REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

# SECOND DIVISION

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| **PEOPLE OF THE PHILIPPINES,**<br>*Plaintiff,*<br><br>- versus -<br><br>**ROMMEL YNION y SALVA,**<br>*Accused.* | **CTA CRIM. CASE NO. O-313**<br>**For:** Violation of Section 255 (Failure to File Return) of the NIRC of 1997, as amended. |

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| **PEOPLE OF THE PHILIPPINES,**<br>*Plaintiff,*<br><br>- versus -<br><br>**ROMMEL YNION y SALVA,**<br>*Accused.* | **CTA CRIM. CASE NO. O-314**<br>**For:** Violation of Section 255 (Failure to File Return) of the NIRC of 1997, as amended. |

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| **PEOPLE OF THE PHILIPPINES,**<br>*Plaintiff,*<br><br>- versus -<br><br>**ROMMEL YNION y SALVA,**<br>*Accused.* | **CTA CRIM. CASE NO. O-315**<br>**For:** Violation of Section 254 (Attempt to Evade/Defeat Tax) of the NIRC of 1997, as amended. |

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**PEOPLE OF THE PHILIPPINES,**
*Plaintiff,*

- versus -

**ROMMEL YNION y SALVA,**
*Accused.*

**CTA CRIM. CASE NO. O-316**
**For:** Violation of Section 254 (Attempt to Evade/Defeat Tax) of the NIRC of 1997, as amended.

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**PEOPLE OF THE PHILIPPINES,**
*Plaintiff,*

- versus -

**ROMMEL YNION y SALVA,**
*Accused.*

**CTA CRIM. CASE NO. O-317**
**For:** Violation of Section 254 (Attempt to Evade/Defeat Tax) of the NIRC of 1997, as amended.

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**PEOPLE OF THE PHILIPPINES,**
*Plaintiff,*

- versus -

**ROMMEL YNION y SALVA,**
*Accused.*

**CTA CRIM. CASE NO. O-318**
**For:** Violation of Section 255 (Failure to Supply Correct/ Accurate Information) of the NIRC of 1997, as amended.

x--------------------------------------x

**PEOPLE OF THE PHILIPPINES,**
*Plaintiff,*

- versus -

**ROMMEL YNION y SALVA,**
*Accused.*

**CTA CRIM. CASE NO. O-319**
**For:** Violation of Section 255 (Failure to Supply Correct/ Accurate Information) of the NIRC of 1997, as amended.

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**PEOPLE OF THE PHILIPPINES,**
*Plaintiff,*

- versus -

**ROMMEL YNION y SALVA,**
*Accused.*

**CTA CRIM. CASE NO. O-320**
**For:** Violation of Section 255 (Failure to Supply Correct/ Accurate Information) of the NIRC of 1997, as amended.

**Members:**

**CASTAÑEDA, JR.,** *Chairperson,*
**MINDARO-GRULLA,** *and*
**BACORRO-VILLENA,** *JJ.*

**Promulgated:**

DEC 04 2019

9:30 a.m.

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# DECISION

***BACORRO-VILLENA, J.:***

At bar are eight (8) consolidated criminal cases filed against accused, Rommel Ynion y Salva (**accused**), for violations of Sections 254[1] and 255[2] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, for taxable years (**TY**) 2006, 2008 and 2010.

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1 **Sec. 254.** *Attempt to Evade or Defeat Tax.* - Any person who willfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment thereof shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine not less than Thirty thousand (P30,000) but not more than One hundred thousand pesos (P100,000) and suffer imprisonment of not less than two (2) years but not more than four (4) years: Provided, That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes.

2 **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

Armed with authority to prosecute from the Bureau of Internal Revenue (**BIR**), the Department of Justice (**DOJ**), *via* its prosecutorial arm, filed the Informations below.

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**Crim. Case No. O-313**
[Violation of Section 255, NIRC, as amended]

That on or about the 25th day of January 2007 in Parañaque City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **ROMMEL YNION y SALVA**, an individual taxpayer registered with BIR-RDO No. 52 in Parañaque City, with Tax Identification No. (TIN) 207-472-883-000, who derived income within the Philippines as the sole proprietor of a business under the name and style HOKSING BUILDERS, with Tax Identification No. (TIN) 207-472-883-002-VAT, and in the course of his trade or business, he earned income payments in the amount of Nine Million Nine Hundred Thirty Four Thousand Seventeen Pesos and 39/100 (Php9,934,017.39) for the 4th quarter (October to December) of 2006, which income is subject to Value-Added Tax (VAT) pursuant to Section 105 of the National Internal Revenue Code of 1997, as amended, and therefore accused has the corresponding obligation to file his quarterly value-added tax returns, in a manner provided under Section 114 of the same Code, did and there willfully, unlawfully and feloniously, with willful and deliberate intent, fails to file his quarterly value added tax returns for the 4th quarter covering the period from October to December, for taxable year 2006, with a total value-added tax liability in the amount of One Million One Hundred Ninety Two Thousand Eighty Two Pesos and 09/100 (Php 1,192,082.09), exclusive of interests and penalties, to the damage and prejudice of the government.

CONTRARY TO LAW.

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

Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years.

**Crim. Case No. O-314**
[Violation of Section 255, NIRC, as amended]

That on or about the 25th day of October 2010 in Parañaque City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **ROMMEL YNION y SALVA**, an individual taxpayer registered with BIR-RDO No. 52 in Parañaque City, with Tax Identification No. (TIN) 207-472-883-000, who derived income within the Philippines as the sole proprietor of a business under the name and style HOKSING BUILDERS, with Tax Identification No. (TIN) 207-472-883-002-VAT, and in the course of his trade or business, he earned income payments in the amount of Ninety Four Million One Hundred Three Thousand Five Hundred Seventy One Pesos and 43/100 (Php94,103,571.43) for the 3rd Quarter (July-September) of 2010, which income is subject to Value-Added Tax (VAT) pursuant to Section 105 of the National Internal Revenue Code of 1997, as amended, and therefore accused has the corresponding obligation to file his quarterly value-added tax returns, in a manner provided under Section 114 of the same Code, did then and there willfully, unlawfully and feloniously, with willful and deliberate intent, fails to file his quarterly value added tax returns for the 3rd quarter covering the period from July to September, for taxable year 2010, with a total value-added tax liability in the amount of Eleven Million Two Hundred Ninety Two Thousand Four Hundred Twenty Eight Pesos and 57/100 (Php 11,292,428.57), exclusive of interest and penalties, to the damage and prejudice of the government.

CONTRARY TO LAW.

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**Crim. Case No. O-315**
[Violation of Section 254, NIRC, as amended]

That on or about the 15th day of April 2007 in Parañaque City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **ROMMEL YNION y SALVA**, a Filipino citizen residing in the Philippines, who is an individual taxpayer registered with BIR-RDO NO. 52 in Parañaque City, with Tax Identification No. (TIN) 207-472-883-000, who derived income within the Philippines as the sole proprietor of a business under the name and style HOKSING BUILDERS, with Tax Identification No. (TIN) 207-472-883-002-VAT, and therefore, subject to tax pursuant to Section 24 of the NIRC of 1997, through fraudulent means, attempt to evade or defeat payment of correct tax when said accused with willful and deliberate intent caused to substantially under-declared his income as he declared in his 2006 annual income tax return only the amount of Six Million Four Hundred Eighty Seven

Thousand Five Hundred Seventy Four Pesos (Php6,487,547.00) when in fact, his gross income is in the amount of Seventeen Million Eight Hundred Ninety Six Thousand Two Hundred Seventy Six Pesos and 93/100 (Php17,896,276.93) resulting with a total basic deficiency income tax in the amount of Five Million Seven Hundred Sixty Six Thousand Seven Hundred Sixty Four Pesos and 87/100 (Php5,766,764.87), exclusive of increments to the damage and prejudice of the government.

CONTRARY TO LAW.

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**Crim. Case No. O-316**
[Violation of Section 254, NIRC, as amended]

That on or about the 15th day of April 2011 in Parañaque City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **ROMMEL YNION** y **SALVA**, a Filipino citizen residing in the Philippines, who is an individual taxpayer registered with BIR-RDO NO. 52 in Parañaque City, with Tax Identification No. (TIN) 207-472-883-000, who derived income within the Philippines as the sole proprietor of a business under the name and style HOKSING BUILDERS, with Tax Identification No. (TIN) 207-472-883-002-VAT, and therefore, subject to tax pursuant to Section 24 of the NIRC of 1997, through fraudulent means, attempt to evade or defeat payment of correct tax when said accused with willful and deliberate intent caused to substantially under-declared his income as he declared in his 2010 annual income tax return only the amount of Two Hundred Seven Million Three Hundred Thirty Three Thousand Thirty Five Pesos and 71/100 (Php207,333,035.71) when in fact, his gross income is in the amount of Two Hundred Fifty Seven Million Four Hundred Four Thousand Seven Hundred Thirty Seven Pesos and 72/100 (Php257,404,737.72) resulting with a total basic deficiency income tax in the amount of Seventeen Million Six Hundred Twenty Seven Thousand Ninety Four Pesos and 29/100 (Php17,627,094.29), exclusive of increments to the damage and prejudice of the government.

CONTRARY TO LAW.

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**Crim. Case No. O-317**
[Violation of Section 254, NIRC, as amended]

That on or about the 15th day of April 2009 in Parañaque City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **ROMMEL YNION** y **SALVA**, a Filipino citizen residing in the Philippines, who is an individual taxpayer registered with BIR-RDO NO. 52 in Parañaque City, with Tax

Identification No. (TIN) 207-472-883-000, who derived income within the Philippines as the sole proprietor of a business under the name and style HOKSING BUILDERS, with Tax Identification No. (TIN) 207-472-883-002-VAT, and therefore, subject to tax pursuant to Section 24 of the NIRC of 1997, through fraudulent means, attempt to evade or defeat payment of correct tax when said accused with willful and deliberate intent caused to substantially under-declared his income as he declared in his 2008 annual income tax return only the amount of Seven Million Two Hundred Six Thousand Seven Hundred Fifty Pesos (Php7,206,750.00) when in fact, his gross income is in the amount of Fifteen Million Nine Hundred Fifty Seven Thousand Two Hundred Eighty Seven Pesos and 17/100 (Php15,957,287.17) resulting with a total basic deficiency income tax in the amount of Five Million Five Thousand Five Hundred Forty Seven Pesos and 89/100 (Php5,005,547.89), exclusive of increments to the damage and prejudice of the government.

CONTRARY TO LAW.

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**Crim. Case No. O-318**
[Violation of Section 255, NIRC, as amended]

That on or about the 15th day of April 2007, in Parañaque City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **ROMMEL YNION y SALVA**, an individual and a Filipino citizen residing in the Philippines, and at that time required by law, rules and regulations to file his annual income tax return, did then and there, willfully, unlawfully and with deliberate intent, substantially fail to supply correct and accurate information with respect to his true and correct income, as said accused declared in his 2006 income tax return the amount of Six Million Four Hundred Eighty Seven Thousand Five Hundred Seventy Four Pesos only (Php6,487,574.00), which is contrary to his total income per investigation in the amount of Seventeen Million Eight Hundred Ninety Six Thousand Two Hundred Seventy Six Pesos and 93/100 (Php17,896,276.93), thus accused substantially under-declared his income for taxable year 2006, in the total amount of Eleven Million Four Hundred Eight Thousand Seven Hundred Two Pesos and 93/100 (Php11,408,702.93), which resulted to basic deficiency income tax in the amount of Five Million Seven Hundred Sixty Six Thousand Seven Hundred Sixty Four Pesos and 87/100 (Php5,766,764.87), exclusive of surcharge and interest, to the damage and prejudice of the government.

CONTRARY TO LAW.

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**Crim. Case No. O-319**
[Violation of Section 255, NIRC, as amended]

That on or about the 15th day of April 2011, in Parañaque City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **ROMMEL YNION y SALVA**, an individual and a Filipino citizen residing in the Philippines, and at that time required by law, rules and regulations to file his annual income tax return, did then and there, willfully, unlawfully and with deliberate intent, substantially fail to supply correct and accurate information with respect to his true and correct income, as said accused declared in his 2010 income tax return the amount of Two Hundred Seven Million Three Hundred Thirty Three Thousand Thirty Five Pesos and 71/100 (Php207,333,035.71), which is contrary to his total income per investigation in the amount of Two Hundred Fifty Seven Million Four Hundred Four Thousand Seven Hundred Thirty Seven Pesos and 72/100 (Php257,404,737.72), thus accused substantially under-declared his income for taxable year 2010, in the total amount of Fifty Million Seventy One Thousand Seven Hundred Two Pesos and 1/100 (Php50,071,702.01), which resulted to basic deficiency income tax in the amount of Seventeen Million Six Hundred Twenty Seven Thousand Ninety Four Pesos and 29/100 (Php17,627,094.29), exclusive of surcharge and interest, to the damage and prejudice of the government.

CONTRARY TO LAW.

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**Crim. Case No. O-320**
[Violation of Section 255, NIRC, as amended]

That on or about the 15th day of April 2009, in Parañaque City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **ROMMEL YNION y SALVA**, an individual and a Filipino citizen residing in the Philippines, and at that time required by law, rules and regulations to file his annual income tax return, did then and there, willfully, unlawfully and with deliberate intent, substantially fail to supply correct and accurate information with respect to his true and correct income, as said accused declared in his 2008 income tax return the amount of Seven Million Two Hundred Six Thousand Seven Hundred Fifty Pesos only (Php7,206,750.00), which is contrary to his total income per investigation in the amount of Fifteen Million Nine Hundred Fifty Seven Thousand Two Hundred Eighty Seven Pesos and 17/100 (Php15,957,287.17), thus accused substantially under-declared his income for taxable year 2008, in the total amount of Eight Million Seven Hundred Fifty Thousand Five Hundred Thirty Seven Pesos

> and 17/100 (Php8,750,537.17), which resulted to basic deficiency income tax in the amount of Five Million Five Thousand Five Hundred Forty Seven Pesos and 89/100 (Php5,005,547.89), exclusive of surcharge and interest, to the damage and prejudice of the government.
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> CONTRARY TO LAW.
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On 14 August 2013, accused posted his personal bail bond for his provisional liberty, undertaken by Philippine Fire and Marine Insurance Corporation and approved by Executive Judge Danilo P. Galvez of the Regional Trial Court (**RTC**), Branch 24, Iloilo City. On 30 August 2013[3], this Court granted accused's motion for consolidation of these eight (8) cases. Accordingly, the cases were consolidated and were to be tried jointly before the Second Division (where the lowest case docket number was raffled to).

On the scheduled date of arraignment on 02 October 2013, accused's counsel manifested that he filed a Motion to Defer Proceedings[4] on the ground that a Petition for Review was filed before the DOJ on 30 August 2013, through registered mail. Finding merit to the same, and over plaintiff's objection, the Court granted the motion.[5] The arraignment of accused was re-scheduled to 04 December 2013.

After several postponements, primarily due to the failure of accused and his counsel to appear despite due notice, the arraignment proceeded on 29 October 2014. Accused then entered a plea of "not guilty" to all the charges against him. Thereafter, the Preliminary Conference and Pre-Trial were set on 14 January 2015 and 18 February 2015, respectively. Again, accused failed to appear during the Preliminary Conference and several settings followed for the marking of plaintiff's exhibits.

Later or on 11 June 2015, plaintiff filed its Pre-Trial Brief. On the other hand, the Court received accused's Pre-Trial Brief[6] on 14 August

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3 Division Docket, Volume I, pp. 443-444.
4 Filed on 02 September 2013, id., pp. 446-449.
5 Resolution dated 02 October 2013, id., pp. 455-456.
6 Division Docket, Volume III, pp. 1133-1136.

2015. Subsequently, plaintiff filed an Amended Pre-Trial Brief[7] on 12 August 2015.

Still later, accused filed his Motion to Quash[8] which the Court denied for absence of merit in a Resolution dated 02 November 2015.[9] Accused moved for reconsideration thereof but the Court denied the same in a Resolution dated 28 January 2016.[10]

During the proceedings and prior to the presentation of evidence, both parties agreed to file their Joint Stipulation of Facts and Issues (**JSFI**) on or before 11 August 2016. It was also made of record that accused had waived his appearance during the trial. Subsequently, the parties failed to file the JSFI hence the filing thereof was deemed waived. Accordingly, the Court issued the Pre-Trial Order[11] and Pre-Trial was deemed terminated thereafter.

On 20 September 2016, accused filed a "Motion for Leave to Allow [Him] to Enter into a Compromise Agreement with the BIR and Motion to Suspend Proceedings". The Court, in a Resolution dated 17 January 2017, denied the said motion for lack of merit.[12]

When trial ensued, plaintiff presented its witnesses, namely: *(1)* Revenue Officer Josephine Madera (**RO Madera**); *(2)* Revenue Officer Marites Arias (**RO Arias**); *(3)* Shiela Mae Doromal (**Doromal**); and, *(4)* Cherill Morales (**Morales**).

## EVIDENCE FOR THE PLAINTIFF

### Testimony of RO Josephine Madera

The first witness to take the stand for plaintiff was RO Madera.[13] On the witness stand, RO Madera declared she is the Group Supervisor

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7 Id., pp. 1118-1132.
8 Filed on 03 August 2015, id., pp. 1107-1116.
9 Id., pp. 1167-1171.
10 Id., pp. 1198-1200.
11 Dated 03 October 2016, id., pp. 1332-1350.
12 Id., p. 1376.
13 Accused's counsel filed a Motion to Reset the hearing, which the court denied in open court. Hence, trial proceeded *in absentia*.

(**GS**) of the National Investigation Division (**NID**) that investigated the tax liabilities of accused. As GS, among her functions is to oversee the conduct of the audit investigation and recommend the criminal prosecution for violations (of the provisions) of the NIRC, as amended. Specifically, she, together with Nilda T. Se (Se) and RO Arias as members, were assigned to conduct the investigation of accused's tax fraud case.[14]

RO Madera also testified that, in line with their investigation, her group was able to access accused's registration details in the BIR data system and conduct a third-party verification. Similarly, they were able to access information relating to accused's transaction with other private companies. Apart from the information from the BIR system, they also looked into the Land Transportation Office (LTO) and Land Registration Authority (LRA) data to verify the information that accused enlisted various properties in his name. When all the data were gathered, RO Madera discovered a glaring disparity between accused's declarations in his income tax returns (**ITRs**), particularly with the properties he owns. She and her group then recommended the issuance of the Letter of Authority (**LOA**); thus, LOA No. LOA-211-2011-00000428[15] was issued with attached checklist of requirements. According to RO Madera, after accused's receipt of the LOA and the attachment, and even after two letters requiring him to present documents, he failed to do so. A "Final Notice of Presentation of Records" dated 16 June 2012 was subsequently issued to him.

RO Madera testified further that accused thereafter submitted certified true copies of official receipts (**ORs**) that Hoksing Builders issued. From the ORs submitted, her group conducted another third-party verification of accused's material business transactions. Her group also requested for an access to the records of selected private companies that accused had transacted with. These private companies obliged and issued certifications relating to their transactions with accused; particularly, for the years the LOA had mentioned (or TY 2006, 2008 and 2010). Among these companies that issued certifications were: Capiz Sugar Central, Inc. (**CSCI**), La Filipina Uy-Gongco Corporation (**LFUC**) and Philippine Foremost Milling Corporation (**PFMC**). The certifications contained payments made to

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[14] The assignment was through the issuance of NID Memorandum of Assignment issued by the Division Chief Atty. Sixto Sy-Dy.

[15] Dated 15 December 2011.

Hoksing Builders for TY 2006, 2008 and 2010. From these, accused's tax returns were then checked and as a result, it was found out that he repeatedly underdeclared his income by more than one hundred percent (100%) for TY 2006, 2008 and by twenty-four percent (24%) for TY 2010. In addition, he failed to file some tax returns for the period covered. With the findings, RO Madera's group forwarded accused's case docket to the RATE Legal Writing Appearance Group for the filing of the criminal complaints against him (with the DOJ).[16]

After the direct testimony and upon plaintiff's motion, the accused's right to cross-examine RO Madera was deemed waived due to his unwarranted absence.

Testimony of RO Marites Arias

RO Arias, Revenue Officer III of the NID, was plaintiff's second witness. Again, accused did not appear despite notice hence the trial proceeded *in absentia* and his right to cross-examine was deemed waived.

The testimony of RO Arias was offered to prove that she was one of the members of the group that investigated the tax liability of accused; the LOA authorized her to conduct an audit on the books of accused; she computed the tax liabilities of accused; she was one of the affiants in the Joint Complaint-Affidavit[17] filed with the DOJ; and, she served the Preliminary Assessment Notice (**PAN**) and Formal Letter of Demand (**FLD**) to the registered addresses of accused and his counsel Atty. Daniel Cartagena (**Atty. Cartagena**), *via* registered mail.

According to RO Arias, among her functions are to review and to audit internal revenue tax liabilities of a taxpayer, make an assessment and report, and recommend the prosecution of a taxpayer's criminal violations of the NIRC, as amended.

RO Arias added that she came up with accused's income tax liability by comparing the total service income *per* Audited Financial

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16 A Joint Complaint-Affidavit was executed by then Commissioner Kim Jacinto-Henares.

17 Division Docket, Volume I, pp. 228-237.

Statements (**AFS**) as adjusted, with the declaration in the ITR. The income from the major customers from which they obtained certifications were added (as adjustments) to the service income reflected in the AFS to arrive at the total taxable income. From the comparison of the amounts, she was able to compute the deficiency income tax liability for the years covered. As regards the Value-Added Tax (**VAT**), RO Arias testified that accused failed to file most of the VAT returns.

RO Arias continued that, after the filing of the criminal complaints with the DOJ, a Notice for Informal Conference (**NIC**) dated 15 July 2013 was issued. The NIC was followed by the issuance of the PAN considering that accused failed to submit the substantiation required. Later, the PAN was sent through registered mail and courier to accused's residence address and also to Atty. Cartagena. Accused failed to reply to the PAN within the prescribed period thus the FLD was issued, together with the Final Assessment Notice (**FAN**) dated 06 April 2015. The FLD and FAN were served through courier at the residences of accused in Parañaque and Las Piñas; copies thereof were also sent to his lawyer, Atty. Cartagena.

Testimony of Shiela Mae Doromal

The third witness for plaintiff was Doromal, CSCI's Finance Head. Her testimony was offered to prove that she was the Chief Accountant of CSCI at the time material to the cases; she prepared the Certification of Income Payments (**CIP**) made by CSCI for Hoksing Builders; and, that all the accounting records of CSCI were damaged and lost during the onset of typhoon Yolanda.

According to Doromal, her functions as Chief Accountant include overseeing CSCI's accounting and tax matters as well as its financial records. She admitted to not having any knowledge about the cases against the accused. She, however, confirmed that, upon the management's instruction, she prepared the CIP that the BIR requested (about CSCI's payments to Hoksing Builders). She based the same on CSCI's general ledgers and books of accounts but these documents were also destroyed during typhoon Yolanda.

In her cross-examination, Doromal affirmed that she submitted the CIP as BIR requested without any supporting documents. She also insisted that she does not personally know the accused or his business.

Testimony of Cherill Morales

The last witness for plaintiff was Morales, LFUC's Finance Head. Her testimony was offered to prove that she was the Accountant of LFUC at the time relevant to the cases; she received BIR's letter requesting for CIP that LFUC issued for Hoksing Builders; and, she issued the said CIP.

As an accountant for LFUC, Morales claimed that she oversees accounting matters including tax and other related records of the company. Similarly, she maintained that she was not aware of the cases pending against accused except that she prepared the CIP and she based it on their records (such as general ledger and other books of account).

During the cross-examination, Morales explained that the amount of payments in the CIP was validated through the vouchers and ORs and the alpha list submitted to the BIR. However, these supporting documents were not attached to the Certification (since the BIR merely requested for the latter). Morales likewise admitted that she does not know who signed the receipts issued by Hoksing Builders and she does not personally know accused.

After the conclusion of the testimony of plaintiff's last witness, the Court ordered the filing of the Formal Offer of Evidence (**FOE**).[18] In a Resolution dated 04 July 2018[19], the Court resolved to admit the following exhibits:

| Exhibit No. | Document |
|---|---|
| "P-1" | NID Memorandum Assignment No. KJH-SCD 2011-10-10-1105 dated October 10, 2011 |
| "P-2" | Letter of Authority (LOA) No. 211-2011-00000428/SNela20110001070l dated December 15, 2011 |

[18] Division Docket, Volume III, pp. 1545-1570.
[19] Division Docket, Volume IV, pp. 1625-1627.

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| "P-3" | First Request for Presentation of Records and Documents attached to the LOA consisting of three (3) pages |
| "P-4" | Second Request for Presentation of Records, Documents and Requirements dated January 26, 2012 |
| "P-5" | Final Request for Presentation of Records, Documents and Requirements dated July 16, 2012, received by Evangeline M. Reyes on July 16, 2012 |
| "P-6" | Certification from RDO No. 52-Parañaque City dated August 14, 2012 consisting of two (2) pages |
| "P-7" | Certified True Copy of the 4th Quarterly VAT Return of Rommel S. Ynion attached to the Certification from RDO 52 consisting of three (3) pages |
| "P-8" | Certified Integrated Tax System (ITS) Screen Printout of Rommel S. Ynion's Certificate of Registration, consisting of two (2) pages |
| "P-9" | Annual Income Tax Return (ITR) for taxable year 2006 |
| "P-10" | Annual ITR for taxable year 2007 |
| "P-11" | Annual ITR for taxable year 2008 |
| "P-12" | Annual ITR for taxable year 2009 |
| "P-13" | Certification from CAPIZ SUGAR CENTRAL, INC. to Hoksing Builders, dated August 10, 2012, notarized by Jinky Jalandoni-Cope |
| "P-14" | Certification from LA FILIPINA UY GONGCO CORPORATION to Hoksing Builders, dated August 10, 2012 |
| "P-15" | Letter dated July 31, 2012 executed by Ruth Lim, Accountant of Philippine Foremost Milling Corporation with attached Certifications, Exhibits "P-16" to "P-20" |
| "P-16" | Certification from Philippine Foremost Milling Corporation for taxable year 2006 dated August 10, 2012 |
| "P-17" | Certification from Philippine Foremost Milling Corporation for taxable year 2007 dated August 10, 2012 |
| "P-18" | Certification from Philippine Foremost Milling Corporation for taxable year 2008 dated August 10, 2012, with attachments consisting of three (3) pages |
| "P-19" | Certification from Philippine Foremost Milling Corporation for taxable year 2009 dated August 10, 2012 |
| "P-20" | Certification from Philippine Foremost Milling |

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| | Corporation for taxable year 2010 with attachments consisting of four (4) pages |
| "P-78" | Notice of Informal Conference dated July 15, 2013, with attachments consisting of ten (10) pages |
| "P-79" | Hoksing Builders Summary of Official Receipts for the Third Quarter of Taxable Year 2010 |
| "P-80" | Preliminary Assessment Notice (PAN) for Income, Value Added Tax (VAT) and Expanded Withholding Tax (EWT) for taxable years 2006-2010 with corresponding Annexes A1 to A5, B1 to B5, C and D, consisting of fifteen (15) pages |
| "P-81" | Original Tracking Record No. 125697725931 dated March 14, 2015 of the PAN sent to Atty. Daniel V. Cartagena |
| "P-81-2" | Original Tracking Record No. 125697725941 dated March 14, 2015, of the PAN sent to Atty. Daniel V. Cartagena |
| "P-81-4" | Original Tracking Record No. 125697725951 dated March 14, 2015, of the PAN sent to Rommel Salva Ynion |
| "P-82" | Joint Complaint Affidavit dated August 16, 2012 consisting of ten (10) pages with its Annexes consisting of One hundred thirty six (136) pages |
| "P-83" | Letter Referral dated August 15, 2012 consisting of two (2) pages |
| "P-84" | Formal Letter of Demand dated April 16, 2015 with attached Audit Result/Assessment Notice for Income, Value[-]Added and Expanded Withholding Taxes consisting of thirty (30) pages |
| "P-85" | Original Tracking Record No. 126056640677 dated May 6, 2015, of the Formal Letter of Demand sent to Rommel Salva Ynion at 50 Palma St. PDP Village, BF Homes, Parañaque City |
| "P-86" | Transaction Printout of Tracking No. 126056640677 |
| "P-87" | Original Tracking Record No. 126056640667 dated May 6, 2015, of the Formal Letter of Demand sent to Rommel Salva Ynion at 21 Aurora Drive, Vergonville Subdivision, Pulanglupa and/or 50 Palma St., PDP Village, BF Homes, Parañaque City |
| "P-88" | Transaction Printout of Tracking No. 126056640667 |
| "P-89" | Original Tracking Record No. 12605640657 dated May 6, 2015, of the Formal Letter of Demand sent to Atty. Daniel V. Cartagena at Jamerlan Building, Iznart St., Iloilo city |

| | |
|---|---|
| "P-90" | Transaction Printout of Tracking No. 126056640657 |
| "P-91" | Registry Receipt No. 5664 dated May 7, 2015 |
| "P-92" | Registry Receipt No. 5665 dated May 7, 2015 |
| "P-93" | Registry Receipt No. 5666 dated May 7, 2015 |
| "P-94" | Computation Sheet of Deficiency VAT for the First Quarter of 2006 |
| "P-95" | Computation Sheet of Deficiency VAT for the Second Quarter of 2006 |
| "P-96" | Computation Sheet of Deficiency VAT for the Third Quarter of 2006 |
| "P-97" | Computation Sheet of Deficiency VAT for the Fourth Quarter of 2006 |

When plaintiff rested its case, the accused filed a Demurrer to Evidence on 27 July 2018[20], which the Court denied in a Resolution dated 03 September 2018[21]. He filed a Motion for Reconsideration[22] which was likewise denied for lack of merit.

Thereafter, trial proceeded for the presentation of evidence for the defense. There were three witnesses presented, namely: *(1)* Manuel P. Mejorada (**Mejorada**); *(2)* Atty. Cartagena; and, *(3)* accused.

## EVIDENCE FOR ACCUSED

Testimony of Manuel P. Mejorada

Mejorada, a farmer, entrepreneur and a freelance journalist, was the first to testify in defense of accused. He learned of accused when he was working as a consultant for Senator Franklin Drilon (**Senator Drilon**). According to him, the accused offered him a job as a columnist in the newspaper "The News Today" which accused owned and published in Iloilo City.

As a columnist for "The News Today", Mejorada took special interest in corruption issues in Iloilo City and wrote articles about them. He claimed that, as a result, the accused became Senator Drilon's and Mayor Mabilog's target of persecution and harassment.

[20] Id., pp. 1632-1653.
[21] Id., pp. 1683-1690.
[22] Id., pp. 1708-1725.

When asked how he knew that there was harassment, he replied that accused was denied business permit for a hotel he was building. City Inspectors also frequented accused's two (2) restaurants and inconvenienced him. The harassment worsened when accused announced his bid for the mayoralty position for the May 2013 election and challenged then incumbent Mayor Mabilog.

Mejorada continued that, on 12 August 2012, then BIR Commissioner Kim Henares (**Commissioner Henares**) likewise announced that the BIR would file tax evasion cases against accused. Thereafter or in March 2013, the DOJ filed the criminal cases before the RTC and the Court of Tax Appeals (**CTA**). To his mind, the filing of the cases was a form of harassment considering that it would normally take years from the time of filing of the complaint (with the DOJ) before Informations are actually filed in courts. He added that the filing of the cases was followed by a press conference in Iloilo City. On 15 March 2013, Commissioner Henares announced that tax evasion cases were already filed in different courts against accused. At the time, it became apparent to him that the press conference was done to humiliate the accused before Ilonggo voters (as it was prominently published and broadcasted in local and national media). After the press conference, his friends (who were close to Senator Franklin Drilon) told him that the filing of the tax evasion cases were done to discourage accused in his political bid and as a retaliation for his articles published on "The News Today" regarding the anomalies behind the Disbursement Acceleration Program (DAP) projects of Senator Drilon in Iloilo City. Furthermore, the manner by which accused was arrested was a clear indication that he was a target of harassment. On 01 May 2013, a regular non-working holiday, while accused was holding a political rally in Barangay Bitoon, Jaro, Iloilo City, a team of police officers from Camp Crame arrived and served a warrant of arrest (**WOA**) on accused before his supporters. According to him, the service of the WOA was suspicious as it was done on the evening of a non-working holiday when courts were closed.

Mejorada likewise testified that Atty. Cartagena pled with the police officers to not serve the WOA until accused shall have already delivered his speech. He thereafter overheard that accused was advised to fake hypertension so that he will be brought to the hospital instead. After which, Mejorada saw accused left the rally on board his vehicle.

The following day, Atty. Cartagena assisted accused with the bail requirements for his provisional liberty.

As regards the charges for tax evasion and failure to file the tax returns, Mejorada believed that accused had neither intended to underdeclare his income with intent to evade or defeat taxes nor willfully file any false or fraudulent returns.

Mejorada attested further that, based on his observation, accused is a law-abiding citizen who does not commit crimes. Likewise, he noticed that accused tends to be disorganized in handling his affairs, overlooks details and neglects the necessary paper works in running his businesses. He is thus of the view that, if accused really failed to file his tax returns, the non-filing was unintentional.

Mejorada also opined that accused is not knowledgeable or experienced in bookkeeping, accounting and taxation matters as he delegates these matters to third parties he trusts.

On cross-examination, Mejorada was asked whether he was familiar with the procedure of the DOJ in filing the cases, to which he answered in the affirmative. According to him, several libel complaints had already been filed against him. On the account of the press conference held, he said that it is very seldom that the BIR conducts press conferences to announce the filing of the criminal cases.

Testimony of Atty. Daniel V. Cartagena

Atty. Cartagena also assumed the witness stand where he recounted that he first met the accused sometime in 2012, during a meeting where he was supposed to be one of his district campaign leaders in Mandurriao, Iloilo City. He helped accused in his mayoralty campaign.

Atty. Cartagena likewise testified that he was not aware of the pending tax cases against the accused until the night of 01 May 2013, two weeks prior to the election. He said that accused did not consult

him for any of the tax cases (he was charged with) as he was not his counsel then. Prior to the 01 May 2013 incident, he heard from the live coverage of "Aksyon Radyo" that Commissioner Henares, in a press conference, announced that thirty-four (34) tax cases were filed against accused before the RTC and the CTA. The press-conference, in his mind, was purely a political harassment and intended to malign and ruin the name of accused. He suspected that it was the handiwork of then incumbent Mayor Mabilog (who had close ties with Senator Drilon).

Atty. Cartagena went on to narrate what transpired during the 01 May 2013 political rally. According to him, at about the time the accused was to address the crowd, one of accused's drivers approached him and told him that an agent of the National Bureau of Investigation (**NBI**) from Manila wanted to serve the WOA on accused. Upon the latter's request, Atty. Cartagena talked to the NBI agents who showed him the copy of the WOA. He tried to reason with the agents to defer the implementation of the WOA until after accused's speech. According to him, the NBI suggested that accused should fake a hypertension so he could be brought immediately to the hospital for medical assistance. As advised, accused was then confined that night at the hospital and through the assistance of Atty. Cartagena, he was able to facilitate the posting of cash bond for his provisional liberty the following day. It was during his confinement that accused formally engaged the services of Atty. Cartagena as his lawyer for the tax cases filed against him.

Atty. Cartagena added that, when he checked the records of the tax cases filed against accused, he was convinced that procedural due process was breached considering that he was never given the chance to explain his side, neither was he informed of the taxes he was supposed to pay (as there was no demand for payment made by the BIR). He likewise found out that accused was never served an LOA and that there was only one LOA issued to cover six taxable years, in violation of the NIRC, as amended.

Later in his testimony, Atty. Cartagena likewise declared that there was no NIC, PAN or FAN served prior to the filing of the criminal charges against accused. He discussed this matter with the accused and asked him why he failed to pay the taxes due before the filing of

the criminal cases. He claimed that accused had explained to him that he would have immediately settled his liability had he been informed. He would have asked for a re-computation from the BIR as well. Later, they both came into a conclusion that the filing of the tax cases was politically motivated since the BIR could have just filed ordinary tax collection cases.

Atty. Cartagena also confirmed that he was never authorized to receive the PAN or any documents relating to accused's taxes. Since he was not responsible for the accounting and/or computation of accused's taxes, he wrote James H. Roldan (**Roldan**) of the BIR about it and informed him that he was only to take charge of the litigation of cases pending with the CTA and RTC. Likewise, that he was not in-charge of bookkeeping, accounting and computation of taxes. According to him, he attached the PAN to his letter to Roldan.

Atty. Cartagena continued that he also received a copy of the FLD and upon receipt thereof, he again wrote back Roldan that he was not in-charge of the accounting and computation of taxes for the accused. Notwithstanding, considering that he was able to get in touch with accused, he informed him of the receipt of the FLD and PAN from the BIR, demanding payment from him. He then advised accused to communicate as soon as possible with the BIR and consult a tax expert as he cannot personally handle the same for lack of sufficient knowledge.

On the PAN and FLD, Atty. Cartagena stated that accused was obviously unaware of their issuance since he had even asked him to send him copies thereof. Atty. Cartagena believed that there was no clear proof that accused earned any income beyond what was declared in his tax returns. He said that the CIPs issued by accused's customers were not enough to prove his guilt beyond reasonable doubt. The CIPs were mere conclusions and summaries of the issuers which were supposed to be based on ORs and other books of account.

As to the non-filing of returns, Atty. Cartagena stated that it was not intentional and was merely a result of accused's aloofness. He also had a tendency to neglect small details in running his affairs. Accused is also not knowledgeable or experienced in taxation and accounting matters so he delegates these matters to third parties.

During his cross-examination, Atty. Cartagena was asked why he was no longer accused's counsel of record. He replied that he was not a tax expert and the cases against accused were the only tax cases he handled. Given his limited knowledge on the subject, he may not be able to protect the rights of accused.

On the PAN and FLD, he confirmed that he apprised the accused of his receipt of these notices and he was instructed to send copies to him (accused) so he did.

Testimony of Accused Rommel Ynion y Salva

The third and last witness for the defense was accused himself. On the witness stand, he declared that his business, Hoksing Builders, is a sole proprietorship and is engaged in the construction business. Although based in Parañaque, most of the projects were done in Iloilo. As the sole proprietor, he focused on securing new clients and projects but in most times, he was an absentee owner.

When inquired about the business operations of Hoksing Builders, accused said that that he employed managers to perform the areas of concern (of the business). He has four (4) regular employees and a number of contractual construction employees. The four (4) regular employees were tasked with the general logistical and operational support of the construction business, human resource, administrative and finance. He explained that he supervised work from time to time but he often relied on his managers' updates.

Accused declared as well that Hoksing Builders hired a professional accountant to handle the finance, which work entailed recording of the flow of money, the filing and payment of the required taxes. The accountant has been involved with Hoksing Builders since it started operations. However, he admitted that he did not check on the work of the accountant and he would pay whatever he was told to pay.

Accused also claimed that, after the filing of the criminal charges, he complied with all of BIR's orders and cooperated with it in order to settle his obligations. He thus paid ₱24,800,000.00 as a sign of

good faith and to show that he did not intend to evade payment of deficiency taxes.

Accused recounted that the first time he saw the FLD was when Atty. Cartagena showed it to him and after the tax cases were already filed in courts. Later, they found out that the notices were sent to his address in Las Piñas, which he had left a long time ago. He affirmed that had he known of his tax obligations, he would have settled them immediately and without hesitation.

On cross-examination, when accused was asked about his highest educational degree, he replied that he holds a Masteral Degree in Shipping Management. Prior to that, he also obtained a "Bachelor's Degree in Secretarial Course".

Accused explained as well that, as a contractor, his job was to secure contracts. However, he could not recall the number of contracts he had over the years (when Hoksing Builders was still operational) and that he had other businesses.

With respect to the employment of an accountant, accused changed tact and admitted that he only employed a bookkeeper and not an accountant (who finished a business management course). It was only during the filing of tax returns that he hired accountants to facilitate the process. The accountants were the ones who filed his tax returns, he claimed. Unfortunately, accused could not remember the names of the accountants. Also, accused failed to recall whether he signed the returns filed saying "it was a lifetime ago". When he requested that the tax returns be shown to him to identify his signature, he denied the signatures appearing on the tax returns as his.

Later on redirect examination, accused mentioned that there were times that his employees would ask for his signature but there were also instances when he let his employees sign on his behalf. Accused admitted that he was ignorant of the technicalities in the filing of tax returns and he entrusted totally the preparation of the same to the bookkeeper and accountants.

Still later on re-cross examination, accused stated that, albeit obtaining a master's degree, he knew nothing about taxes. This, according to him, was the reason why he hired accountants to assist him in paying his taxes. When asked about the properties in his name (which were discovered during the lifestyle check conducted on him), he admitted owning the properties.

Subsequently, accused filed a Motion to Suspend Proceedings which the Court denied.[23] Thereafter, the Court ordered accused to file his FOE. In a Resolution dated 17 July 2019[24], the Court admitted all the exhibits for the accused.

The accused later filed his Memorandum on 20 August 2019[25], whereas the plaintiff filed its Memorandum on 02 September 2019[26]. With the filing of their respective memoranda, the Court submitted the consolidated cases for decision.

## ISSUES

As shown in the Pre-Trial Order[27], the following issues are to be resolved:

> I.
>
> WHETHER OR NOT THE ACCUSED IS GUILTY BEYOND REASONABLE DOUBT OF VIOLATING SECTION 255 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED, FOR ALLEGEDLY FAILING TO FILE HIS VAT RETURNS FOR THE 4TH QUARTER OF TAXABLE YEAR 2006 AND 3RD QUARTER OF TAXABLE YEAR 2010 (CTA CRIM. CASE NOS. O-313 AND O-314);
>
> II.
>
> WHETHER OR NOT THE ACCUSED IS GUILTY BEYOND REASONABLE DOUBT OF VIOLATING SECTION 254 OF THE NIRC OF 1997, AS AMENDED, FOR HIS ALLEGED WILLFUL INTENT TO EVADE AND DEFEAT TAX FOR TAXABLE YEARS

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23 Id., p. 1894.
24 Id., pp. 1922-1923.
25 Id., pp. 1924-1966.
26 Id., pp. 1974-1992.
27 Pre-Trial Order, Division Docket, Volume III, pp. 1333-1334.

2006, 2008 AND 2010 (CTA CRIM. CASE NOS. O-315, O-316 & O-317); AND,

III.

WHETHER OR NOT THE ACCUSED IS GUILTY BEYOND REASONABLE DOUBT OF VIOLATING SECTION 255 OF THE NIRC OF 1997, AS AMENDED, FOR HIS ALLEGED WILLFUL FAILURE TO SUPPLY CORRECT AND ACCURATE INFORMATION IN HIS INCOME TAX RETURNS FOR TAXABLE YEARS 2006, 2008 AND 2010 (CTA CRIM. CASE NOS. O-318, O-319 AND O-320).

## THE COURT'S RULING

### A. CRIMINAL ASPECT

At the outset, it must be emphasized that an assessment is not a pre-requisite to the filing of the criminal charges. Section 222(a) of the NIRC, as amended, specifically states that, in case of a false or fraudulent return or failure to file a return, the tax may be assessed or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity fraud or omission. Moreover, jurisprudence holds that a criminal case can stand independent of an assessment. The ruling of the Supreme Court in *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*[28] is instructive, thus:

...

Private respondents maintain that the filing of a criminal complaint must be preceded by an assessment. This is incorrect, because Section 222 of the NIRC specifically states that in cases where a false or fraudulent return is submitted or in cases of failure to file a return such as this case, proceedings in court may be commences without an assessment. Furthermore, Section 205 of the same Code clearly mandates that the civil and criminal aspects of the case may be pursued simultaneously. In *Ungab v. Cusi*, petitioner therein sought the dismissal of the criminal complaints for being premature, since his protest to the CTA has not yet been resolved. The Court held that such protests could not stop or suspend the criminal action which was independent of the resolution of the protest in the CTA. This was because the Commissioner of Internal Revenue had, in such tax evasion cases, discretion on whether to

[28] G.R. No. 128315, 29 June 1999; Underscoring supplied.

> issue an assessment or to file a criminal case against the taxpayer or to do both.
>
> Private respondents insist that Section 222 should be read in relation to Section 255 of the NIRC, which penalizes failure to file a return. They add that a tax assessment should precede a criminal indictment. We disagree. To reiterate, said Section 222 states that an assessment is not necessary before a criminal charge can be filed. This is the general rule. Private respondents failed to show that they are entitled to an exception. Moreover, the criminal charge need only be supported by a *prima facie* showing of failure to file a required return. This fact need not be proven by an assessment.
>
> The issuance of an assessment must be distinguished from the filing of a complaint. Before an assessment is issued, there is, by practice, a pre-assessment notice sent to the taxpayer. The taxpayer is then given a chance to submit position papers and documents to prove that an assessment is unwarranted. If the commissioner is unsatisfied, an assessment signed by him or her is then sent to the taxpayer informing the latter specifically and clearly that an assessment has been made against him or her. In contrast, the criminal charge need not go through all these. The criminal charge is filed directly with the DOJ. Thereafter, the taxpayer is notified that a criminal case had been filed against him, not that the commissioner has issued an assessment. It must be stressed that a criminal complaint is instituted not to demand payment, but to penalize the taxpayer for violation of the Tax Code.
> ...

Thus, accused's contention that he was denied of procedural due process since there was no assessment prior to the filing of the criminal charges is clearly without merit. The filing of the criminal charges should not be confused with the subsequent assessment issued against accused, as the former is for the purpose for prosecution for violation of tax laws and not a demand for payment. These consolidated cases are concerned with whether the accused committed the crimes he was indicted for and if so, the amount of civil liability arising from these criminal violations of the NIRC, as amended.

The next important query is whether accused is liable of the charges against him. The Court, through this Second Division, resolves below.

**CTA CRIM. CASE NOS. O-313 and O-314**

These cases pertain to the charges of non-filing of VAT returns for the 4th quarter of 2006 and 3rd quarter of 2010 to the damage and prejudice of the Government in the estimated amount of ₱12,484,510.66, exclusive of penalties, surcharges and interest, in violation of Section 255 of the NIRC, as amended. The provision 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 such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten Thousand Pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than 10 years.
>
> ...

To sustain conviction for the violation of the above-cited provision, plaintiff should have established the following elements:

> ...
>
> (1) Accused is a person required by the NIRC or rules and regulations to make or file a return;
> (2) Accused failed to make or file the return at the time or times required by law or rules and regulations; and[,]
> (3) The failure to make or file the return was willful.[29]
>
> ...

Anent the first element, a careful review of the Certificate of Registration[30] (**COR**) adduced by plaintiff reveals that accused is a resident Filipino citizen and is the owner/sole proprietor of Hoksing Builders and H2O Pure Drinking Water, located at 50 Palma St. PDP Vill. BF Homes Parañaque City and 21 Aurora Drive Vergonville Subd. . Pulanglupa Las Piñas City, respectively. Based on the COR, plaintiff

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29 *People v. Baluyot*, CTA Crim. Case Nos. O-445, O-446, O-447 and O-448, 17 January 2018.
30 Exhibit "P-8", Division Docket, Volume II, pp. 711-712.

has established aptly that accused is a VAT-registered taxpayer with TIN 207-472-883-002-VAT. Accused, therefore, is required to make or file his quarterly VAT returns pursuant to Section 114 of the NIRC, as amended:

> ...
>
> **Sec. 114.** *Return and Payment of Value-added Tax.* –
>
> (A) *In General.* – Every person liable to pay the value-added tax imposed under this Title shall **file a quarterly return of the amount of his gross sales or receipts** within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis.
> ...
>
> (B) *Where to File the Return and Pay the Tax.* – Except as the Commissioner otherwise permits, the return shall be filed with and the tax paid to an authorized agent bank, Revenue Collection Officer or duly authorized city or municipal Treasurer in the Philippines located within the revenue district where the taxpayer is registered or required to register. *(Emphasis supplied)*
>
> ...

Being a registered VAT taxpayer starting year 2000, accused was duty-bound to make or file a return, especially so that he received payments from his customers. Plaintiff's testimonial and documentary evidence showed evidently that accused failed to make or file his quarterly VAT returns for TY 2006 and 1st to 3rd quarterly VAT returns for TY 2010.

Pursuant to Section 114(B) of the NIRC, as amended, and as implemented by Section 4.114-1(D) of RR No. 16-2005[31], a person with legal residence or principal place of business in the Philippines shall file his quarterly VAT returns and pay the corresponding VAT due with the authorized agent bank, Revenue Collection Officer or duly authorized City or Municipal Treasurer in the Philippines, located within the Revenue District where he is registered or principal place of business.

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[31] Consolidated Value-Added Tax Regulations of 2005.

Upon an assiduous review of the subject cases, accused had no record of filing of the required quarterly VAT returns for 2006 and 1st to 3rd quarterly VAT returns for 2010, within the reglementary period, with any of the revenue district offices of the BIR. It was established that the principal place of business of Hoksing Builders is at 50 Paloma St. PDP Village BF Homes Parañaque City, for the years 2006-2010; and therefore, he should have filed his VAT returns in Parañaque City.

A Certification[32] dated 14 August 2012 issued by Maria Socorro O. Lozano, Revenue District Officer of RDO No. 52-Parañaque City, also attested to the fact that accused had no record on file for the years 2006-2009 and 1st to 3rd quarters of 2010. Notably, accused did not proffer any counter-evidence to prove the filing of the returns during the said years.

From the foregoing, the Court is thus convinced that accused failed to make or file a return, within the period required by law, hence the first and second elements are present.

Having satisfied the first two elements, it is now crucial for the Court to determine whether the third element concurs as well. In this respect, it must have been demonstrated that, not only did accused fail to make or file his ITR for TY 2006 but he also did so willfully, with knowledge, voluntariness and with intentional violation of a known legal duty. Black's Law Dictionary[33] defined the term "willful" as:

> ...
>
> An act or omission is 'willfully' done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose to either disobey or to disregard the law.
>
> ...
>
> A willful act may be described as one done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently. A willful act differs essentially from a negligent act. The one is positive and the other negative

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32 Exhibit "P-6", Division Docket, Volume II, p. 706.

33 6th Edition, St. Paul Minn. West Publishing Co., 1990, p. 1599; Underscoring supplied.

> Act is 'willful' within meaning of section *(sic)* of Internal Revenue Code imposing penalty for willful failure to pay federal income and social security taxes withheld from employees if it is voluntary, conscious and intentional; no bad motive or intent to defraud the United States need be shown, and a 'reasonable cause' or 'justifiable excuse' element has no part in definition. *Harrington v. U.S.*, C.A.R.I., 504 F.2d 1306, 1315."
> ...

In tax crimes, the term "willful" has been defined to be:

> ...
> Willful in the tax crime statutes means a voluntary, intentional violation of a known legal duty and bad faith or bad purpose need not be shown."[34]
> ...

Was it willful on the part of the accused to not have filed the required tax returns?

As shown in the records, accused failed to file his quarterly VAT returns for TY 2006-2009 and 1st to 3rd quarters of TY 2010 for the income he received from his construction business, Hoksing Builders. As evidence of income, VAT official receipts were issued under the name of Hoksing Builders[35]. To corroborate the income received by accused, plaintiff presented the CIPs from Hoksing Builders' customers in 2006 and 2010, as follows:

| Customer | Amount Paid (net of VAT) | |
|---|---|---|
| | 2006 | 2010 |
| Capiz Sugar Central, Inc. | - | ₱45,535,714.29[36] |
| La Filipina Uy Gongco Corp. | - | 6,514,000.00[37] |

[34] [Mertens (Law of Federal Income Taxation) Chapter 47.04, page 28, Volume 13, see *U.S. v. Green*, 757 F2d 116, 85-1 USTC 9178 (CA7 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], also cited in *People of the Philippines v. Estelita Delos Angeles*, CTA Crim. Case No. O-027, 25 November 2009; underscoring supplied.

[35] Exhibit "P-94", Division Docket, Volume II, p. 877.

[36] Exhibit "P-13", id., p. 717.

[37] Exhibit "P-14", id., p. 718.

| | | |
|---|---|---|
| Philippine Foremost Milling Corporation | ₱17,326,118.00[38] | 206,052,952.00[39] |
| **TOTAL** | **₱17,326,118.00** | **₱258,102,666.29** |

The above CIPs have been duly identified and explained by the persons who prepared the same and they carry probative value.[40]

Accused does not appear to be lacking in education, neither totally ignorant nor unaware of his affairs. As he himself testified, he holds a Masteral Degree in Shipping Management from John B. Lacson Foundation Maritime University[41]. He is also a journalist by profession. The courses he took may be far removed from the subject of taxation but his educational attainment is indicative of his capacity to comprehend. Besides, he runs several businesses and could not be presumed to not know his obligations, especially so that he is registered with the BIR.

Moreover, the Court could not find truth in accused's claim that he is an "absentee owner". It is highly unusual that accused opted to be the sole proprietor of his business yet would be absent in actually managing his investments. As a sole proprietor engaged in various businesses, he could not be expected to *not* make himself informed of the money inflow in his company and what his tax obligations are, especially so that he voluntarily and consciously registered with the BIR. Incidentally, it is incredulous to claim at this point that, after being compliant in some taxable years, accused suddenly became unaware of his obligations with the BIR for the taxable years concerned.

Considering the above circumstances, the Court finds that accused's failure to file the VAT returns was willful. Intent is described as the state of mind accompanying an act, especially a forbidden act.[42] Being a state of mind, intent can be deduced from the actions of the accused. To reiterate for emphasis, accused has been VAT-registered

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38 Exhibit "P-16", id., p. 720.
39 Exhibit "P-20", id., p. 727.
40 PFMC's representative, who prepared the CIP, did not appear as witness. GS Madera, who secured the CIP from PFMC, nevertheless duly identified the same on the witness stand; *See* TSN dated 06 September 2017, p. 21.
41 TSN dated 03 June 2019, p. 6.
42 *Artemio Villareal v. People of the Philippines*, G.R. No 151258, 01 December 2014.

taxpayer since 2000 and has filed VAT returns for several years prior and subsequent to the periods in question. He appeared to have known this duty required by law, yet he missed out in the subject taxable years. It is his known legal duty and he did fail *voluntarily* to file the tax returns. The failure to file the income tax was also made repeatedly, negating any possible justification that it could only have been the result of carelessness or thoughtlessness (hence not intentional on his part). As bad faith need not be shown, but only that the failure to file the tax return is *voluntary* and/or willful, the willfulness of accused's inaction could no longer be doubted. The Court is thus convinced that plaintiff was able to establish that accused committed a violation of Section 255 of the NIRC, as amended, for his failure to file the VAT returns for the 4th quarter of 2006 and 3rd quarter of 2010.

**CTA CRIM. CASE NOS. O-315, O-316 AND O-317**

As regards the charges of Evasion of Income Tax for TY 2006, 2008, and 2010, totaling to ₱28,399,407.05, exclusive of penalties, surcharges and interest, in violation to Section 254 of the NIRC, as amended, the Supreme Court in the case of *Commissioner of Internal Revenue v. The Estate of Benigno P. Toda, Jr.*[43], held that tax evasion connotes the integration of three factors:

> ...
> 1. The end to be achieved, i.e., the payment of less than that known by the taxpayer to be legally due, or the non-payment of tax when it is shown that a tax is due;
> 2. An accompanying state of mind which is described as being "evil" in "bad faith" "willful" or "deliberate and not accidental"; and,
> 3. A course of action or failure of action which is unlawful.
> ...

In consideration of the enumeration above, plaintiff should have established that: (1) there was non-declaration and non-payment of income tax legally due from the accused; and, (2) there was "willfulness" or deliberate intent on the part of accused to evade or defeat the payment of income taxes.

[43] G.R. No. 147188, 14 September 2004.

The second element under Section 254 of the NIRC, as amended, is dependent on the first element, that is — the taxpayer did not pay the tax due from him. In other words, there can be no willful attempt to evade tax, if there is in fact no requirement to pay the same.[44] The following elements must then concur:

> ...
> 1. The offender is required to pay the tax imposed under the NIRC;
> 2. The offender attempts in any manner to evade or defeat any tax imposed, or the payment thereof; and[,]
> 3. The attempt to evade or defeat any tax imposed, or the payment thereof was willful.[45]
> ...

Anent the first requisite, as earlier discussed, accused is a registered individual taxpayer with TIN 207-472-883-000 and as the sole proprietor of a business under the name and style Hoksing Builders located in Parañaque City with TIN 207-472-883-002-VAT. Accordingly, there is no dispute that accused is a Filipino citizen residing in the Philippines who is required to pay his taxes on his taxable income under Section 23(A)[46] of the NIRC, as amended.

During the audit investigation, plaintiff was able to gather third-party information by securing CIPs issued to Hoksing Builders by CSCI[47], LFUC[48] and PMFC[49] for the years 2006 to 2010. These CIPs were then compared with the gross income declared by accused in his ITRs for TY 2006[50], 2008[51] and 2010[52], and revealed that there was an under declaration of his income for the concerned taxable years as shown in the table below:

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44 *People v. David*, CTA Crim. Case Nos. O-656, O-657 & O-658, 26 February 2019.
45 Id.
46 "SECTION 23. General Principles of Income Taxation in the Philippines. — Except when otherwise provided in this Code:
(A) A citizen of the Philippines residing therein is taxable on all income derived from sources within and without the Philippines; ..."
47 Exhibit "P-13", Division Docket, Volume II, p. 717.
48 Exhibit "P-14", id., p. 718.
49 Exhibit "P-15", id., p. 719.
50 Exhibit "P-9", id., p. 713.
51 Exhibit "P-11", id., p. 715.
52 Exhibit "P-82", id., p. 1002.

| Taxable Year | Gross Income per ITR | Gross Income per Certifications | Percentage of Underdeclaration |
|---|---|---|---|
| 2006 | ₱ 6,487,574.00 | ₱ 17,896,276.93 | 175.85% |
| 2008 | 7,206,750.00 | 15,957,287.17 | 121.42% |
| 2010 | 207,333,035.71 | 257,404,737.72 | 24.15% |

Section 248(B) of the NIRC, as amended, provides that there is *prima facie* evidence of a false or fraudulent return if there is a substantial under- declaration of taxable sales, receipt or income, to wit:

> ...
> **Sec. 248.** *Civil Penalties.* –
> ...
> (B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: Provided, That a substantial under-declaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute prima facie evidence of a false or fraudulent return: Provided, further, That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding [thirty percent] (30%) of actual deductions, shall render the taxpayer liable for substantial under-declaration of sales, receipts or income or for overstatement of deductions, as mentioned herein.[53]
> ...

From the foregoing, the NIRC, as amended, creates a *prima facie* evidence of fraudulent return if there is substantial underdeclaration of income of more than 30%. A comparison of the declaration in the ITRs *vis-à-vis* the income as certified by the customers of accused indicates that for TY 2006 and 2008, there is *prima facie* evidence of fraudulent returns.

*Prima facie* evidence is defined as evidence good and sufficient on its face. Such evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the

[53] Underscoring supplied.

party's claim or defense, and which if not rebutted or contradicted, will remain sufficient. Evidence which, if unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue it supports, but which may be contradicted by other evidence.[54]

When plaintiff establishes a *prima facie* case in a criminal case, as in the case at bar, the burden of proof does not shift to the defense. It remains throughout the trial with the party upon whom it is imposed—the plaintiff. It is the burden of evidence which shifts from party to party depending upon the exigencies of the case in the course of the trial.[55]

Considering that the law created a *prima facie* presumption, the burden of evidence was shifted from the plaintiff to accused. It has then become incumbent upon the latter to controvert the *prima facie* case against him (to be exculpated from liability). He, however, miserably failed to discharge this burden.

Moreover, in order to ascertain whether or not accused had the intent to evade or defeat the payment of income tax for the concerned years, a comparison between the income declared in the filed ITRs and the CIPs by his customers from TY 2005 to 2006 was made as follows:

| Year | Gross Income per AFS/ITR | Gross Income per Certifications[56] | Difference |
|---|---|---|---|
| 2006 | ₱6,487,574.00[57] | ₱ 17,896,276.93 | ₱ 11,408,702.93 |
| 2007 | 6,804,082.00[58] | 2,231,577.96 | (4,572,504.04) |
| 2008 | 7,206,750.00[59] | 15,957,287.17 | 8,750,537.17 |
| 2009 | 9,008,437.50[60] | 2,231,577.96 | (6,776,859.54) |
| 2010 | 207,333,035.71[61] | 257,404,737.72 | 50,071,702.01 |
| **TOTAL** | **₱236,839,879.21** | **₱295,721,457.74** | **₱58,881,578.53** |

It can be gleaned from the above that accused, after considering the taxable years not covered by the criminal information (*i.e.*, 2007

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54 *Robert P. Wa-Acon v. People of the Philippines*, G.R. No. 164575, 06 December 2006.
55 *Corpus v. Sarmiento*, G.R. No. L-45137, 23 September 1985.
56 Exhibit "P-13 to P-20", Division Docket, Volume II, pp. 717-727.
57 Exhibit "P-9", id., p. 713.
58 Exhibit "P-10", id., p. 714.
59 Exhibit "P-11", id., p. 715.
60 Exhibit "P-12", id., p. 716.
61 Id., p. 1002.

and 2009), still has an undeclared income amounting to ₱58,881,578.53. Unfortunately, accused did not present any countervailing evidence such as books of accounts, journals, ledgers or other related documents to refute the prosecution's evidence and support its claim that there was no under-declaration of taxable income for TY 2006, 2008 and 2010. Instinctively, a person charged with a tax evasion case would exhaust all means to counter and dismiss the allegations against him. When a taxpayer knows that he has no outstanding tax liabilities because he has squarely paid all of his tax liabilities, it is not unlikely to expect that said taxpayer will cooperate with the tax investigation because he knows his conscience is clear and he has nothing to hide.[62] Instead, the following documents constitute the totality of the pieces of documentary evidence proffered by accused in his FOE[63]:

| Exhibits | Description |
|---|---|
| "A-1" | Letter from Cartagena & Associates dated 20 May 2015 |
| "A-2" | Letter from Cartagena & Associates dated 21 May 2015 |
| "A-3" | News article from *Balita* dated 15 March 2013, entitled: *"BIR intensifies campaign vs. tax evaders; files case against Ilonggo businessman"* |
| "A-4" | Philstar news article dated 3 May 2013, entitled: *"UNA's Iloilo City mayoral bet nabbed for tax evasion: Plain political harassment – Nancy"* |
| "A-5" | Judicial Affidavit for Manuel P. Mejorada |
| "A-5a" | Signature of Manuel P. Mejorada |
| "A-6" | Judicial Affidavit for Daniel V. Cartagena |
| "A-6a" | Signature of Daniel V. Cartagena |
| "A-7" | Judicial Affidavit of Rommel S. Ynion |
| "A-7a" | Signature of Rommel S. Ynion |

As clearly shown above, accused presented no document or record to sustain his claim that he religiously filed correct and accurate tax returns congruent with his accounting books and records. Accused did not even present his books of accounts when these were demanded from him. Such refusal could only cast doubt on his insistent claims. To the mind of the Court, there was also an attempt to evade or defeat the payment of tax liability; henceforth, constituting the second element.

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62 CTA EB CRIM. CASE NO. 002 (CTA Case Nos. A-1, A-2), 08 January 2008.
63 Division Docket, Volume IV, pp. 1907-1913.

As discussed earlier, "willful" in tax crime means a voluntary, intentional violation of a known legal duty and bad faith or bad purpose need not be shown.[64] The Court finds accused's voluntary attempt to evade willful.

First, accused did not refute, neither tried to reconcile the discrepancies found by the BIR investigating team between the amount of income declared in the ITRs filed, and the third-party sworn Certifications issued by accused's customers.

Second, plaintiff was able to establish that accused, as a businessman, was aware of his responsibility to pay taxes. Likewise, in his testimony, accused testified that during the subject taxable years he personally acquired contracts, to quote:[65]

> ...
>
> PROS. CRUZ:
> How much is the cost of the contract?
>
> WITNESS:
> Well, it varies. Sometimes it would cost like twenty million, thirty million. Sometimes fifty million.
>
> PROS. CRUZ:
> Did you acquire contract in 2006, 2008 and 2010?
>
> WITNESS:
> You know what, I don't have really a good memory, but you know what, I think I had. **I was the one who subcontracted those hundred of school buildings small classrooms were subcontracted to me during that time**, if I am not mistaken.
> ...

Accused, as a contractor who personally took part in the negotiation and perfection of the revenue-generating contracts, could reasonably estimate the amount of income he earned for the concerned taxable year.

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64 *Ongsiako, Jr., et al. v. People of the Philippines*, CTA EB Crim. Case No. 031, 26 May 2015, citing Mertens (Law of Federal Income Taxation) Chapter 47.05, p. 28, Vol. 13 cited in *People of the Philippines v. Estelita Delos Angeles*, CTA Crim. Case No. O-027, 25 November 2009.

65 TSN, 03 June 2019, pp. 12-13.

Third, accused admitted to owning properties, the aggregate value of which, were not commensurate to the income he declared in his ITRs. During his re-cross examination, the ownership of the properties was touched upon, to wit:

> ...
> PROS. CRUZ:
> Are you aware, Mr. Ynion, that a lifestyle conducted on you, wherein there many (*sic*) properties were registered in your name, and those properties are not that cheap because there are high end cars registered in your name, property that cost much and in the Informations filed against you for 2006, 2008 and 2010, you did not file your income tax returns?
>
> ATTY. CAMPAÑANO:
> Objection, Your Honors not touched in the direct.
>
> JUSTICE CASTAÑEDA:
> We allow the question in connection with the Informations. Proceed.
>
> WITNESS:
> Ahh, Yah.
> ...

This Court does not find accused's contention that he merely relied on his accountant to be excusable. To point out, there was even an inconsistency in his testimony as to the person who handled the accounting of his business. In his Judicial Affidavit, he declared:

> ...
> Q18: Of the areas of concern you mentioned, were there employees concerned with the finances of your business?
>
> A18: Yes, Hoksing Builders hired a professional accountant to handle the finance aspect of its business.
>
> Q19: Can you describe the usual scope of work of these personnel?
>
> A19: The work performed by the accountant of Hoksing Builders' business concerns all aspects of its finances, including the flow of money in the business, the recording of such, and the filing and payment of the required taxes.

Q20: Since when have these personnel been handling the tax concerns of Hoksing Builders?

A20: As far as I can recall, the accountant has already been involved since the start of the operations of Hoksing Builders.
...

Yet in his cross-examination, he stated that he only employed a bookkeeper, *viz*:

...
PROS. CRUZ:
You mentioned an accountant you employed in your business, where did you employ your accountant?

WITNESS:
To be honest, I only employed a bookkeeper. And every time I thought I believe, you know, I was aware of my responsibility as a businessman to pay my taxes, so when it was time for me to pay my taxes, we had what we called on a contractual basis, we hired accountants but those are not regular employees. The only regular employees I had for accounting purposes was my bookkeeper, and to pay my taxes, I had my accountants to facilitate the process. But you know, I had three or four accountants on that time, but those a lifetime ago, I cannot recall their names.

PROS. CRUZ:
Did you employ your accountants in 2006? Did you retain an accountant in 2006, 2008 and 2010?

WITNESS:
Yah, I said I had just like three or four accounts (*sic*) as a contractual basis, but I had one bookkeeper who kept track of everything and just for my construction business. But as I told you, I had other businesses and that was not my only... (interrupted)

PROS. CRUZ:
Describe to me your working relation with your accountant?

WITNESS:
Ok, my bookkeeper, my accountant... (interrupted)

PROS. CRUZ:
So your bookkeeper is not your accountant?

> WITNESS:
>
> He is not an accountant. Yah, he finished business management, I think, in school. That is only he did, he keep tracked (*sic*) of expenses, revenues, and he would remind me that it is due to pay taxes. So, of course, I instructed them to hire people qualified to have us process that.
>
> ...

**CTA CRIM. CASE NOS. O-318, O-319, AND O-320**

These cases pertain to the charges for failure to supply correct and accurate information of the ITRs for TY 2006, 2008, and 2010 to the prejudice of the Government in the estimated amount of ₱28,399,407.05, exclusive of penalties, surcharges and interest, in violation to Section 255 of the NIRC, as amended.

The Court does not find merit in accused's contention that the violation for failure to supply correct and accurate information under Section 255 of the NIRC, as amended, is absorbed in the crime of tax evasion under Section 254 of the same code.

Jurisprudence holds that a false return is distinct from a fraudulent return and the former is not absorbed or is necessarily included in the latter. In *Commissioner of Internal Revenue v. Philippine Daily Inquirer, Inc.*[66], the Supreme Court, citing *Samar-1 Electric Cooperative v. Commissioner of Internal Revenue*[67], held, *viz*:

> ...
>
> To our minds we can dispense with these controversial arguments on facts, although we do not deny that the findings of facts by the Court of Tax Appeals, supported as they are by very substantial evidence, carry great weight, by resorting to a proper interpretation of Section 332 of the NIRC. We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment at any time within ten years after the discovery of the (1) falsity, (2) fraud, (3) omission. Our stand that the law should be interpreted to mean a separation of the three different

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66 G.R. No. 213943, 22 March 2017; underscoring supplied.
67 G.R. No. 193100, 10 December 2014.

> situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situation into three different classes, namely "falsity", "fraud," and "omission." That there is a difference between "false return" and "fraudulent return" cannot be denied. While the first implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due.
>
> ...

For failure to supply correct and accurate information under Section 255 of the NIRC, as amended, the following elements must be established:

> ...
>
> 1. That accused was a person required to supply correct and accurate information;
> 2. That he failed to supply correct and accurate information at the time required by law; and[,]
> 3. That the failure to supply correct and accurate information was willful.[68]
>
> ...

The records and evidence already confirmed that accused is a registered taxpayer, and as such, is required by law to file ITRs reflecting all the income from all sources. The Court finds no need to belabor on this element as this has already been aptly discussed in the preceding paragraphs.

On the next element, Section 51(C)[69] of the NIRC, as amended, provides that an individual subject to income tax is required to make

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[68] *People of the Philippines v. Judy Anne Santos y Lumagui*, CTA Crim. Case No. O-012, 16 January 2013.

[69] **Sec. 51.** *Individual Return.* –

> ...
>
> (C) *When to File.* -
>
> (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.
>
> (2) Individuals subject to tax on capital gains;
>
> (a) From the sale or exchange of shares of stock not traded thru a local stock exchange as prescribed under Section 24(c) shall file a return within thirty (30) days after each transaction and a final consolidated return on or before April 15 of each year covering all stock transactions of the preceding taxable year; and[,]
>
> (b) From the sale or disposition of real property under Section 24(D) shall file a return within thirty (30) days following each sale or other disposition.
>
> ...

and file a declaration of income on or before April 15 of each year covering the income for the preceding taxable year.

A perusal of plaintiff's documentary evidence shows that accused filed his ITRs for TY 2006, 2008 and 2010 with RDO No. 52-Paranaque City[70], for his income for the aforementioned taxable years.

Equally important with the filing of the ITRs at the time required by the NIRC, as amended, is the accuracy of the information contained in the same. The ITRs should reflect the true and correct amount of income earned by the taxpayer for the given period.

The plaintiff presented third-party sourced Sworn Certifications from accused's customers to prove that he failed to supply the correct and accurate information, as follows:

| Taxable Year | Gross Income per ITR | Gross Income per Certifications | Percentage of Underdeclaration |
|---|---|---|---|
| 2006 | ₱ 6,487,574.00 | ₱ 17,896,276.93 | 175.85% |
| 2008 | 7,206,750.00 | 15,957,287.17 | 121.42% |
| 2010 | 207,333,035.71 | 257,404,737.72 | 24.15% |

With the above, plaintiff was able to prove that accused earned substantial income in 2006, 2008 and 2010 but accused's ITRs showed significantly lower amounts.

As regards the third element, since it has already been demonstrated that accused failed to supply correct and accurate information in his ITRs, what is left for the Court to ascertain is whether such failure was intentional. To this, the Court holds in the affirmative.

Obviously, accused was aware of the contracts he secured over the years and was in a position to reasonably estimate the income he will derive therefrom. In his testimony, he attested that, as a contractor, his primary job was to secure contracts. Likewise, accused

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70 Exhibits "P-9", "P-11" and "P-82", Division Docket, Volume II, pp. 713, 715 and 1002.

merely denied having signed the ITRs for TY 2006, 2008 and 2010 when the same were shown to him, but offered no evidence to support his argument. His cross-examination also tells:

> ...
> PROS. CRUZ:
> Who signs the returns you file in the Bureau of Internal Revenue (BIR)?
>
> WITNESS:
> Ok, it was like a long time ago. I think I signed them, or I didn't, I don't know. But I remember having some papers presented to me for signature, but you know at the time of... (interrupted)
>
> PROS. CRUZ:
> Before signing the returns, you filed in the Bureau of Internal Revenue (BIR), did you elevate the contents of your returns? Did you ask your accountants, what is the gross sales, the income tax to be paid?
>
> WITNESS:
> I can't recall anymore what I was doing then, but I think it should also have the understanding the situation when I tell you that 80% or most of the time I was out of the country and I have to delegate those task to the people I trusted in my office.
>
> ...
> PROS. CRUZ:
> I thought Mr. Ynion, that you are the one signing the returns filed in the Bureau of Internal Revenue (BIR).
>
> WITNESS:
> I just told, with all due respect, I just said that I was not even sure if I was the one who signed it or the people I trusted who signed.
> ...
>
> WITNESS:
> Is there a signature there, Madam?
>
> PROS. CRUZ:
> Yes, Rommel S. Ynion.
>
> WITNESS:
> Can I check the signature please? I am sorry that is not my signature. That is not my signature, Madam. I'm sorry.

PROS. CRUZ:
Anyway, even it is not... (interrupted)

WITNESS:
I don't know, that is why I said earlier that is also possible I signed it, and it is possible I am not the one who signed them.

PROS. CRUZ:
Whose signature is this?

WITNESS:
I really don't know. I swear, that is not my signature. I can give you the sample of my signature right now.

PROS. CRUZ:
This is a certified true copy (CTC) we got from the records of the Bureau of Internal Revenue (BIR).

WITNESS:
Yah, but that is not my signature.

PROS. CRUZ:
But you employed an accountant who did it for you?

WITNESS:
Yah, but as I said, I (*sic*) always out of the country and I let my staff do it, and I don't know. I'm sorry.
...

Section 51(G)[71] of the NIRC, as amended, states that the fact that an individual's name signed on a filed return shall be *prima facie* evidence, for all purposes, that the return was actually signed by him. Accused's mere denial of the signatures appearing on his returns as not his is insufficient to overturn the disputable presumption raised by the law. Although he did not claim categorically that his signatures were forgeries, any suggestion from his end that someone else signed it could only be deemed (by this Court) to have been made with his consent. Based on his own candid sworn declaration on the witness stand, he let his employees sign on his behalf. Ultimately, the actions of accused in filing his ITRs logically point to the conclusion that the

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[71] **Sec. 51.** *Individual Return.* –
...
(G) *Signature Presumed Correct.* - The fact that an individual's name is signed to a filed return shall be prima facie evidence for all purposes that the return was actually signed by him.

failure to supply correct and accurate information was done by him, intentionally.

It is noted that accused's defense was mainly anchored on the alleged political undertone of the filing of the criminal charges against him. He insisted that considering his stature as a journalist and rival of then incumbent Mayor Mabilog of Iloilo City, the filing of the criminal charges was nothing but a harassment suit. Even if this Court were to lend credence to accused's theory, it does not alter the fact that accused failed to file VAT returns, substantially underdeclared his income, and failed to supply correct and accurate information in his ITRs for the concerned taxable years, all in violation of the NIRC, as amended.

It is unfortunate that accused took no effort to offer any reconciliation of accounts to somehow refute the charges against him. Instead, he merely presented a couple of newspaper clippings to show how he was allegedly harassed by the previous administration. Even his witnesses only spoke of their assumptions that he could not have done the criminal violations he was charged with or that the violations (to their mind and own personal opinion) were the by-product of political persecution or harassment. What could be a better evidence but proof of the filing of the tax returns with correct and accurate information? With accused's failure to rebut the *prima facie* evidence against him, the Court could only respond to the query in the affirmative, that is, he committed the violations charged against him.

We shall now discuss the civil liability *ex delicto* that are deemed instituted with the criminal cases.

## B. CIVIL ASPECT *EX DELICTO*

**CTA CRIM. CASE NOS. O-313 and O-314** (VIOLATIONS OF SEC. 255, NIRC, AS AMENDED)

ACCUSED IS CIVILLY LIABLE FOR VAT DUE FOR TAXABLE YEAR 2006 AND 1ST TO 3RD QUARTERS OF 2010 FOR FAILURE TO FILE VAT RETURNS

On the civil aspect *ex delicto*, the Court holds that accused should necessarily be held similarly liable. However, since the computation presented in the FLD[72] was based on the photocopies of the official receipts[73] issued by Hoksing Builders that were considered by this Court as UNVERIFIED and UNAUTHENTICATED documents, there is a need to revise the computation using only the Certifications[74] issued by accused's customers stating the amount of income payments they made to the accused for TY 2006 and 2010 as bases. The FLD VAT assessment computation for TY 2006 and 2010 are hereby revised, as follows:

| Year | Amount Paid per Certifications (net of VAT) | Amount declared per filed VAT Returns | Amount of Under-declaration |
|---|---|---|---|
| 2006 | ₱ 17,326,118.00 | ₱ - | ₱ 17,326,118.00 |
| 2010 | 258,102,666.29 | 207,333,035.71[75] | 50,769,630.58 |

Correspondingly, the revised VAT computation for the TY 2006 and 2010 should be as follows:

| Year | Basic | 50% Surcharge | Interest | Total |
|---|---|---|---|---|
| 2006 | ₱ 2,079,134.16 | ₱ 1,039,567.08 | ₱ 3,489,527.63 | ₱ 6,608,228.87 |
| 2010 | 6,092,355.67 | 3,046,177.84 | 5,347,919.88 | 14,486,453.39 |

*Computed up to June 15, 2015, which is the demand date indicated in the FLD*

**CTA CRIM. CASE NOS. O-315 to O-320** (VIOLATIONS OF SECS. 254 AND 255, NIRC, AS AMENDED)

ACCUSED IS CIVILLY LIABLE FOR THE INCOME TAX DUE FOR TY 2006, 2008 and 2010 FOR ATTEMPTING TO EVADE OR DEFEAT TAX AND FAILURE TO SUPPLY CORRECT AND ACCURATE RETURNS.

72 Exhibit "P-84", Division Docket, Volume III, pp. 1042-1071.

73 Exhibits "P-25", "P-26", "P-27", "P-28", "P-29", "P-30", "P-31", "P-32", "P-33", "P-34", "P-35", "P-36", "P-37", "P-38", "P-39", "P-40", "P-41", "P-42", "P-43", "P-44", "P-45", "P-46", "P-47", "P-48", "P-49", "P-50", "P-51", "P-52", "P-53", "P-54", "P-55", "P-56", "P-57", "P-58", "P-59", "P-60", "P-61", "P-62", "P-63", "P-64", "P-65", "P-66", "P-67", "P-68", "P-69", "P-70", "P-71", "P-72", "P-73", "P-74", "P-75", "P-76" and "P-77", Division Docket, Volume II, pp. 736-803.

74 Exhibits "P-13", "P-14", "P-16" and "P-20", Division Docket, Volume II, pp. 717, 718, 720 and 727.

75 Exhibit "P-7", Division Docket, Volume III, p. 708.

As earlier discussed, the civil action for collection of deficiency tax is deemed jointly instituted in a criminal action.

The BIR's assessment is based on the best evidence obtainable rule. It applies when there is a failure on the part of the taxpayer to submit required returns, statements, reports and other documents as laid down in Section 6(B) of the Tax Code, to wit:

> ...
>
> **Sec. 6.** *Power of the Commissioner to Make [A]ssessments and Prescribe [A]dditional Requirements for Tax Administration and Enforcement.* —
>
> ...
>
> (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.[76]
>
> ...

Pertinent portions of Revenue Memorandum Circular (RMC) No. 23-00[77] implement the "best evidence obtainable" rule, to wit:

> ...
>
> SECTION 2. Prescribed Revenue Procedures. —
>
> ...
>
> 2.3 *Assessment Based on Best Evidence Obtainable.* — An assessment based on best evidence obtainable is justified when any of the grounds provided by law is clearly established viz:
>
> 1. The report or records requested from the taxpayer are not forthcoming i.e., the records are lost; refusal of the taxpayer to submit such records;
>
> 2. The reports submitted are false, incomplete or erroneous.
>
> In every case where a taxpayer is ordered to be examined and he refuses or fails to submit his records giving rise to the

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76 Underscoring supplied.

77 Existing Revenue Procedures on the Assessment of Deficiency Internal Revenue Taxes Based on the "Best Evidence Obtainable".

> issuance of a *subpoena duces tecum* pursuant to RMO No. 35-90, the assessment shall only be issued after a criminal case has been instituted for failure to obey summons.
>
> After filing of the complaint against the taxpayer for violation of the *Subpoena Duces Tecum*, the Legal Division/Prosecution Division shall immediately return the docket of the case to the concerned Revenue Officer. The Revenue Officer shall, upon receipt of the docket, immediately proceed to determine the taxpayer's deficiency internal revenue tax liability in accordance with the 'Best Evidence Obtainable.'

2.4 *Existing Revenue Procedures and Jurisprudence Governing Assessment Based on the Best Evidence Obtainable.* — Provided hereunder are the existing revenue procedures and jurisprudence governing issuance of a deficiency tax assessment based on the best evidence obtainable:

...

(f) *Assessment Based on Best Evidence in Case of Non-Presentation of Taxpayer's Books of Accounts.* —

The disputed 1954 deficiency income tax assessment of P73,636.50, even if it was based merely on adjusting entries recorded in petitioner's general ledger, is justified and sanctioned by Section 159 of the National Internal Revenue Code, the pertinent portion of which reads as follows:

> SECTION 15. *Power of Commissioner of Internal Revenue to make assessments.* — 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 law or regulation, or when there is reason to believe that any such report is false, incomplete, or erroneous, the Commissioner of Internal Revenue shall assess the proper tax on the best evidence obtainable.

Petitioner's willful and consistent neglect to file its corporate income tax returns for a period of four (4) calendar years (1950 to 1953) justifies the issuance of respondent's deficiency income tax assessment and letter of demand. *A taxpayer like the petitioner cannot be permitted to hide its taxable income and evade the payment of taxes with impunity by the simple expediency of conveniently losing its books of accounts and paying the minimal compromise penalty therefor; otherwise, it would be impossible to collect income taxes due from a dishonest taxpayer.* This doctrine was enunciated by our Supreme Court in the disputed income tax case of William Li Yao v.

Collector of Internal Revenue, G.R. No. L-11875, December 28, 1963, wherein the said Court categorically stated as follows:

> If a taxpayer commits a violation of the law, hiding his income to evade payment of taxes, the Government must be permitted to resort to all evidence or sources available to determine his said income so that the tax may be collected for public purposes. There is and there should be a presumption of regularity accorded this action of the Collector of Internal Revenue in assessing the tax on the best evidence obtainable otherwise, it would be impossible to assess taxes due from a dishonest taxpayer.[78]

...

Records show that accused failed to submit his books of accounts and other records as requested by the BIR after being served by several notices.[79] Upon serving the final request for presentation of documents, accused submitted to the BIR copies of ORs issued by Hoksing Builders to its various customers. Also, as part of its investigation, BIR issued Access to Records Letters[80] to his customers (CSCI, LFUC, PFMC). The BIR was then able to secure Sworn Certificates from said customers of the alleged payments to Hoksing Builders. Note that the Court considered the copies of ORs as UNVERIFIED and UNAUTHENTICATED documents. As such, the following are the revised computations of the basic deficiency income tax of accused for TY 2006, 2008 and 2010 based solely on the third-party sourced sworn certificates:

**2006 Basic Deficiency Income Tax**

| | | |
|---|---|---|
| Net Income per FS and per Return | | ₱205,375.00 |
| Add: Adjustment to Income | | |
| Income payments per Sworn Certificates: | | |
| Phil. Foremost Milling Corporation | ₱17,326,118.00 | |
| Total Income per Investigation | 17,326,118.00 | |
| Less: Service Income per Return | 6,487,574.00 | 10,838,544.00 |
| Net Income per Investigation | | 11,043,919.00 |
| Less: Personal Exemption | | 20,000.00 |
| **Net Taxable Service Income per Investigation** | | **₱11,023,919.00** |

78 Underscoring supplied.
79 Exhibit "P-3" to "P-5", Division Docket, Volume II, pp. 701-705.
80 Exhibit "P-82", id., p. 877.

| | | |
|---|---|---|
| Income Tax Due Thereon | | |
| 1st P500,000.00 | | ₱125,000.00 |
| Excess at 32% | | 3,367,654.08 |
| **Total** | | **₱3,492,654.08** |
| Less: Income Tax paid per Return | | 33,843.75 |
| **Basic Deficiency Income Tax** | | **₱3,458,810.33** |

**2008 Basic Deficiency Income Tax**

| | | |
|---|---|---|
| Net Income per FS and per Return | | ₱300,280.00 |
| Add: Adjustment to Income | | |
| Income payments per Sworn Certificates: | | |
| Phil. Foremost Milling Corporation | ₱14,178,971.50 | |
| La Filipina Uy Gongco Corporation | 1,778,315.67 | |
| Total Income per Investigation | 15,957,287.17 | |
| Less: Service Income per Return | 7,206,750.00 | 8,750,537.17 |
| Net Income per Investigation | | 9,050,817.17 |
| Less: Personal Exemption | | 35,000.00 |
| **Net Taxable Service Income per Investigation** | | **₱9,015,817.17** |

| | |
|---|---|
| Income Tax Due Thereon | |
| 1st P500,000.00 | ₱125,000.00 |
| Excess at 32% | 2,725,061.49 |
| **Total** | **₱2,850,061.49** |
| Less: Income Tax paid per Return | 54,584.00 |
| **Basic Deficiency Income Tax** | **₱2,795,477.49** |

**2010 Basic Deficiency Income Tax**

| | | |
|---|---|---|
| Net Income per FS and per Return | | ₱17,102,947.21 |
| Add: Adjustment to Income | | |
| Income payments per Sworn Certificates: | | |
| Phil. Foremost Milling Corporation | ₱206,052,951.50 | |
| Capiz Sugar Central Inc. | 45,535,714.79 | |
| La Filipina Uy Gongco Corporation | 5,816,071.43 | |
| Total Income per Investigation | 257,404,737.72 | |
| Less: Service Income per Return | 207,333,035.71 | 50,071,702.01 |
| Net Income per Investigation | | 67,174,649.22 |
| Less: Personal Exemption | | 50,000.00 |
| **Net Taxable Service Income per Investigation** | | **₱67,124,649.22** |

| | | |
|---|---|---|
| Income Tax Due Thereon | | |
| 1st P500,000.00 | | ₱125,000.00 |
| Excess at 32% | | 21,319,887.75 |
| Total | | 21,444,887.75 |
| Less: Creditable Withholding Tax | ₱3,021,000.10 | |
| Income Tax Paid per Return | 2,400,943.00 | 5,421,943.10 |
| **Basic Deficiency Income Tax** | | **₱16,022,944.65** |

To summarize, the basic deficiency income tax for TY 2006, 2008 and 2010, and basic deficiency VAT for TY 2006 and 2010 including surcharge and interests are:

| **Income Tax** | **Taxable Years** | | | |
|---|---|---|---|---|
| | **2006** | **2008** | **2010** | **TOTAL** |
| Basic Deficiency Tax | ₱ 3,458,810.33 | ₱ 2,795,477.49 | ₱ 16,022,944.65 | ₱ 22,277,232.47 |
| 50% Surcharge | 1,729,405.17 | 1,397,738.75 | 8,011,472.33 | 11,138,616.25 |
| *Sub-Total* | *₱ 5,188,215.50* | *₱ 4,193,216.24* | *₱ 24,034,416.98* | *₱ 33,415,848.72* |
| **Add: 20% Deficiency Interest** | | | | |
| From April 16, 2007 to June 15, 2015 (P3,458,810.33 x 20% x 2,983/365) | ₱ 5,653,496.56 | | | ₱ 5,653,496.56 |
| From April 16, 2009 to June 15, 2015 (P2,795,477.49 x 20% x 2,252/365) | | ₱ 3,449,542.63 | | 3,449,542.63 |
| From April 16, 2011 to June 15, 2015 (P16,022,944.65 x 20% x 1,522/365) | | | ₱ 13,362,696.85 | 13,362,696.85 |
| **Total Amount Due, June 15, 2015** | **₱ 10,841,712.06** | **₱ 7,642,758.87** | **₱ 37,397,113.83** | **₱ 55,881,584.76** |
| **Add: 20% Deficiency Interest** | | | | |
| From June 16, 2015 to December 31, 2017 (930 days) | | | | |

| **Income Tax** | **Taxable Years** | | | |
|---|---|---|---|---|
| | **2006** | **2008** | **2010** | **TOTAL** |
| (P3,458,810.33 x 20% x 930/365) | ₱ 1,762,571.84 | | | ₱ 1,762,571.84 |
| (P2,795,477.49 x 20% x 930/365) | | ₱ 1,424,544.69 | | 1,424,544.69 |
| (P16,022,944.65 x 20% x 930/365) | | | ₱ 8,165,117.00 | 8,165,117.00 |
| **Add: 20% Delinquency Interest** | | | | |
| From June 16, 2015 to December 31, 2017 (930 days) | | | | |
| (P10,841,712.06 x 20% x 930/365) | 5,524,817.65 | | | 5,524,817.65 |
| (P7,642,758.87 x 20% x 930/365) | | 3,894,666.16 | | 3,894,666.16 |
| (P37,397,113.83 x 20% x 930/365) | | | 19,057,159.38 | 19,057,159.38 |
| **Total Amount Due, December 31, 2017** | **₱ 18,129,101.55** | **₱ 12,961,969.72** | **₱ 64,619,390.21** | **₱ 95,710,461.48** |

*Computed up to 31 December 2017.*

| **Value-Added Tax** | **Taxable Years** | | |
|---|---|---|---|
| | **2006** | **2010** | **TOTAL** |
| Basic Deficiency Tax | ₱ 2,079,134.16 | ₱ 6,092,355.67 | ₱ 8,171,489.83 |
| 50% Surcharge | 1,039,567.08 | 3,046,177.84 | 4,085,744.92 |
| *Sub-Total* | *₱ 3,118,701.24* | *₱ 9,138,533.51* | *₱ 12,257,234.75* |
| **Add: 20% Deficiency Interest** | | | |
| From January 26, 2007 to June 15, 2015 (P2,079,134.16 x 20% x 3,063/365) | ₱ 3,489,527.63 | | ₱ 3,489,527.63 |

| **Value-Added Tax** | **Taxable Years** | | |
|---|---|---|---|
| | **2006** | **2010** | **TOTAL** |
| From January 26, 2011 to June 15, 2015 (P6,092,355.67 x 20% x 1,602/365 | | ₱ 5,347,919.88 | 5,347,919.88 |
| **Total Amount Due, June 15, 2015** | **₱ 6,608,228.87** | **₱ 14,486,453.39** | **₱ 21,094,682.26** |
| **Add: 20% Deficiency Interest** | | | |
| **From June 16, 2015 to December 31, 2017 (930 days)** | | | |
| (P2,079,134.16 x 20% x 930/365) | ₱ 1,059,503.98 | | ₱ 1,059,503.98 |
| (P6,092,355.67 x 20% x 930/365) | | ₱ 3,104,597.68 | 3,104,597.68 |
| **Add: 20% Delinquency Interest** | | | |
| **From June 16, 2015 to December 31, 2017 (930 days)** | | | |
| (P6,608,228.87 x 20% x 930/365) | ₱ 3,367,481.01 | | ₱ 3,367,481.01 |
| (P14,486,453.39 x 20% x 930/365) | | ₱ 7,382,137.89 | 7,382,137.89 |
| **Total Amount Due, December 31, 2017** | **₱ 11,035,213.86** | **₱ 24,973,188.96** | **₱ 36,008,402.82** |

*Computed up to 31 December 2017.*

**WHEREFORE,** with the foregoing, the Court finds accused Rommel Ynion y Salva:

1. **GUILTY** beyond reasonable doubt of violating Section 255 of the NIRC, as amended, in **CTA Crim. Case Nos. O-313, O-314, O-318, O-319 and O-320**. He is hereby **SENTENCED** to an

indeterminate penalty of one (1) year, as minimum, to two (2) years, as maximum term of imprisonment for *each* charge. He is also **ORDERED** to pay a fine of ₱10,000.00, with subsidiary imprisonment pursuant to Section 280 of the NIRC, as amended, in the event that accused Ynion has no property with which to meet the fines imposed upon him, or is unable to pay such fines; and,

2. **GUILTY** beyond reasonable doubt of violating Section 254 of the NIRC, as amended, in **CTA Crim. Case Nos. O-315, O-316 and O-317.** He is hereby **SENTENCED** to an indeterminate penalty of two (2) years, as minimum, to three (3) years as maximum term of imprisonment for *each* charge. He is also **ORDERED** to pay a fine in the amount of ₱30,000.00, with subsidiary imprisonment pursuant to Section 280 of the NIRC, as amended, in the event that accused Ynion has no property with which to meet the fines imposed upon him, or is unable to pay such fines.

On the civil aspect *ex delicto*, accused Rommel Ynion y Salva, is hereby **ORDERED** to pay the total amount of **₱95,710,461.48**[81] for income tax covering the taxable years 2006, 2008 and 2010 and **₱36,008,402.82**[82] for VAT covering the taxable years 2006 and 2010, inclusive of the 50% penalty imposed under Section 248(B) of the NIRC, as amended, and twenty percent (20%) deficiency interest and delinquency interest imposed under Section 249(B)[83] and (C)[84] of the NIRC, as amended, respectively, computed until 31 December 2017.

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81 For violations of Sections 254 and 255 of the NIRC, as amended (CTA Crim. Case Nos. O-315 to O-320).

82 For violation of Section 255 of the NIRC, as amended (CTA Crim. Case Nos. O-313 and O-314).

83 Section 249. Interest –
(B) *Deficiency Interest.* – Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

84 (C) *Delinquency Interest.* – In case of failure to pay:
(1) The amount of the tax due on any return required to be filed, or
(2) The amount of tax due for which no return is required, or
(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

In addition, accused Rommel S. Ynion is **ORDERED** to pay the delinquency interest at the rate of twelve percent (12%), on the total unpaid amount of **INCOME TAX and VAT** as of 15 June 2015 in the amount of **₱55,881,584.76 and ₱21,094,682.26**, respectively, as determined above, computed from 01 January 2018 until full payment thereof pursuant to Section 249(C) of the Tax Code, as amended by RA No. 10963[85] and implemented by RR No. 21-2018[86].

**SO ORDERED.**

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**WE CONCUR:**

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**CIELITO N. MINDARO-GRULLA**
Associate Justice

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85 Tax Reform for Acceleration and Inclusion Act (TRAIN Law).

86 Regulations Implementing Section 249 (Interest) of the National Internal Revenue Code (NIRC) of 1997, as amended under Section 75 of the Republic Act (RA) No. 10963 or the "Tax Reform for Acceleration and Inclusion (TRAIN Law).

## ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

Juanito C Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice
2nd Division Chairperson

## CERTIFICATION

Pursuant to Section 13, Article VIII 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 cases were assigned to the writer of the opinion of the Court's Division.

**ROMAN G. DEL ROSARIO**
Presiding Justice