated Jc

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53 Ibid.
54 Exhibit "23".

the accused's testimony that the operation of the health clinic and art gallery was suspended due to lack of building permit.[55]

THE ISSUE

WHETHER OR NOT ACCUSED DR. JOEL C. MENDEZ IS LIABLE FOR VIOLATION OF SECTION 255 OF THE 1997 NATIONAL INTERNAL REVENUE CODE, AS AMENDED, FOR FAILURE TO FILE INCOME TAX RETURN AND FOR FAILURE TO SUPPLY CORRECT AND ACCURATE INFORMATION.

THE COURT'S FINDINGS AND RULING

The offenses allegedly committed by herein accused are violation of the first paragraph of Section 255 of the National Internal Revenue Code (NIRC), which provides:

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

Based on the above-mentioned provision, the following elements must be established:

[55] Exhibit "24".

Criminal Case No. O-013

1. The accused was a person required to make or file a return;

2. The accused failed to make or file the return at the time required by law; and

3. The failure to make or file the return was willful.

Criminal Case No. O-015

1. The accused is a person required under the Tax Code or by rules and regulations to pay any tax, make a return, keep any record, or supply correct and accurate information;

2. The accused failed to supply correct and accurate information at the time or times required by law or rules and regulations; and

3. Such failure to supply correct and accurate information is willful.

In his defense, accused avers that he was not able to personally receive the notices issued by the BIR. The accused alleges that it was his former accountant, Mr. Richard Bianan, who received the notices and that Mr. Bianan concealed said notices from the accused.

It must be pointed out that, as narrated by the accused in his Affidavit and as confirmed by him during the cross-examination, Mr. Richard Bianan was authorized by him to receive documents and notices on his behalf, including the notices issued by the BIR. Hence, the notification requirement was deemed substantially complied with by the BIR, considering that the subject notices were admittedly received by Mr. Bianan.

Even assuming, *arguendo*, that Mr. Bianan concealed said notices from the accused, the BIR is still authorized to subject the accused to an investigation and assess him on the basis of best evidence obtainable and third-party information. In the recent case of *Commissioner of Internal Revenue vs. Hon. Raul M. Gonzalez, et al.,*[56] the Supreme Court said that the lack of consent of the taxpayer does not make the resort to third-party information and best evidence obtainable illegal. The ruling of the High Court is hereunder quoted in part:

> "In the Details of Discrepancies attached as Annex B of the PAN, private respondents were already notified that inasmuch as the revenue officers were not given the opportunity to examine LMCEC's books of accounts, accounting records and other documents, said revenue officers gathered information from third parties. Such procedure is authorized under Section 5 of the NIRC, which 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:
> >
> > > (A) To examine any book, paper, record or other data which may be relevant or material to such inquiry;
> > >
> > > (B) To obtain on a regular basis **from any person other than the person whose internal revenue tax liability is subject to audit or investigation**, or from any office or officer of the national and local governments, government agencies and instrumentalities, including the *Bangko Sentral ng Pilipinas* and government-owned or -controlled corporations, any information such as, but not limited to, costs and volume of production, receipts or sales and gross incomes of taxpayers, and the names, addresses, and financial statements of corporations, mutual fund companies,

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[56] G.R. No. 177279, October 13, 2010.

> insurance companies, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures or consortia and registered partnerships, and their members;
>
> (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;
>
> (D) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry; x x x (Emphasis supplied)

> Private respondents' assertions regarding the qualifications of the 'informer' of the Bureau deserve scant consideration. **We have held that the lack of consent of the taxpayer under investigation does not imply that the BIR obtained the information from third parties illegally or that the information received is false or malicious. Nor does the lack of consent preclude the BIR from assessing deficiency taxes on the taxpayer based on the documents.** In the same vein, herein private respondents cannot be allowed to escape criminal prosecution under Sections 254 and 255 of the NIRC by mere imputation of a 'fictitious' or disqualified informant under Section 282 simply because other than disclosure of the official registry number of the third party 'informer,' the Bureau insisted on maintaining the confidentiality of the identity and personal circumstances of said 'informer." *(*Emphasis supplied*)*

Therefore, even if the accused was not notified of the investigation made by the BIR, the information gathered in the course of the said investigation is not deemed illegal and may serve as basis for criminal prosecution.

Now, before going one by one with the foregoing elements, it may be relevant to emphasize that direct evidence is not the sole means of establishing guilt beyond reasonable doubt. Established facts that form a chain of circumstances can lead the mind intuitively or impel a conscious process of reasoning towards a conviction. Indeed, rules on evidence and principles in jurisprudence have long recognized that the accused may be convicted through circumstantial evidence.[57]

Circumstantial evidence has been defined as such evidence which goes to prove a fact or series of facts, other than the facts in issue, which, if proved, may tend by inference to establish the fact in issue. But for circumstantial evidence to be sufficient for a conviction, the following requisites must be present, namely: (a) there is more than one circumstance; (b) the facts from which the inferences are derived have been proven; and (c) the combination of all the circumstances results in a moral certainty that the accused, to the exclusion of all others, is the one who has committed the crime.[58]

Hence, this Court's determination of the accused's culpability shall not be confined with the appreciation of direct evidence submitted by the prosecution but shall also include the consideration of the circumstantial evidence adduced to establish the guilt of the accused beyond reasonable doubt.

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57 *Amora vs. People* , G.R. No. 154466, January 28, 2008, 542 SCRA 485, 491.
58 Ibid.

Criminal Case No. O-013

As to the first element, it is necessary to determine who are those required to file a return and declare income tax. In this regard, this Court found instructive the provisions under Section 51(A) and 74 in connection with Section 32 of the NIRC of 1997, as amended.

> "SEC. 51. *Individual Return*. -
>
> (A) *Requirements*. –
>
> (1) Except as provided in paragraph (2) of this Subsection, the following individuals are required to file an income tax return:
>
> **(a) Every Filipino citizen residing in the Philippines;**
> (b) Every Filipino citizen residing outside the Philippines, on his income from sources within the Philippines;
> (c) Every alien residing in the Philippines, on income derived from sources within the Philippines; and
> (d) Every nonresident alien engaged in trade or business or in the exercise of profession in the Philippines.
>
> (2) The following individuals shall not be required to file an income tax return;
>
> (a) An individual whose gross income does not exceed his total personal and additional exemptions for dependents under Section 35: *Provided*, **That a citizen of the Philippines and any alien individual engaged in business or practice of profession within the Philippine shall file an income tax return, regardless of the amount of gross income**;
>
> (b) An individual with respect to pure compensation income, as defined in Section 32(A)(1), derived from sources within the Philippines, the income tax on which has been correctly withheld under the provisions of Section 79 of this Code: *Provided*, That an

individual deriving compensation concurrently from two or more employers at any time during the taxable year shall file an income tax return: *Provided, further*, That an individual whose pure compensation income derived from sources within the Philippines exceeds Sixty thousand pesos (P60,000) shall also file an income tax return;

(c) An individual whose sole income has been subjected to final withholding tax pursuant to Section 57(A) of this Code; and

(d) An individual who is exempt from income tax pursuant to the provisions of this Code and other laws, general or special.

(3) The foregoing notwithstanding, any individual not required to file an income tax return may nevertheless be required to file an information return pursuant to rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner.

(4) The income tax return shall be filed in duplicate by the following persons:

(a) A resident citizen - on his income from all sources;
(b) A nonresident citizen - on his income derived from sources within the Philippines;
(c) A resident alien - on his income derived from sources within the Philippines; and
(d) A nonresident alien engaged in trade or business in the Philippines - on his income derived from sources within the Philippines." (Emphasis supplied)

"SEC. 74. *Declaration of Income Tax for Individuals*. -

(A) *In General*. - Except as otherwise provided in this Section, **every individual subject to income tax under Sections 24 and 25(A) of this Title, who is receiving self-employment income, whether it constitutes the sole source of his income or in combination with salaries, wages and other fixed or determinable income, shall make and file a declaration of his estimated income for the current taxable year on or before April 15 of the same taxable year.** In general, **self-employment income consists**

of the earnings derived by the individual from the practice of profession or conduct of trade or business carried on by him as a sole proprietor or by a partnership of which he is a member. Nonresident Filipino citizens, with respect to income from without the Philippines, and nonresident aliens not engaged in trade or business in the Philippines, are not required to render a declaration of estimated income tax. The declaration shall contain such pertinent information as the Secretary of Finance, upon recommendation of the Commissioner, may, by rules and regulations prescribe. An individual may make amendments of a declaration filed during the taxable year under the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner." (Emphasis supplied)

"SEC. 32. *Gross Income*. -

(A) *General Definition.* - Except when otherwise provided in this Title, **gross income means all income derived from whatever source**, including (but not limited to) the following items:

(1) Compensation for services in whatever form paid, including, but not limited to fees, salaries, wages, commissions, and similar items;
(2) Gross income derived from the conduct of trade or business or the exercise of a profession;
(3) Gains derived from dealings in property;
(4) Interests;
(5) Rents;
(6) Royalties;
(7) Dividends;
(8) Annuities;
(9) Prizes and winnings;
(10) Pensions; and
(11) Partner's distributive share from the net income of the general professional partnership." (Emphasis supplied)

It is clear from the foregoing that the prosecution is tasked to establish the fact that the accused is one of those required to file a return on its income for taxable year 2002 and that the accused is not one of those exempted from filing the same. *Jr*

Based on the evidence adduced by the prosecution, it has been sufficiently established that the accused is a Filipino citizen and a resident of the Philippines.[59] It was further established that the accused is the owner/sole proprietor of "Mendez Body and Face Salon and Spa" No. 31-B A. Roces Ave., Quezon City with TIN No. 120-644-683-000 as evidenced by a Certificate of Registration issued by the Revenue District Officer Clavelina S. Nacar of RDO No. 39-South Quezon City on May 6, 2002.

To further prove the existence and operation of the business of Dr. Mendez during the subject taxable year, the prosecution presented a certified true xerox copy of the contract of lease dated July 12, 2001 executed between the Accused, as lessee and Ma. Lita Gregorio, as lessor, for the period covering August 15, 2001 to August 14, 2007, for the purpose of establishing a health clinic and art gallery located at 31-G A. Roces Ave., Quezon City.

For the taxable year 2002, accused was also found to have spent for advertisement placements with PhilStar Daily, Inc., the total amount of P357,550.46 in the year 2001 and P1,385,108.78 in the year 2002. Also, a list of Ad placements of accused's businesses in the names of "Weigh Less Center", "Body and Face by Mendez", and "Mendez Medical Group" with a total of sixty (60) ad placements in the year 2001 and two hundred thirty-five (235) in the year 2002 was also presented by the prosecution as certified by witness Perlita De Lara, the Chief Accountant of PhilStar Daily, Inc.[60]

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59 Stipulated during the pre-trial conference, docket, p. 499; Exhibit "N".
60 Exhibit "P".

Moreover, the prosecution also presented a Certification from the Philippine Daily Inquirer, indicating a total amount of P3,798,038.72 of gross sales from the ad placements made by the Weigh Less Center advertising the "Mendez Body and Face Spa", from which the amounts of P966,408.83 and P1,702,871.41, represents the gross sales from ad placements made during the year 2001 and 2002, respectively. Said amounts were also reflected in the Summary of Gross Sales to the Mendez Group of Companies for the year 2001 to 2003 attached to the certification issued by Mr. Jose H. Villareal dated February 26, 2007. The said certification was also duly identified by Mr. Villareal during trial.

In addition, the prosecution presented a copy of the advertisement of Weigh Less Center published in the newspaper, The Philippine Star dated September 24, 2001. Even though the accused said that the newspaper advertisements for 2001 and 2002 were made in preparation for his soon-to-open business, nowhere in the advertisements would show that the businesses advertised therein were not yet operational.

Likewise, the prosecution presented the letter-reply issued by Arabelle O. Petilla, Chief of the Records Section of the LTO Management Information Division, as regards the various vehicles purchased during 1996, 2000, 2001, 2002, and 2003 and duly registered under the name of the accused.[61] Ms. Petilla herself testified that the information contained therein was based on the LTO Information Technology System database.

To further bolster its stance that the accused is earning income from the year 2001 to 2003, the prosecution also presented the original copy of the

61 Exhibits "AA" to "AA-3".

Letter dated July 19, 2005 issued by Atty. Salvador A. Alcuino, Jr., Senior Legal Counsel, Legal Affairs Department, Philippine Airlines, including the Summary of Gross Fares paid by the accused for his travel abroad for taxable years 2001, 2002 and 2003. In addition, a certification from the Bureau of Immigration shows that accused Dr. Mendez made 41 travels 1995 to 2000; five (5) foreign travels in 2001; five (5) foreign travels in 2002 and twenty-two (22) foreign travels in 2003.

For its part, accused claims that although his business was registered on May 6, 2002, the same was still not operational; hence, there was no income to declare for the year 2002. Also, Ms. Ma. Lita Gregorio, the lessor of the 2-storey commercial building located at 31-G, A. Roces Avenue, Quezon City, testified, among others, that the renovation of the said building was completed only until in the later part of the year 2002 and that the operation of the health clinic and art gallery was suspended due to lack of building permit.

The accused also added, during his cross-examination, that his source of income in the year 2002 came from his brothers and that he had financial problems from 1996 to 2002.

The accused tried to establish the impossibility of operation of his Roces branch by attributing the non-operation to his building permit problem, which was corroborated by the testimony of the lessor Ms. Lita Gregorio. However, the statements made by Ms. Gregorio failed to show that the Roces branch was not in operation in the year 2002. What Ms. Gregorio merely said is that the operation was suspended, which could mean that the operation already started, only that it was suspended due to the accused's problem with building permit. Also, the testimony of the accused that there was operation Jr in the Roces branch in 2004 despite problems with the said building permit and the on-going renovation of the building only supports the arguments presented by the prosecution of the possibility of operation in the year 2002. The pertinent parts of the accused's testimony[62] given during the hearing held on July 6, 2009 reads:

> "DR. MENDEZ
>
> In particular branch, I think, that branch, your Honors, I'm still in my rush to this program and it is still constructing the area.
>
> JUSTICE CASTAÑEDA
>
> How many weeks did it take to prepare?
>
> DR. MENDEZ
>
> If you are referring, your Honors, to the Roces branch, up to now, we are still having a problem with the construction, your Honors. With other branches, it takes me at least two months to prepare the area. And usually, the mall is not charging from that time, but you are supposed to pay ahead of time.
>
> ATTY. VELASCO
>
> Q. Now, I understand you said that the Roces branch is still going renovation?
>
> DR. MENDEZ
>
> A. Construction.
>
> ATTY. VELASCO
>
> Q. Isn't it true that the construction is to add another floor to the building?
>
> DR. MENDEZ

62 TSN, July 6, 2009, pp. 19-22.

A. Not, your Honors. This is like we have a pending case under the Quezon City that we cannot proceed until it is being done and all the building permits, your Honors. So, it is not an additional floor because my roof *na po sya*. Unless, we took up the roof and we will be adding another floor. There is no another floor.

JUSTICE CASTAÑEDA

There is still a problem with the building permit?

DR. MENDEZ

Yes.

JUSTICE CASTAÑEDA

So, there is no occupancy in the building?

DR. MENDEZ

The way we are paying the rental, your Honors. We are there. My staffs are there also.

ATTY. VELASCO

Q. Your staff is there, so, that means, even while the construction is on-going, operations are also on-going?

DR. MENDEZ

A. I'm referring to the staffs that are staying there right now, your Honors/sir.

ATTY. VELASCO

Q. Are there business operations on-going there?

DR. MENDEZ

A. We seldom seek operations there right now, but we are having, your Honor. I think, it is every Monday, we are having there, and it's all on sale all the time." (Emphasis supplied)

The claims of the accused that he had no income during the year 2002 and that the business registered with the BIR during the year 2002 was not gr yet operational in 2002 are further belied by his own admission during the pre-trial conference and during the cross-examination. The significant parts of the accused's testimony[63] during the hearing held on July 6, 2009 are hereunder quoted to wit:

> "ATTY. VELASCO
>
> Q. Now, as to the celebrity clients that you operated and even before the opening of the business, you said in your Supplemental Affidavit that just the same, these are also advertisements for your soon-to-open business?
>
> DR. MENDEZ
>
> A. Yes, sir.
>
> ATTY. VELASCO
>
> Q. And that you did not derive any source of income here as this was more of an ex-deal?
>
> DR. MENDEZ
>
> A. Yes, sir."

At this juncture, it must be noted that an admission made by a party may be given in evidence against him. Consequently, this very admission of the accused that he rendered services to some celebrities in exchange for the endorsement these celebrities will render in favor of his business actually corroborates the prosecution's evidence that the accused earned income and his business was operational in the year 2002.

With the foregoing pieces of evidence presented by the prosecution as against the rather conflicting testimonies proffered for the defense, it may be

[63] Ibid., pp. 25-26.

inferred that the "Mendez Body and Face Spa" branch was already operational even before its registration with the BIR.

Based on the foregoing circumstantial evidence presented by the prosecution, it was proved that Dr. Mendez is the sole proprietor of the said branch and that during the taxable year 2002, he was able to spend a large amount of money on advertisements, purchase of vehicles, rent, and foreign travels. It is thus concluded that the amount he used for such purchases and expenditures came from his income earned from the practice of his profession through the operation of his business for taxable year 2002. Accordingly, the accused is deemed to be an individual required by law to file income tax return on his income earned during taxable year 2002.

After establishing the fact that the accused is one of those required by law to file income tax return, the prosecution now has the burden to prove that the accused failed to make or file a return at the time required by law.

Section 51(B) and (C)(1) of the NIRC of 1997, as amended, also provides for the venue for the filing of the required income tax return and the period within which to file the same to wit:

> "SEC. 51. *Individual Return.* -
>
> xxx xxx xxx
>
> (B) *Where to File.* - Except in cases where the Commissioner otherwise permits, the return shall be filed with an authorized agent bank, Revenue District Officer, Collection Agent or duly authorized Treasurer of the city or municipality in which such person has his legal residence or principal place of business in the Philippines, or if there be no legal residence or place of business in the Philippines, with the Office of the Commissioner.
>
> (C) *When to File.* - Jc

(1) The return of any individual specified above shall be filed on or before the fifteenth (15th) day of April of each year covering income for the preceding taxable year."

The prosecution has established that the principal place of business of accused Dr. Mendez is the business address of his "Mendez Body and Face Salon and Spa" in 31-B, A. Roces Avenue, Quezon City, with TIN No. 120-644-683-000 as indicated in his Certificate of Registration with the RDO No. 39-South Quezon City. Accordingly, its income tax return for taxable year 2002 should have been filed with RDO No. 39-South Quezon City.

However, based on the evidence presented by the prosecution, it was found that the accused has no records of returns filed for taxable years 2001 and 2002 as certified by Revenue District Officer Clavelina S. Nacar of RDO No. 39-South Quezon City in a Certification dated February 22, 2005.[64]

In view thereof, this Court finds that the accused, despite earning income from the operation of its Weigh Less Center branch, failed to file a return for taxable year 2002.

Now as to the willfulness of the omission made by the accused, it was mentioned in the Resolution of this Court dated August 15, 2008, which denied the Demurrer to Evidence filed by the accused, that the term "willfully" generally connotes a voluntary, intentional violation of a known legal duty. If a taxpayer in good faith believes that certain income is not taxable and, acting under such belief, does not include the amount received in his return, he does not have willful intent required to be convicted of a tax crime.

The findings of this Court on the first two elements apparently show that the accused willfully failed to file his return.

64 Exhibit "G".

In essence, the accused claims that he did not earn any income during taxable year 2002. This assertion was later disproved by the findings of this Court and the result of the investigation of the BIR investigating team that the accused actually has unreported income earnings for the taxable year 2002. His purchases and expenditures such as the ad placements, rents and purchase of vehicles undeniably prove that he has knowledge that he has substantial income which was actually used to spend on the said purchases and expenses. In effect, the accused's denial of his income earned in 2002 obviously connotes the attempt of the accused to conceal said income earnings by not filing his income tax return. In addition, the accused's habitual failure to file his income tax return for the years 2001 and 2002 despite findings that he was earning income during the said taxable years clearly shows the willfulness of his non-filing of tax return for taxable year 2002. Consequently, this Court is convinced that the accused indeed willfully failed to file his return for taxable year 2002.

This Court finds the circumstantial evidence adduced by the prosecution sufficient to support a finding that the accused is guilty beyond reasonable doubt of willful failure to file or make a return for taxable year 2002, in violation of Section 255 of the NIRC of 1997, as amended.

CRIMINAL CASE NO. O-015

First Element:

He is a person required under this code or by rules and regulations to pay any tax, make a return, keep any record, or supply correct and accurate information gr

As earlier discussed, the prosecution has already established that the accused is required by law to file a return and to declare all his income from all sources.

Second Element:

He fails to supply correct and accurate information at the time or times required by law or rules and regulation.

Anent the second element, the prosecution has the burden to prove that the accused, as a duly registered taxpayer and as a sole proprietor of various branches of Weigh Less Center, failed to supply the correct and accurate information in his income tax return for taxable year 2003 due to his failure to declare and indicate in his return *all his income from all sources* for taxable year 2003.

During the investigation, it was found that accused filed his income tax return for taxable year 2003 with Revenue District Office No. 4–Calasiao, Pangasinan, for his Mendez Weigh Less Center located at CSI City Mall, Lucao District, Dagupan City, as evidenced by the Certification dated February 23, 2005 issued by Mr. Joseph M. Catapia, Revenue District Officer of RDO No. 4. In the said Annual Income Tax Return submitted for taxable year 2003, the accused declared a net loss of P38,893.91.

However, based on the documents gathered by the BIR Revenue District Officers during the investigation, it was discovered that there are several other branches registered with the BIR having the trade/business names "Weigh Less Center", "Mendez Body and Face Salon and Spa" and

"Mendez Body and Face Skin Clinic" under the name of the accused Dr. Mendez as the sole proprietor/owner. This fact was evidenced by the Certifications issued by the duly authorized Revenue District Officers who certified the registration of said branches with the BIR. The trade names and addresses of the said branches are as follows:

a. Mendez Body and Face Salon and Spa - 31-B Roces Avenue, Quezon City, registered with RDO No. 39-South Quezon City on May 6, 2002;[65]

b. Mendez Body and Face Salon and Spa - B-3, 3/F New Farmers Plaza, Cubao, Quezon City, registered with RDO No. 40-Cubao on October 24, 2003;[66]

c. Mendez Body and Face Skin Clinic - The Plaza Building, Greenbelt, Ayala Center, Makati City, registered with RDO No. 47-East Makati on April 30, 2004;[67]

d. Weigh Less Center - SM City, San Fernando, Pampanga, registered with RDO No. 21-San Fernando, Pampanga on January 17, 2003;[68]and

e. Mendez Weighless Center - 2/F CSI Mall, Lucao District, Dagupan City, registered with RDO No. 4-Calasiao, Pangasinan on May 16, 2003.[69]

Also, the information obtained from the Department of Trade and Industry revealed that accused Dr. Mendez has businesses registered under his name as owner on May 26, 2003, July 31, 2003, and September 17, 2003, proving that the accused made several investments in 2003.

It may be deduced from the foregoing that aside from the income generated from the operation of the Dagupan branch, the accused earned

65 Exhibit "O".
66 Exhibit "EEE".
67 Exhibit "RRR".
68 Exhibit "AAA".
69 Exhibit "MMM".

income from the operation of its other branches, which accused failed to declare in 2003.

As previously mentioned, the prosecution was able to present evidence regarding the accused's purchases and registration of various vehicles in 1996, 2000, 2001, 2002, and 2003, and his foreign travels in taxable years 2001, 2002 and 2003; further proving that said branches of the businesses of the accused were already earning income.

The prosecution also presented several lease contracts with the accused's named as the lessee, including the lease contract of the building for the Roces branch, which were rented by the accused for the establishment of its other branches and computed the corresponding rental expense to prove that the foregoing branches of accused's businesses were already earning income. The lease contracts presented also include the one between the accused and The Plaza Inc., for the lease of its premises in The Plaza Building, Greenbelt, Ayala Center, Makati Metro Manila; with a lease period from September 1, 2003 to December 31, 2005, entered by and between the parties on July 17, 2003. The computation made by the investigating team on the expenditure covering the said contract of lease yields the amount of P510,000.00 as total rentals from the taxable year 2003. Also, the prosecution was able to present the lease contract between the accused and SM Prime Holdings, Inc., for the accused's rental of the lessor's premises in SM City Pampanga with a lease period from October 15, 2002 until April 30, 2004.[70]

Furthermore, the certified true copies of the various advertisement placements for the Weigh Less Center branches made by the accused with

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70 Exhibit "H^6-H^{6-1}".

different major publications, specifically, those evidencing the ninety-six advertisements placed from January 6 to December 17, 2003 with the PhilStar Daily, Inc. were presented to prove that the accused was earning income from taxable years 2001 to 2003 through the operation of his different branches of Weigh Less Center, Body and Face Salon and Spa, and Face Skin Clinic. Also, a Certification from the Vice President for Finance of the Philippine Daily Inquirer shows that Weigh Less Center had advertising placements for the year 2001 to 2003 with the Philippine Daily Inquirer and all the gross sales amounting to P3,798,038.72 from the said ad placements were reported with the BIR; the P1,128,758.48 of which represents the amount of sales made to the Mendez Group of Companies for the year 2003.

Taking into consideration the bulk of circumstantial evidence proving the accused's ability to spend on the foregoing expenditures and purchases during the taxable year 2003, it can be concluded that the accused earned substantial income during the said year.

Such findings that the accused earned substantial income for taxable year 2003 clearly contradicts the declaration made by the accused in his income tax return filed with RDO No. 4 that he suffered a net loss during taxable year 2003. The said declaration of net loss by the accused is further disproved by his own admission in his Supplemental Affidavit and his testimony during cross-examination that he was able to put up several branches and was able to spend over five million pesos on the same in taxable year 2003. The pertinent statements of the accused during cross-examination[71] are hereunder quoted as follows:

"ATTY. VELASCO

Q. How do you sustain yourself then in 2002 if you were not given any money?

DR. MENDEZ

A. Well, some people are giving me money, my brothers.

ATTY. VELASCO

Q. How much?

DR. MENDEZ

A. Well, sometimes, they send 200 dollars, 300 dollars.

ATTY. VELASCO

Q. May we know who this brother is?

DR. MENDEZ

A. Dr. Hector Mendez, Dr. Oscar Mendez.

ATTY. VELASCO

Q. They are based in the United States?

DR. MENDEZ

A. In the United States.

ATTY. VELASCO

Q. Now, as you said, you are having financial problems from 1996 to 2002 and that nobody gave you money in 2002 except Dr. Hector Mendez and Dr. Oscar Mendez ranging from 200 to 300 dollars, how were you able to spend more than 5 million in less than a year to put up all these branches in 2003?

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[71] *Supra.*, at note 62, pp. 37-41.

DR. MENDEZ

A. I did not mention that I'm having financial problem. Is that your question? You mentioned that I'm having financial problem.

ATTY. VELASCO

Q. Yes. You affirmed it on cross and it is stated in your Judicial Affidavit.

DR. MENDEZ

A. May I see where that is?

ATTY. VELASCO

Q. In Question and Answer 9, it was pointed out to you that the idea of putting up the clinics came up in 1996, but because of the financial problems, you were only able to put them up later and you even reiterated, even if we ask the Stenographer to read it back...*(interrupted)*

ATTY. CAABAY

May I object, your Honors.

JUSTICE ENRIQUEZ

The Public Prosecutor is not finished yet. Let him finish first.

ATTY. VELASCO

Q. Even if the Court reads back what you said, you even reiterated the term, yes, financial problems. So, the question is, if you were having these financial problems in 1996 to 2002, and in 2002, your parents did not give you any money because they passed away, I'm sorry about that, and that Dr. Oscar and Hector Mendez only gave you 200/300 dollars for 2002, how were you able to spend over five million and still going up to put up these six (6) branches in a little over a year?

DR. MENDEZ

A. The financial problem I mentioned is my medical problem. It's not a hard question. That's what I mentioned. If you want me to read it again, I could."

Moreover, if the accused claims that he suffered a net loss from the operation of his Mendez Weigh Less Center Dagupan branch during taxable year 2003, then the substantial income found to have been earned by the accused during the same year can be attributed to the operation of his other branches for taxable year 2003; which were not reflected in the Annual Income Tax Return submitted by the accused for the same year.

Furthermore, verification of the tax records from the BIR Integrated Tax System revealed that accused Dr. Mendez did not file his income tax returns for taxable year 2003 on its income earned from these other branches.

The Certifications issued by the following Revenue District Officers would show the failure of the accused to file his income tax returns for its income earned from the operation of its branches located in A. Roces Ave, Quezon City; Cubao, Quezon City; and San Fernando, Pampanga for taxable year 2003:

a. Revenue District Officer Clavelina S. Nacar of RDO No. 39-South Quezon City - Certification dated February 22, 2005;[72]

b. Revenue District Officer Romeo E. Naranjo of RDO No. 40-Cubao, Quezon City – Certification dated March 7, 2005;[73]

c. Revenue District Officer Simplicio A. Madulara of RDO No. 47-East Makati dated March 2, 2005;[74] and

d. Revenue District Officer Florante R. Aninag of RDO No. 21-San Fernando, Pampanga – Certification dated February 22, 2005.[75]

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72 Exhibit "G".
73 Exhibit "EEE".
74 Exhibit "RRR".
75 Exhibit "BBB".

In view of the foregoing circumstances, the Court is convinced that the prosecution was able to establish that the accused failed to supply the correct and accurate information on its Annual Income Tax Return filed for taxable year 2003 by making it appear that the operation of his Dagupan branch is his only source of income during taxable year 2003.

Third Element:

Such failure is willful.

As regards the third element, this Court finds the failure of the accused to supply the correct information in his return to be willful.

In case of *People of the Philippines vs. Estelita Delos Angeles,*[76] this Court defined the term "willful" in this wise:

> "Willful in the tax crimes statutes means a voluntary, intentional violation of a known legal duty and bad faith or bad purpose need not be shown *[Mertens (Law of Federal Income Taxation) Chapter 47.05, page 28, Volume 13, see U.S. v. Green, 757 F2d 116, 85-1 USTC 9178 (CA 1985), in which the Court, citing U.S. v. Moore, 627 F2d 830 (CA 1980) and U.S. v. Verkuilen, 690 F2d 648, 82-2 USTC 9618 (CA7 1982), upheld the conviction of a tax protester for willful failure to file returns].*"

In this case, the accused is considered to have knowledge that he has the obligation to declare and file income tax return for taxes from all sources. This may be confirmed by his act of filing his income tax return declaring his income from the operation of his Dagupan branch. Notwithstanding said knowledge of the operation of his other branches as well as his obligation to file income tax return or at least consolidate and reflect his income from his other branches in his income tax return filed in taxable year 2003, the jc

[76] CTA Crim. Case No. O-027, November 25, 2009.

accused still failed to file his income tax return on his income from these other Weigh Less Center branches for taxable year 2003; making it appear that his only source of income was from the operation of his Weigh Less Center in Dagupan City.

The accused attempted to justify the under declaration by blaming his former accountant and book keeper, Mr. Richard Bianan, averring that Mr. Bianan is the one who has not been remitting or paying to the BIR the sums of money which he entrusted to him to pay his tax obligations. He further identified documentary evidence to prove the alleged embezzlement of money by Mr. Bianan which was intended for payment to the BIR, such as the checks and vouchers he allegedly issued. The defense also presented a copy of the Resolution of the Inquest Prosecutor dated March 15, 2005 and a copy of a Memo of Preliminary Investigation with Affidavit of Complaint as proof that he filed a case for Qualified Theft and Estafa, respectively, against Mr. Bianan.

However, as correctly pointed out by the prosecution in its Memorandum, the said documents only show that Mr. Bianan took clinic inventories, business and mayor's permit fees, and 2004 withholding tax remittances of accused's employees. No evidence at all on the supposed income tax payments for 2003, which is the subject of the present criminal case.

Even conceding that the accused was made to believe by his then accountant, Mr. Bianan, that he was able to comply with his tax obligations, the same is not sufficient to prove that the failure of the accused to declare all his income is not willful. Under the circumstances, the accused, despite knowledge that he is earning from his other Weigh Less Center branches, *Jc* failed to inquire as to his compliance with his tax obligations. The accused should have inquired if he was able to declare his income from his other branches considering that the only income declared in his income tax return for 2003 was for his income earned from the Dagupan branch. Such refusal or failure of the accused to verify his compliance with his tax obligation constitutes "willful blindness" on his part.

"Willful Blindness" is defined in Black's Law Dictionary as "deliberate avoidance of knowledge of a crime, esp. by failing to make a reasonable inquiry about suspected wrongdoing despite being aware that it is highly probable." It "creates an inference of knowledge of the crime in question."[77]

In this case, even if the allegations of the accused were true, his failure to examine his income tax return for 2003 and verify whether the same contains correct and accurate information would still render the commission of the offense charged willful.

It must be emphasized that denials by the accused of the crimes herein charged, while failing to provide clear and convincing evidence to support the same, clearly deserve no weight and should not be given any probative value.

In the case of *People vs. Baniega,*[78] the Supreme Court had the occasion to expound on the evidentiary weight of the denials made by the accused which were unsubstantiated by clear and convincing evidence, to wit:

> "Between the categorical statements of the prosecution witnesses, on the one hand, and the bare denial of accused-appellant, on the other hand, the former must perforce prevail. An affirmative testimony is far stronger than a negative testimony especially when the former comes from the mouth of a credible witness. Alibi and **denial, if not**

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[77] *People of the Philippines vs. Benjamin G. Kintanar*, CTA Crim. Case No. O-030, August 11, 2010.

[78] G.R. No. 139578, February 15, 2002, 377 SCRA 170.

> **substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. It is considered with suspicion and always received with caution, not only because it is inherently weak and unreliable but also because it is easily fabricated and concocted.**"[79] (Emphasis supplied)

Even though the accused in this case tried to substantiate his denial of the crimes charged against him by submitting evidence to prove his innocence, an evaluation of the said evidence was later found by this Court to have glaring inconsistencies. In this regard, the accused failed to show any credible evidence to support his denial. Thus, denial by the accused of the offense charged should not be given evidentiary weight.

The necessity for proof beyond reasonable doubt lies in the fact that "(i)n a criminal prosecution, the State is arrayed against the subject; it enters the contest with a prior inculpatory finding in its hands; with unlimited means of command with counsel usually of authority and capacity, who are regarded as public officers, and therefore as speaking semi-judicially, and with an attitude of tranquil majesty often in striking contrast to that of defendant engaged in a perturbed and distracting struggle for liberty if not for life. These inequalities of position, the law strives to meet by the rule that there is to be no conviction when there is a reasonable doubt of guilt.[80]

However, proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty.

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79 *People vs. Baniega* , *ibid.*, at note 69, citing *People vs. Crisanto*, G.R. No. 120701, June 19, 2001, 358 SCRA 647.

80 *People vs. Berroya*, G.R. No. 122487, December 12, 1997, 283 SCRA 111, 122 citing Francisco, Evidence, 3rd. Ed. P. 577, citing Wharton's Criminal Procedure.

Suffice it to say that the law requires only moral certainty or that degree of proof which produces conviction in an unprejudiced mind.[81]

That the guilt of an accused must be proved beyond reasonable doubt is the cardinal rule in our adversarial system of justice. Before he is convicted, there should be moral certainty — a certainty that convinces and satisfies the reason and conscience of those who are to act upon it.[82]

After careful consideration of the testimonial and documentary evidence presented by both parties, this Court finds that the prosecution was able to establish the guilt of the accused beyond reasonable doubt of the crimes charged in these consolidated cases for violation of Section 255 of the NIRC of 1997, as amended.

As to the civil aspect of these consolidated cases, the same is deemed instituted herewith pursuant to Section 7(b)(1) of Republic Act No. 9282, which provides that "criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of a criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized."

The Computations of Deficiency Tax for Taxable Years 2002 and 2003 presented by the prosecution to prove accused's civil liabilities for taxable years 2002 and 2003 are illustrated as follows: Je

81 *Ibid.*, citing *People vs. Gapasan*, 243 SCRA 53 [1995].
82 *People vs. Abujan*, G.R. No. 140870, February 11, 2004, 422 SCRA 449, 457 citing *People vs. Cañedo*, G.R. No. 128382, July 5, 2000, 335 SCRA 81, 99 citing *U.S. vs. Reyes*, 3 Phil. 3, 6 (1903).

I. Computation of Deficiency Tax for Taxable Year 2002[83]

1. ADVERTISEMENTS • Philippine Star (Exhibits "R" to "R-7") • Philippine Daily Inquirer (Exhibit "Z5")		 P1,385,108.78 1,702,871.41
2. RENTALS • Roces branch (Exhibits "N" to "N-5") (P27,000 x 12 months) • SM City Pampanga (Exhibits "H6" to "H6-1") -(P400/sq.m. x 205.64 sq.m. x 2 ½ months) -security deposit (Oct. 15, 2002) • Total SM City Pampanga branch	 P205,640.00 493,536.00	 324,000.00 699,176.00
3. HONDA CR-V (Exhibit "PP") • Plate No. JCM-707 Honda Cars Makati, Inc. Invoice No. 030252 dated April 30, 2002		 909,950.00
4. FOREIGN TRAVEL • Philippine Airlines (Exhibits "Z" to "Z-10") MLA/HK/MLA (2/12/2002) Ticket No. 079-3621239887 US $ 397 at P53.51/dollar		 21,247.24
TOTAL		P5,037,353.43
Less: Source of Funds		NONE
Adjusted Gross Income		5,037,353.43
Less: • Personal Exemption (Single) • 10% Optional Standard Deduction • Total Deductions	 P20,000.00 503,735.34	 (523,735.34)
Corrected Taxable Income		4,513,618.09
Less: Reported Taxable Income		NONE
UNREPORTED TAXABLE INCOME		P4,513,618.09
Tax Due Thereon • P500,000.00 • P4,013,618.09 x 32%		 P125,000.00 1,284,357.79
2002 DEFICIENCY INCOME TAX (BASIC)		**P1,409,357.79**

II. The Computation of Deficiency Tax for Taxable Year 2003[84]

1. ADVERTISEMENTS • Philippine Star (Exhibits "R" to "R-7") • Philippine Daily Inquirer (Exhibit Z5")		 P703,221.75 1,128,258.48
2. RENTALS • Roces branch (Exhibits "N" to "N-5") (P27,000 x 12 months) • The Plaza Bldg., Greenbelt branch (Exhibits "III" to III-15") -(P75,000.00 x 4 months) -security deposit • Total Greenbelt branch • SM City Pampanga branch (Exhibits "H6" to "H6-1")	 P300,000.00 210,000.00	 324,000.00 510,000.00

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[83] Exhibit "J6-4".
[84] Exhibit "J6-5" to "J6-6".

-(P400/sq.m. x 205.64 sq.m x 10 months) (January to October 2003) -(P440/sq.m. x 205.64 sq.m. x 2 months) (November to December 2003) • Total SM City Pampanga branch	822,560.00 180,963.20	1,003,523.20
3. CAPITAL INVESTMENTS • Capital per DTI (Roces Branch) (Exhibit "ZZ") • Capital per DTI (Farmer's branch) (Exhibit "DDD") • Capital per DTI (Greenbelt branch) (Exhibit "HHH") • Capitalization – Dagupan branch (Exhibits "NNN" to "NNN-15") • Total Capital Investment	45,000.00 50,000.00 45,000.00 750,000.00	890,000.00
4. HONDA CR-V (Exhibit "LLL") • Plate NO. XLF-105 Honda Cars Balintawak, Inc. Invoice No. 24775 dated October 24, 2003		1,035,500.00
5. FOREIGN TRAVEL • Philippine Airlines (Exhibits "Z" to "Z-10") a. MLA/HK/MLA Ticket No. 079-912975719 October 2, 2003 b. MLA/BKK/MLA Ticket No. 079-9129518586 August 2, 2003 US $317 c. MLA/BKK/MLA Ticket No. 079-3622218396 April 3, 2003 US $345 d. BKK/MLA Ticket No. 079-9130539210 Baht • Total foreign Travels	21,855.00 17,432.27 18,218.35 15,180.00	72,685.62
TOTAL		P5,667,189.05
Less: Source of Funds		NONE
Adjusted Gross Income		5,667,189.05
Less: • Personal Exemption (Single) • Net Loss per Return (Exhibits "NNN" to "NNN-15") • Total Deductions	P20,000.00 38,893.91	(58,893.91)
Corrected Taxable Income		5,608,295.14
Less: Reported Taxable Income		NONE
UNREPORTED TAXABLE INCOME		P5,608,295.14
Tax Due Thereon • P500,000.00 • P5,108,295.14 x 32%		P125,000.00 1,634,654.44
2003 DEFICIENCY INCOME TAX (BASIC)		**P1,759,654.44**

According to the prosecution, the foregoing amount of alleged civil liabilities were arrived at by utilizing the net worth and expenditures method. The prosecution maintains that the said method had to be resorted to since accused did not present his books and accounting records in compliance with the Letter of Authority, First Letter-Notice, Second Letter-Notice and Final Request for Presentation of Records served by the BIR Investigating Team. The prosecution cited as its basis Sections 5(B) and 6(B) of the National Internal Revenue Code, as amended.

> "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:
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> xxx xxx xxx
>
> (B) To obtain on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation, or from any office or officer of the national and local governments, government agencies and instrumentalities, including the Bangko Sentral ng Pilipinas and government-owned or controlled corporations, any information such as, but not limited to, costs and volume of production, receipts or sales and gross incomes of taxpayers, and the names, addresses, and financial statements of corporations, mutual fund companies, insurance companies, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures or consortia and registered partnerships, and their members;
>
> xxx xxx xxx
>
> SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* -
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> xxx xxx xxx

> (B) *Failure to Submit Required Returns, Statements, Reports and other Documents.* - When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by laws or rules and regulations or when there is reason to believe that any such report is false, incomplete or erroneous, the Commissioner shall assess the proper tax on the best evidence obtainable.
>
> In case a person fails to file a required return or other document at the time prescribed by law, or willfully or otherwise files a false or fraudulent return or other document, the Commissioner shall make or amend the return from his own knowledge and from such information as he can obtain through testimony or otherwise, which shall be *prima facie* correct and sufficient for all legal purposes."

From the foregoing provision cited by the prosecution, it is clear that the best evidence obtainable may be resorted to in making an assessment of the proper tax. However, in this case, there was no showing that an assessment was made by the BIR on the accused's deficiency tax for the taxable years 2002 and 2003. What the prosecution provided are mere computations of the alleged tax deficiencies of the accused for the taxable year 2002 and 2003.

While it is true that the foregoing approximation of the alleged income earned by the accused for taxable years 2002 and 2003 were relied upon by this Court in finding the accused guilty beyond reasonable doubt of the crimes charged in the information, the said computation made by one of the Revenue Officers who took part in the investigation of the accused's unreported income may not be used as basis to impose the civil liabilities prayed for by the prosecution.

In the case of *Ungab vs. Cusi, Jr.,*[85] the Supreme Court said:

> "While there can be no civil action to enforce collection before the assessment procedures provided in the Code have been followed, there is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution under the Code."[86]

Plainly, an assessment of the tax before there can be a criminal prosecution is not necessary. Whereas, in case of a civil action for collection of the tax, the assessment procedures provided by the NIRC of 1997, as amended, should be complied with.

Accordingly, considering that there was no assessment issued by the BIR against the accused, the foregoing computations presented by the prosecution to prove the civil liabilities of the accused for the taxable years 2002 and 2003 may not be used by this Court as its basis to impose the civil liabilities prayed for by the prosecution. Therefore, a proper determination of the civil liabilities for the non-payment of tax based on the computations submitted by the prosecution may not be achieved.

Moving on to the ascertainment of the penalties to be imposed, this Court found instructive the pertinent portion of Section 255 of the NIRC of 1997, as amended, which reads:

> "SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* - Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules

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85 G.R. No. L-41919-24, May 30, 1980, 97 SCRA 877.
86 *Ibid.*, 883-884.

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.**"(Emphasis supplied)

Here, since there are two Informations filed against the accused, docketed as CTA Crim. Case Nos. O-013 and O-015, one for the failure to file income tax return for taxable year 2002 and the other for failure to supply the correct and accurate information in the return for taxable year 2003, respectively, the imposition of a fine of P10,000.00 for each case is proper. Furthermore, the imposition of the indeterminate penalty of imprisonment of one (1) year as minimum, to two (2) years as maximum for each crime charged was also found to be proper under the circumstances. This, however, is without prejudice to Section 280 of the NIRC of 1997, as amended, which provides for the imposition of subsidiary penalty in the event that the accused has no property with which to meet the fine imposed upon him by the Court or is unable to pay such fine.

WHEREFORE, premises considered, judgment is hereby rendered:

1. In Criminal Case No. O-013, finding the accused Joel Cortez Mendez **GUILTY** beyond reasonable doubt for violation of Section 255 of the National Internal Revenue Code of 1997, as amended, and is hereby **SENTENCED** to suffer an indeterminate penalty of one (1) year, as minimum, to two (2) years, as maximum, and is **ORDERED TO PAY** a fine in the amount of P10,000.00, with subsidiary imprisonment in case accused has no property with which to meet such fine, pursuant to Section 280 of the NIRC of 1997, as amended; and

2. In Criminal Case No. O-015, finding the accused Joel Cortez Mendez **GUILTY** beyond reasonable doubt for violation of Section 255 of the National Internal Revenue Code of 1997, as amended, and is hereby **SENTENCED** to suffer an indeterminate penalty of one (1) year, as minimum, to two (2) years, as maximum, and is **ORDERED TO PAY** a fine in the amount of P10,000.00, with subsidiary imprisonment in case

accused has no property with which to meet such fine, pursuant to Section 280 of the NIRC of 1997, as amended.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

ATTESTATION

I attest 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's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ERNESTO D. ACOSTA
Presiding Justice