REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case No. O-271** (I.S. No. 2007-285)
versus-	For: Violation of Sec. 255 of the NIRC of 1997
	Members:
	CASTAÑEDA, JR., *Chairperson*
	CASANOVA, *and*
	MANAHAN, *JJ.*
LEONILA TOLENTINO ARCEO, doing business under the name and style L.T. Arceo Trading, *Accused.*	Promulgated: SEP 03 2018 9:50 am

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in the year 2004 thru public bidding, award, and initial payment, and thereafter, the execution of the deed of sale and full payment in the year 2005, as evidenced by a Notice of Award dated December 7, 2004 and Deed of Absolute Sale dated February 9, 2005. Applying the expenditure method of assessment of income, since the declared net worth of the accused in her audited balance sheet on December 2004 amounted only to PHp543,029.73, the said amount of Php20,250,000.00 accounts for unreported income; thus, a substantial underdeclaration of income which resulted in the deprivation of revenues for the Government and deficiency income tax for said taxable years in the total amount of Php6,806,418.22, exclusive of interest, surcharge, and/or penalty charges, to the damage and prejudice of the Government of the Republic of the Philippines."

CONTRARY TO LAW.[1]

Antecedents

The above-quoted Information[2] was filed with the Court on March 22, 2012. On June 4, 2012, the Court found probable cause for the issuance of a warrant of arrest against accused and setting the bail at Php20,000.00.[3]

On January 4, 2013, the case was archived considering that accused remained at-large for more than six (6) months from the issuance of the warrant of arrest.[4]

On April 26, 2017, accused voluntarily surrendered and submitted herself to the jurisdiction of the Court. Accused's cash bail bond in the amount of Php20,000.00 for her provisional liberty was approved, and her arraignment set for May 22, 2017.[5]

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[1] Docket, CTA Crim. Case No. O-271, Vol. I, pp. 4-5.
[2] *Id.*
[3] Docket, Vol. I, pp. 133-134.
[4] Docket, Vol. I, Resolution dated January 4, 2013, p. 145.
[5] Docket, Vol. I, Resolution dated April 26, 2017, p. 155.

Upon arraignment, accused pleaded "NOT GUILTY."[6] After preliminary conference[7] and pre-trial,[8] the Pre-Trial Order[9] was issued on June 30, 2017.

The parties stipulated the following facts:[10]

1. That Republic Act No. 1125, as amended, otherwise known as "An Act Creating the Court of Tax Appeals" grants exclusive original jurisdiction to the Honorable Court over all criminal offenses arising from violation of the provisions of the 1997 National Internal Revenue Code.

2. That the accused Leonila T. Arceo is being charged for violation of the provisions of the NIRC.

3. That the accused is the same person named and charged in the Information, for violation of Sec. 255 of the NIRC, subject of this case.

4. That accused is a registered taxpayer of Revenue District Office (RDO) No. 51, Pasay City with Tax Identification Number (TIN) 103-774-976-000.

5. That accused operated a junk shop under the name and style "L.T. Arceo Trading" with address at J-IB Page Condominium, Pasay City.

6. That on February 9, 2005, the Attorney-in-Fact of the accused, Antonio E. Arceo, purchased railroad bridges, angular bars, wooden ties, and terminal building/station comprising as one lot from the Privatization and Management Office (PMO) wherein PMO acted for and on behalf of Panay Railways, Inc. for a consideration of Php20,250,000.00.

7. That on January 12, 2007, the Commissioner of Internal Revenue issued a Letter of Authority No.

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[6] Docket, Vol. I, Certificate of Arraignment dated May 22, 2017, together with Identity Admission of the Accused, pp. 164-165.
[7] Docket, Vol. I, Minutes of Preliminary Conference held on May 29, 2017, pp. 178-189.
[8] Docket, Vol. I, Minutes of the Hearing held on June 21, 2017; and Order dated June 21, 2017, pp. 293-294.
[9] Docket, Vol. I, pp. 296-307.
[10] Docket, Vol. I, Pre-Trial Order (PTO), pp. 296-297.

(LOA) 200100045285 authorizing Revenue Officers Aurora V. Flor and Angela Marie T. Simpit under the supervision of Elmer F. Carolino to examine the books of accounts and accounting records of the accused for taxable years 2004 and 2005.

8. That LOA 200100045285 was duly served and received by Antonio E. Arceo.

9. That the accused, in her income tax returns as well as her attached audited financial statements, declared purchases for the years 2004 and 2005 in the amounts of Php4,226,779.45 and Php 1,084,697.20 respectively.

10. The accused, in her audited financial statements for the years 2004 and 2005, declared her cash accounts to be Php296,475.13 and Php 261,250.18 respectively.

11. That the accused, in her audited financial statements for the years 2004 and 2005, declared her net worth to be Php543,029.73 and Php476,259.78, respectively.

12. That the accused, in her 2004 Annual Income Tax Return filed with the BIR, declared her Gross Sales/Receipt/Revenues/Fees in the amount of Php4,865,450.00, her Gross Taxable Income in the amount of Php649,640.55, her Net Income in the amount of Php93,960.65 and her Taxable Business Income in the amount of Php61,960.65.

13. That the accused, in her 2005 Annual Income Tax Return filed with the BIR, declared her Gross Sales/Receipt/Revenues/Fees in the amount of Php1,632,521.50, her Gross Taxable Income in the amount of Php577,519.30, her Net Income in the amount of Php53,520.05 and her Taxable Business Income in the amount of Php21,230.65.

14. That accused's business is registered as a sole proprietor with the Office of the City Mayor of Pasay City.

15. That accused filed her Income Tax Returns for taxable period 2004 and 2005.

Trial ensued with the prosecution presenting its sole witness, Revenue Officer Angela Marie Simpit De Leon.[11] The prosecution filed its Formal Offer of Evidence (FOE)[12] on July 12, 2017, which was resolved by the Court in its Resolution dated August 3, 2017,[13] thereby admitting and denying several exhibits.

The defense presented the following witnesses: (1) Carlos San Pascual;[14] (2) Leonila T. Arceo;[15] (3) Antonio E. Arceo;[16] (3) Engelbert G. Pangilinan;[17] and (5) Evelyn N. Yriarte.[18] The final witness from the Privatization Management Office was no longer presented considering that the documents brought were already stipulated upon.[19]

Accused filed her FOE,[20] through registered mail on February 15, 2018,[21] and received by the Court on February 23, 2018. The Court resolved accused's FOE through the Resolution dated May 3, 2018,[22] admitting and denying several of accused's exhibits.

The prosecution filed its Memorandum on May 17, 2018,[23] while accused filed her Memorandum,[24] through registered mail on May 30, 2018, and received by this Court on June 8, 2018. Considering the foregoing, the case was deemed submitted for decision on June 14, 2018.

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[11] Docket, Vol. I, Exhibit "P-16" Judicial Affidavit (of Angela Marie Simpit De Leon), pp. 204-216; Minutes of Hearing on July 10, 2017, p. 308.
[12] Docket, Vol. I, pp. 311-318.
[13] Docket, Vol. II, pp. 388-389.
[14] Docket, Vol. II, Judicial Affidavit (By Way of Direct Examination), pp. 521-531; Minutes of Hearing on September 27, 2017, p. 767.
[15] Docket, Vol. II, Judicial Affidavit (By Way of Direct Examination), pp. 394-422; Minutes of Hearing on October 4, 2017, p. 769.
[16] Docket, Vol. II, Judicial Affidavit (By Way of Direct Examination), pp. 555-614; Minutes of Hearing on October 4, 2017, p. 769.
[17] Docket, Vol. II, Minutes of Hearing on December 6, 2017, p. 874.
[18] Docket, Vol. II, Minutes of Hearing on December 6, 2017, p. 874.
[19] Docket, Vol. III, Minutes of Hearing on February 5, 2018, p. 901.
[20] Docket, Vol. III, pp. 1151-1176.
[21] Insufficient copies submitted, but with Manifestation and Compliance submitted on February 26, 2018, pp. 1149-1150; and, Manifestation and Compliance to the Order dated 27 February 2018, pp. 1402-1403.
[22] Docket, Vol. IV, pp. 1655-1656.
[23] Docket, Vol. IV, pp. 1660-1673.
[24] Docket, Vol. IV, pp. 1681-1715.

Issues

The parties stipulated the following issues:[25]

1. Whether or not accused is liable for violation of Sec. 255 of the NIRC for failure to supply correct and accurate information in the income tax return for taxable years 2004 and 2005.

2. Whether or not the Attorneys-in-Fact of accused acted outside and beyond the scope of the authority given by accused based on the "Special Powers of Attorney" dated October 20, 2004 and February 8, 2005.

3. Whether or not accused is liable for the payment of deficiency income tax in the amount of Php6,806,418.22, exclusive of interest, surcharge, and/or penalty charges.

Evidence presented by the prosecution

Prosecution presented Revenue Officer Angela Marie Simpit De Leon (Ms. De Leon) who testified by way of Judicial Affidavit,[26] and identified the various documents offered as evidence. Ms. De Leon states that she is a revenue officer assigned to the National Investigation Division since 2005; that as revenue officer, her duties included the conduct of audit or investigation of books of accounts and other accounting records of taxpayers for internal revenue tax purposes; to submit corresponding reports on their audit or investigation; and, to recommend the prosecution for criminal violations of the NIRC.

She testified that sometime in January 2007, she and her group conducted an examination on the accused to determine whether or not accused is compliant with her tax obligations.

She testified that the investigation was prompted by a letter sent by an informant disclosing that L.T. Arceo Trading was declared as the highest bidder for 46 Panay Railways Inc. (PRI) steel bridges and recommending that the Bureau of Internal Revenue (BIR) check L.T. Arceo Trading's books of

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[25] Docket, Vol. I, PTO, p. 298.
[26] Docket, Vol. I, Exhibit "P-16", pp. 204-216.

accounts; that in response to said letter, the then CIR issued a Letter of Authority (LOA) No. LOA-2001-00045285 dated January 12, 2007 authorizing the examination of books of accounts for the years 2004 and 2005.

During the course of the investigation, the group sent access letters to the Privatization and Management Office (PMO) and BIR Revenue District Office No. 51-Pasay City (RDO 51). In return, the PMO provided a copy of the Deed of Absolute Sale between accused and PMO dated February 9, 2005, and the Notice of Award dated December 7, 2004 wherein the PMO accepted accused's bid for the railroad bridges, angular bars, wooden ties and terminal buildings and stations for a consideration of Php20,250,000.00. RDO 51, on the other hand, provided copies of the Annual Income Tax Returns (ITR) with Attached Audited Financial Statements (AFS) of the accused for taxable years 2004 and 2005.

Ms. De Leon further testified that they discovered that the reported purchases of the accused for 2004 and 2005 in the respective amounts of Php4,226,779.45 and Php1,084,697.20 are far less than the purchase price for railroad bridges, angular bars, wooden ties, and terminal buildings in the amount of Php20,250,000.00; that accused's cash accounts for taxable years 2004 and 2005 in the respective amounts of Php296,475.13 and Php261,250.18 are not viable for the purchase of the said lot worth Php20,250,000.00; and, that accused's net worth for the two consecutive years merely amounted to Php543,029.73 for 2004 and Php476,259.78 for 2005, which amounts are not sufficient to cover the purchase price of Php20,250,000.00.

She explained that adopting the expenditure method, it is conclusive that the purchase price for the railroad, bridges and steel bars in the amount of Php20,250,000.00 represented income which should have been reported or reflected in the books of account of the accused; that using the net worth-expenditure method, it was established that the accused's records particularly the income tax returns do not clearly reflect the income; in other words, that the money doled out for the purchases of the properties from PMO signifies unreported income considering that the net worth of the accused on December 31, 2004 as reflected in her 2004 AFS amounted only to Php543,029.73; that the amount of Php20,250,000.00 is grossly disproportionate to the net worth of the accused; that it

is conclusive that accused intentionally failed to reflect the purchases of railroad/bridges in the amount of Php20,250,000.00; and, that based on the foregoing, the deficiency tax liability of the accused is Php12,648,753.18 inclusive of interests and surcharge.

She also stated that a Joint Complaint Affidavit against the accused was filed before the Department of Justice (DOJ). She explains that under Sec. 248(B) of the NIRC, substantial underdeclaration of income shall constitute *prima facie* evidence of false or fraudulent return. There is underdeclaration of income if the taxpayer failed to report income in an amount exceeding 30% of that declared per return. Having categorized the purchase price of the properties from PMO as unreported income, it shows that the underdeclared income of Php20,250,000.00 represents more than 30% of the declared net income in the amount of Php53,230.05. This can be regarded as a violation of Sec. 255 of the NIRC for failure to supply correct and accurate information.

Ms. De Leon also stated that in accused's Counter-Affidavit filed before the DOJ, accused admitted that she purchased rail road bridges, angular bars, wooden ties and terminal buildings/stations previously owned by Panay Railways, Inc. for the amount of Php20,250,000.00. Ms. De Leon states that in their Reply-Affidavit before the DOJ, they stated that assuming that accused indeed conveyed the railroad bridges to Stam Builders and Development Corporation, perusal of the reported sales for 2005 in accused's ITR and AFS amounting to Php1,632,521.50 would show that accused again failed to report the said sale in her ITR and AFS; and, that such failure shows accused's propensity to underdeclare her income with intent to evade or defeat tax.

Finally, Ms. De Leon testified that the DOJ issued a resolution finding probable cause to file an Information against accused for violating Sec. 255 of the NIRC.

On cross-examination,[27] Ms. De Leon admitted that in the informer's letter, it was stated that L.T. Arceo Trading is being represented by a person by the name of Carlos San Pascual; that accused Leonila T. Arceo's name appears on the Annual Income Tax Returns for 2004 and 2005; that the LOA was not served personally upon the accused; and, that the LOA was

[27] Transcript of Stenographic Notes (TSN), July 10, 2017, pp. 6-32.

served upon Antonio E. Arceo, who is accused's husband; that Ms. De Leon cannot remember if a pre-assessment notice or final legal demand was sent; and, that they did not present any assessment before the DOJ.

It was also admitted that in the Deed of Absolute Sale, Notice of Award, and Deed of Assignment, the signature of accused Leonila T. Arceo does not appear.

On re-direct examination,[28] Ms. De Leon explained that the LOA, and Complaint-Affidavit were addressed to/filed against accused Leonila T. Arceo because she is the owner of L.T. Arceo Trading.

On re-cross examination,[29] it was emphasized that L.T. Arceo Trading is a sole proprietorship, and not a partnership or corporation.

Evidence presented by the defense

The defense presented five (5) witnesses:

1) Carlos San Pascual

Mr. Carlos San Pascual (Mr. San Pascual) testified by way of Judicial Affidavit,[30] and identified several of the exhibits for the defense.

Mr. San Pascual stated that he was a former scrap adjuster, doing business with Antonio E. Arceo (Mr. Arceo); that he knew accused Leonila T. Arceo, who was the wife of Antonio Arceo; that he knew that Leonila T. Arceo's business was also in scrap; and, that the business was called L.T. Arceo Trading.

He recalled that when he worked with Mr. Arceo, he would look for scrap and inform Mr. Arceo; that he went to Iloilo to look at the scrap from Panay, together with Maricel, Louie Minerva and Edwin San Pascual. He also admitted that he signed the "Asset Specific Bidding Form", dated October 20, 2004, which was submitted under the name of L.T. Arceo Trading to the PMO; that his position as "Vice-President

[28] TSN, July 10, 2017, pp. 32-35.
[29] TSN, July 10, 2017, pp. 36-37.
[30] Docket, Vol. II, pp. 521-531.

Operation" indicated therein was by mere appointment; that he thinks that it was a Roland Lim who asked him to sign said document; and, that based on what he knew, Roland Lim may have been the partner of Mr. Arceo, or the financier or the person who looked for a financier.

He stated that he never talked to accused Leonila T. Arceo except for "hi" and "hello" or "good morning"; that it was not accused Arceo who asked him to sign the documents and he doesn't think that accused Arceo was the one who prepared said documents.

Aside from the "Asset Specific Bidding Form", Mr. San Pascual also identified his signatures in: (1) the "Special Power of Attorney" executed by accused Arceo in favor of Carlos San Pascual, Louie Minerva, and Atty. Rene Doce; (2) Deed of Absolute Sale, where he signed as witness.

Mr. San Pascual also identified photographs and the individuals shown therein, as follows:

36. Q. Mr. Witness, I am showing you a series of photographs earlier marked as Exhibits "A-12"[31]. Kindly go over this photograph and kindly identify the persons appearing in the said photograph?

A. Opo, yung pangalawang lalaki mula sa kaliwa ay si Roland Lim, yung katabi nya ay si Mr. Tony Arceo, sa likod nya ay si Louie Minerva, ang babae ay si Mina po at ako po iyan.

37. Q. How about the persons appearing in the photograph marked as Exhibit "A-12-f"[32]?

A. Si Tony Arceo po ay yung nakaupo at ang katabi nya ay si Louie Minerva. Ako po yung nakatalikod.

38. Q. Does Leonila T. Arceo appear in these photographs, sir?

A. Wala po.

39. Q. Now, after identifying the persons in these photographs, namely Antonio E. Arceo, Roland

[31] Docket, Vol. III, p. 1212.
[32] Docket, Vol. III, p. 1214.

> Lim, Louie Minerva and yourself, do you recall where this photograph was taken?
>
> A. Hindi po.[33]

On cross-examination,[34] it was clarified that in the preparation of Mr. San Pascual's affidavit, the questions were propounded in English and translated to Filipino for him; that his highest educational attainment was Grade VI; that he was appointed verbally as Vice-President Operations of L.T. Arceo Trading by Mr. Arceo; and, that Mr. Arceo is the owner of L.T. Arceo Trading. Mr. San Pascual further confirmed all his signatures in the "Asset Specfic Bidding Form",[35] "Special Power of Attorney",[36] and "Deed of Absolute Sale".[37]

2) Leonila T. Arceo

Accused Arceo testified by way of Judicial Affidavit[38] and identified several of the exhibits offered for the defense.

She stated that she is the accused in the instant case; that she is married to Antonio E. Arceo; that they have four children; that she previously worked for Marcopper Mining; and, that she opened her junk shop business, named L.T. Arceo Trading, sometime in the 1990s.

For the year 2004, to prove that she was operating a junk shop, accused Arceo identified her Department of Trade and Industry (DTI) Registration and Mayor's Permit with attachments. She also testified that she is a registered taxpayer with RDO 51-Pasay City and that she pays her annual income tax every year. Accused Arceo then identified her 2004 and 2005 ITR, as well as the 2004 and 2005 AFS.

As to the operations of L.T. Arceo Trading, she testified that the sales for the periods 2004 and 2005 were different because they haul ("hakot") different things depending on disposal; that they buy scrap materials like scrap paper, crap board, x-ray and x-ray film; that they buy these scrap from

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[33] Docket, Vol. II, pp. 528-529.
[34] TSN, September 27, 2017, pp. 4-8.
[35] Docket, Vol. III, Exhibit "A-6", pp. 1191-1192.
[36] Docket, Vol. III, Exhibit "A-5", pp. 1187-1188.
[37] Docket, Vol. III, Exhibit "A-11", pp. 1201-1205.
[38] Docket, Vol. II, pp. 394-422.

private or government offices; and, that they sell these scrap materials to melting companies.

She also testified that L.T. Arceo Trading issues official receipts; that she relies on her accountant and bookkeeper with respect to accounting rules, procedures or regulations; that her bookkeeper is the one who knows the certified public accountant who audited her financial and accounting documents; and that it is her bookkeeper who provides that necessary documents to the accountants.

She denied being familiar with the transaction for the purchase of assets of Panay Railways, Incorporated, nor was she personally involved with said transaction; that she learned about the said transaction when her husband, Antonio E. Arceo, told her about it when there were cases filed by the BIR. She further stated that she only signed the "Special Power of Attorney" for Carlos San Pascual, Louie Minerva, and Rene Doce, because her husband told her to, and she no longer read the same. The same is true for the "Special Power of Attorney" for her husband Antonio E. Arceo; and, that her husband merely told her that it was to be used for a business. A portion of her testimony is quoted below:

> 66. Q. Was there any instance wherein your husband asked you to sign a document in relation to a supposed transaction that he and his business partners will be having with a government agency or private offices?
>
> A. Meron siyang pinap-sign sa akin minsan pero nagmamadali sya parati na pinapa-sign nya lang sa akin, ako naman sign na lang ng sign without reading.
>
> xxx xxx xxx
>
> 68. Q. I am showing you a document entitled "Special Power of Attorney" executed by a certain Leonila T. Arceo in favor of Carlos San Pascual, Louie Minerva and Atty. Rene D. Doce dated October 20, 2004 consisting of 2-pages and earlier marked as Exhibit "A-5" and notarized before a notary public, a certain Atty. Jesus B. Bongon of Pasay City. What is the relationship of this document to your testimony?
>
> A. Yan po ang document na pinapirma ng asawa ko.

69. Q. Who prepared this document Madame Witness?

A. Hindi ko po alam.

70. Q. Who presented this document to you?

A. My husband, sir.

71. Q. What did your husband tell you when he showed this document?

A. Sign mo lang.

xxx xxx xxx

76. Q. No when your husband asked you to sign this "Special Power of Attorney", what statements did he made (*sic*), if any[?]

A. Wala basta pirmahaan ko yaan.

77. Q. What was your reply, if any?

A. Wala, basta pinirmahan ko.[39]

She also admitted that she signed, without reading, a document identified as "Memorandum of Agreement (With Special Power of Attorney) supposedly by and between Rodolfo T. Lim and L.T. Arceo Trading, represented by herein spouses Leonila T. Arceo and Antonio E. Arceo; that said memorandum was supposedly for a loan of money; that her husband did not explain the transaction or subject matter of the document; however, she stated that she learned that Rodolfo Lim was able to provide the said funding, but that she did not receive any money from Rodolfo Lim in 2005. She further testified that she was managing the junkshop together with other "katiwala"; and, that her husband was sometimes involved in her junkshop business in 2005.

She stated that she merely signed, without reading, the Counter-Affidavit filed with the DOJ where it appears that she is confirming and admitting that she knew of the transaction with the PMO; that she was not assisted by a lawyer when she signed it; that she did not know who prepared the said document; that she did not go to the DOJ when she signed it; and, that she signed the document near Pasay City Hall.

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[39] Docket, Vol. II, pp. 411-412.

She further testified that she is retracting the allegations made in the Counter-Affidavit filed with the DOJ; that her husband finally told her the whole story; and, that she filed a Rejoinder-Affidavit with the DOJ which contained a more detailed narration of facts in relation to the transaction as provided by her husband, Antonio E. Arceo.

She further denies knowing of an entity named Stam Builders & Development Corporation back in 2005; that she only learned of this entity when there was already a problem; that she did not file any case against Stam Builders & Development Corporation, nor did she authorize anyone to file such a case; and, she further states that she did not receive any money from Stam Builders & Development Corporation.

As a final matter, she further denies receiving the LOA issued by the BIR, or any document in relation to the case filed before the DOJ.

On cross-examination,[40] accused Arceo identified and admitted her signatures in the 2004 Annual ITR, 2005 Annual ITR, Special Powers of Attorney (marked as Exhibit "A-5" and "A-9", respectively), and Memorandum of Agreement.

On re-direct examination,[41] accused Arceo reiterated that she did not read the documents that she signed.

3) Antonio E. Arceo

Antonio E. Arceo (Mr. Arceo), testified by way of Judicial Affidavit[42] and identified several exhibits for the defense.

Mr. Arceo testified that he is married to accused Leonila T. Arceo, that he is a retired policeman with a rank of Lieutenant; that during his employment as a policeman, he was not engaged in any business. He states that after his retirement, he sometimes helped in the operations by looking for scrap that can bought and sold; that he knew certain individuals/agents who wanted to enter into bidding to buy scrap materials from government or private companies.

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[40] TSN, October 4, 2017, pp. 11-14.
[41] TSN, October 4, 2017, pp. 14-17.
[42] Docket, Vol. II, pp. 555-614.

He testified that he was approached by Carlos San Pascual, Louie Minerva, and Atty. Rene D. Doce regarding the bidding opportunity at the PMO; that he was told that this was an opportunity to earn something; that they told him that they needed a financier; that he approached his *kumpare* Roland Lim regarding the financing, who in turn talked to his brother, Rodolfo Lim, regarding the financing needed. He stated that he believes that he was approached by said individuals because of his wife's business which has the requisite permits, and that he was told that only the name of the business would be used; that they said he will be given a commission of about Php4,000,000.00; and, that based on this understanding, he agreed to the arrangement.

He testified that the "Special Power of Attorney" dated October 20, 2004 was signed by his wife, accused Arceo; that accused Arceo did not inquire who the individuals named therein were, nor did he explain the transaction covered by said document.

He testified that his or his wife's signature does not appear on the "Asset Specific Bidding Form", that said document was signed by Carlos San Pascual; that said document mentions that the bidder is an entity named L.T. Arceo Trading; and, that at the time the said document was submitted, accused Arceo was not informed that L.T. Arceo Trading will be a bidder in the acquisition of assets of the Panay Railways, Inc.

Mr. Arceo identified a "Certificate of Resolution" and the "Notice of Award" which shows that L.T. Arceo Trading was the highest bidder for the Panay Railways, Inc. assets at the bid amount of Php20,250,000.00. Said documents were addressed to L.T. Arceo Trading with address at Unit J 1-B Page Condominium, 2268 P. Burgos Street, Pasay City. At this stage, Mr. Arceo states that he still did not inform L.T. Arceo Trading was the winning bidder for the purchase of assets.

He then testified that the payments for the purchase of assets were handled by Carlos San Pascual and Roland Lim; that he only attended for the signing of documents; he denied that he or his wife, accused Arceo, had sufficient money to cover the purchase of the said assets. He also stated that he asked his wife to sign a "Special Power of Attorney" dated February 8, 2005 authorizing him to do certain acts; and, that he once again did not explain about the transaction or the purpose of said

"Special Power of Attorney". Mr. Arceo then identified the "Deed of Absolute Sale" on February 9, 2005 which was signed at the PMO in Makati City, together with photographs of said event; and testified that accused Arceo was not present at the signing of the said "Deed of Absolute Sale".

With respect to the financing of said purchase, Mr. Arceo identified a "Memorandum of Agreement and Special Power of Attorney) which purportedly shows that Rodolfo Lim lent the money for the bidding. Mr. Arceo states that he prepared the said Memorandum of Agreement, and that his wife signed it without reading.

Mr. Arceo also narrates that Mr. Val Lopez of Stam Builders & Development Company arrived at their house/office and they agreed that Stam Builders & Development Company will purchase the assets bought from the PMO. They agreed at the price of Php25,000,000.00 and an additional amount of Php17,500,000.00. This transaction was evidenced by the document entitled "Deed of Assignment",[43] which was signed by Mr. Arceo and Mr. Valiante P. Lopez, as well as the "Supplement (To the Deed of Assignment)[44].

Mr. Arceo further identified several checks issued to L.T. Arceo Trading. He states that he deposited one check to his account and bought a manager's check in order to pay the financier; that the second check for Php5,000,000.00 was encashed of which he received Php300,000.00; and that up to this date, Mr. Arceo did not inform his wife, accused Arceo, of the said transactions.

He also testified that he filed a complaint against Stam Builders & Development Corporation, without informing his wife; that said complaint was dismissed; and, that Mr. Arceo wrote a letter[45] dated February 2, 2006 to Stam Builders & Development Corporation rescinding the Deed of Assignment and Supplemental Deed of Assignment.

Mr. Arceo also stated that he received the LOA; that he did not inform his wife about the said document; and, that he was not authorized by his wife to receive documents from the BIR.

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[43] Docket, Vol. III, Exhibit "A-16 to A-16-e", pp. 1220-1225.
[44] Docket, Vol. III, Exhibit "A-17 to A-17-c", pp. 1228-1231.
[45] Docket, Vol. III, Exhibit "P-32", p. 1350.

He further narrated that he was the one who talked with the BIR employees, as follows:

> 255. Q. What happened next, if any?
>
> A. Opo. Yong sa Bureau of Internal Revenue, bigla na lang po nag-punta sa bahay naming. Tinanong ako kung saan galing yong ipinambili ko sa Privatization Management Office, sabi ko inutang ko, eh bakit daw yong income tax ng 2004, wala daw naman akong kinita na ganoon. Ang ginawa ko binigyan ko sila lahat ng kopya, ng istorya, sabi ko tumalbog ang tseke, ayan ang tseke, na hindi kumite, o ayon tinuloy tuloy nila ang kaso ayaw maniwala, siguro ang pinaka-mababang punta nila sa bahay mga limang beses.
>
> 256. Q. Did you inform your wife of the visits made by the Bureau of Internal Revenue?
>
> A. Hindi po, ako lang po nakikipag usap sa BIR.[46]

He further states that he prepared the Counter-Affidavit, assisted by his lawyer, which was signed by accused Arceo and was filed with the DOJ. He further states that his wife submitted a Rejoinder-Affidavit after learning of the truth about the transactions.

On cross-examination, Mr. Arceo reiterated his understanding that the name L.T. Arceo Trading will be used for bidding. He also affirmed that commissions were divided among his business partners, and that he received Php300,000.00 as *"pondo"*. He also stated that he did not return the said Php300,000.00 since he has already spent it. He also stated that despite his letter (Exhibit "A-32") they were no longer able to retrieve the scrap bought in the bidding.[47]

On re-direct examination, Mr. Arceo clarified that a case was filed against Stam Builders & Development Company due to failure to pay. He further reiterated that in all the transactions, he did not inform his wife, accused Arceo.[48]

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[46] Docket, Vol. II, p. 607.
[47] TSN, October 4, 2017, pp. 22-27.
[48] TSN, October 4, 2017, pp. 28-34.

4) Engelbert G. Pangilinan

Mr. Engelbert G. Pangilinan(Mr. Pangilinan) is the Manager of Union Bank, EDSA, Caloocan Branch. In compliance with the *subpoena*, Mr. Pangilinan stated that he brought the certified true copy, front and back, of Manager's Check No. 3149[49] dated February 8, 2005. However, the bank no longer has records of the application/purchase of said manager's check, as such, Mr. Pangilinan does not know who purchased the said manager's check.[50]

Mr. Pangilinan was no longer cross-examined.

5) Evelyn N. Yriarte

Ms. Evelyn N. Yriarte (Ms. Yriarte) is the Branch Manager San Juan Jose Abad Santos of the PNB (formerly Gilmore).

Ms. Yriarte explained that of the documents requested in the *subpoena*, only the Statement of Account (SOA)[51] is available. Ms. Yriarte confirmed that the account number 0021881079-8 belongs to an Arceo Antonio and is a personal account. However, Ms. Yriarte cannot confirm that it is not a joint account with accused Leonila Arceo. Mr. Yriarte also testified that based on the SOA, there was a withdrawal of Php19,898,030.00 on February 18, 2005.[52]

Ms. Yriarte was not subjected to cross-examination.

Ruling of the Court

In the Information, accused is charged for violation of Sec. 255 of the NIRC for failure to supply correct and accurate information in her annual income tax return and audited financial statements by falsely declaring the purchases of L.T. Arceo Trading in the amounts of Php4,226,779.45 and Php1,084,697.20 for taxable years 2004 and 2005, which is far less than the purchase amount of Php20,250,000.00 paid to the Privatization Management Office (PMO) for 46 steel bridges owned by Panay Railways, Inc.; that the said amount of

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[49] Docket, Vol. III, Exhbit "A-15", p. 1219.
[50] TSN, December 6, 2017, pp. 6-7.
[51] Docket, Vol. III, Exhibit "A-37", p. 1392.
[52] TSN, December 6, 2017, pp. 8-14.

Php20,250,000.00 accounts for unreported income and that such substantial underdeclaration of income resulted to deficiency income tax amounting to Php6,806,418.22, exclusive of interest, surcharge, and/or penalty charges.

Sec. 255 of the NIRC provides:

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

As gleaned from the foregoing provision, the elements of the offense of willful failure to supply correct and accurate information are:

1) That a person is required to supply correct and accurate information;

2) That there is failure to supply correct and accurate information at the time or times required by law or rules and regulations; and

3) That such failure to supply correct and accurate information is done willfully.

The Court will now determine if the foregoing elements have been sufficiently proven by the prosecution.

1st element: Required to supply correct and accurate information

Every Filipino citizen residing in the Philippines is required to file an income tax return.[53] Relative to such obligation to file an income tax return is the obligation to supply correct and accurate information, as provided in Sec. 255 of the NIRC.

In the instant case, it has been stipulated that accused Arceo is a registered taxpayer of RDO No. 51-Pasay City with Tax Identification No. 103-774-976-000[54] and that she operates a junk shop under the name and style of L.T. Arceo Trading[55]. It is further stipulated that accused filed her income tax returns for taxable years 2004 and 2005.[56]

Significantly, accused Arceo admits that this obligation exists:

> 42. Q. Are you knowledgeable, Madame witness of accounting rules, procedures and regulations?
>
> A. Hindi po, umaasa lang po ako sa advice ng accountant ko at bookkeeper ko po pero alam ko po na kailangang magbayad ng buwis.[57] (*Underscoring supplied*0

Clearly, accused is required to supply correct and accurate information and is aware of said obligation.

2nd element: Failure to supply correct and accurate information at the time required by law

Section 51(C) of the NIRC provides that individuals specified in Section 51(A) shall file their returns on or before the fifteenth (15th) day of April of each year covering income for the preceding taxable year.

As stated above, it was stipulated that accused Arceo filed her income tax returns for taxable years 2004[58] and 2005[59]. A

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[53] Sec. 51(A)(1)(a), NIRC.
[54] Docket, Vol. I, PTO, p. 296.
[55] Docket, Vol. I, PTO, p. 297.
[56] Docket, Vol. I, PTO, p. 297.
[57] Docket, Vol. II, Judicial Affidavit, p. 407.
[58] Docket, Vol. III, Exhibit "A-33", pp. 1352-1353.
[59] Docket, Vol. III, Exhibit "A-34", pp. 1357-1358.

perusal of said returns shows that said returns were timely filed on April 15, 2005 and April 17, 2006[60], respectively.

Despite such timely filing of income tax returns together with the audited financial statements[61], prosecution argues that accused Arceo failed to supply correct and accurate information when she failed to report the purchases amounting to Php20,250,000.00 from the PMO.

The following was stipulated with respect to the purchase from PMO:

> 6. That on February 9, 2005, the Attorney in Fact of the accused, Antonio E. Arceo, purchased railroad bridges, angular bars, wooden ties, and terminal building/station comprising as one lot from the Privatization and Management Office (PMO) wherein PMO acted for and on behalf of Panay Railways, Inc. for a consideration of Php20,250,000.00[62]

In relation to said purchase, the following documents were offered and admitted in evidence:

1) Notice of Award dated December 7, 2004 by the PMO in favor of L.T. Arceo Trading, for the winning bid amount of Php20,250,000.00;[63]

2) Deed of Absolute Sale between the PMO and accused Leonila Tolentino Arceo, under the business style L.T. Arceo Trading, represented by her attorney-in-fact Antonio E. Arceo, dated February 9, 2005, with purchase price referred to as Php20,250,000.00;[64]

3) Certified photocopy of Official Receipt No. 9661531 dated October 20, 2004 issued by the PMO in favor of L.T. Arceo Trading in the amount of Php2,250,000.00 for the payment of 10% of the bid;[65] and

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[60] April 15, 2006 was a Saturday.
[61] Docket, Vol. III, Exhibits "A-33-d to A-33-f", pp. 1354-1356; Exhibits "A-34-d to A-34-f", pp. 1359-1361.
[62] Docket, Vol. I, PTO, p. 297.
[63] Docket, Vol. I, Exhibit "P-5", pp. 332-333; Vol. III, Exhibit "A-8", pp. 1194-1195.
[64] Docket, Vol. I, Exhibit "P-4", pp. 327-331; Vol. III, Exhibit "A-11", pp. 1201-1205.
[65] Docket, Vol. III, Exhibit "A-13", p. 1216.

4) Certified photocopy of Official Receipt No. 9661659[66] dated February 8, 2005 issued by the PMO in favor of L.T. Arceo Trading in the amount of Php18,225,000.00 as full payment, together with Payment Acceptance Order[67].

It is clear from the foregoing that L.T. Arceo Trading won in the bidding for various railway bridges, angular bars, wooden ties, and terminal building/station conducted by the PMO, and that such bid involved a purchase price of Php20,250,000.00 which were subsequently paid by L.T. Arceo Trading.

On the other hand, it has been stipulated[68] and clearly shown that accused Arceo's Income Statements for the years 2004[69] and 2005[70] reflect the following amounts:

	2004		2005	
Sales		4,865,450.00		1,633,521.50
Less: Cost of Sales				
Merchandise Inventory-beg	145,667.00		156,637.00	
Add: Purchases	4,226,779.45		1,084,697.20	
Total Goods Available for Sale	4,372,446.45		1,241,334.20	
Merchandise Inventory-end	156,637.00	4,215,809.45	185,332.00	1,056,002.20
Gross income on Sales		649,640.55		577,519.30

There is no purchase of Php20,250,000.00 reflected in the income statements. Thus, prosecution has proven that there is failure to supply correct and accurate information.

3rd element: failure to supply correct and accurate information was willful

In *Rogelio A. Tan v. People of the Philippines*,[71] the Court of Tax Appeals (CTA) *En Banc* defined "willful" as follows:

> Black's Law Dictionary defined the term "willful" as voluntary and intentional. In tax crimes statutes, "willful" is defined as voluntary or intentional violation of a known legal duty.

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[66] Docket, Vol. III, Exhibit "A-14", p. 1217.
[67] Docket, Vol. III, Exhibit "A-14-a", p. 1218.
[68] Docket, Vol. I, PTO, p. 297.
[69] Docket, Vol. III, Exhibit "A-33-f", p. 1356.
[70] Docket, Vol. III, Exhibit "A-34-f", p. 1361.
[71] CTA EB Crim Case Nos. 022 & 023, November 18, 2014.

> In the case of *Commissioner of Internal Revenue v. The Estate of Benigno P. Toda, Jr. et al.,* the Supreme Court described it as **being "evil," in "bad faith," "willful," or "deliberate and not accidental."** (*Boldfacing supplied*)
>
> In another tax case, the Final Arbiter explained that the deception for purposes of evading payment of correct taxes must be intentional "**consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some legal right**. And as stated by the Court in Division, an act or omission is willfully done if executed voluntarily and intentionally with specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done.[72] (*Citations omitted, boldfacing in the original*)

Further, in *People v. Judy Anne Santos y Lumagui,*[73] the CTA also explained:

> Citing *Black's Law Dictionary*, the term "willful" is defined as voluntary and intentional. And in *Merten's Law of Federal Income Taxation*, "willful" in tax crimes statutes is defines as voluntary, intentional violation of a known legal duty.
>
> Applying the foregoing in the case at bench, the element of willful failure to supply correct and accurate information must be fully established as a positive act or state of mind; it cannot be presumed nor attributed to mere inadvertent or negligent acts. (*Citations omitted, underscoring supplied*)

As to how willfulness is proven, the CTA in *People v. Bienvenido S. Dimson,*[74] it was explained:

> ...And although "willfulness" is a state of mind that may be inferred from the circumstances of the case, and proof of willfulness may be, and usually is, shown by circumstantial evidence alone, in this case, we have direct admissions by the accused.[75] (*Citations omitted and underscoring supplied*)

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[72] *Id.*
[73] CTA Crim. Case No. O-012, January 16, 2013.
[74] CTA Crim. Case Nos. O-071 and O-085, July 2, 2014.
[75] *Id.*

In accused's Counter-Affidavit,[76] filed before the DOJ, accused Arceo originally admitted the transaction amounting to Php20,500,000.00, that it was paid for through a loan; and that there was a subsequent sale to Stam Builders and Development Corporation, as follows:

> 1. That I admit having purchased the railroad bridges, angular bars, wooden ties and terminal buildings/stations (hereinafter called the "Properties"), previously owned by Panay Railways, Inc., from the government through the Privatization and Management Office for **TWENTY MILLION FIVE HUNDRED THOUSAND PESOS (P20,500,000.00)**, Philippine currency, which I paid from a loan I secured;
>
> 2. That after the sale of the said properties to me, I in turn conveyed the same by way of Deed of Assignment to **STAM Builders & Development Corporation** for and in consideration of the sum of **FORTY TWO MILLION FIVE HUNDRED PESOS (P42,400,000.00)** Philippine currency;[77] (*Boldfacing in the original*)

However, accused, in her Rejoinder-Affidavit[78] filed before the DOJ, recanted the above admissions and put forward her defense that she knew nothing about the transactions involving the PMO; that the bidding was entered into by Antonio E. Arceo with his business partners; and, that the purchase price was financed by a Mr. Rodolfo Lim.

Accused Arceo together with her husband, witness Antonio E. Arceo, and witness Mr. Carlos San Pascual, repeatedly testified that accused Arceo had no participation in the transactions. Mr. Antonio E. Arceo also testified that he undertook the PMO bidding with his business partners on the understanding that only the business name L.T. Arceo Trading would be used for the bidding, and that the financing of said transaction was done by a Mr. Rodolfo Lim.

Accused's testimony, as well as that of her husband, Antonio E. Arceo, show accused's lack of knowledge as to the transaction with the PMO. This lack of knowledge of the transaction points to the lack of intent on the part of the accused to willfully fail to report said purchase in the ITR and

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[76] Docket, Vol. I, Exhibit "P-12", pp. 347-348.
[77] Docket, Vol. I, Exhibit "P-12", p. 347.
[78] Docket, Vol. III, Exhibit "A-36", pp. 1363-1372.

audited financial statements of L.T. Arceo Trading. Also convincing is witness Antonio E. Arceo's admissions as to the circumstances of the transactions which he kept hidden from accused Arceo.

Thus, the Court finds that the element of "willful and deliberate" failure to supply correct and accurate information is not present in the instant case. Accused Arceo, as a dutiful wife obedient and subservient to her husband, dared not ask what those papers she was being asked to sign were for. Such behavior stems from the underlying and prevalent culture that the husband is the head of the family and is the provider thereof. The doctrine of "willful blindness" cannot possible apply to the instant case. Furthermore, if there is one party that should be charged for violation of the NIRC, it is Antonio E. Arceo, who admittedly orchestrated the entire transaction.

The presumption of innocence of an accused in a criminal case is a basic constitutional principle, fleshed out by procedural rules which place on the prosecution the burden of proving that an accused is guilty of the offense charged by proof beyond reasonable doubt. Corollary thereto, conviction must rest on the strength of the prosecution's evidence and not on the weakness of the defense.[79]

In this case, prosecution's evidence showed the existence of a purchase, through bidding, by L.T. Arceo Trading which was not duly reported in L.T. Arceo Trading's income tax returns and audited financial statements. However, prosecution failed to prove the intent of accused Arceo to deliberately omit the transactions with PMO in the ITR and audited financial statements. Equally glaring, is the fact that accused was not positively identified by the prosecution's witness in open court.

Considering the foregoing, while accused Arceo may have been negligent in signing documents presented by her husband, without having read the same, said negligence does not equate to willful and deliberate intent to violate Section 255.

Thus, the prosecution failed to prove accused's guilt beyond reasonable doubt.

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[79] People of the Philippines vs. Zafra Maraorao, G.R. No. 174369, June 20, 2012, citing People vs. Lorenzo, G.R. No. 184760, April 23, 2010.

There is no civil liability against the accused.

With respect to the civil aspect of this case, the same is deemed simultaneously instituted with the instant criminal action.[80]

The prosecution alleged that accused had deficiency income tax amounting to Php6,806,418.22 exclusive of interest, surcharge, and/or penalty charges.[81]

In *Ungab v. Cusi*,[82] the Supreme Court held that "there is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution under the Code." Thus, while an assessment is not required in the prosecution of the criminal case, the final determination of the Commissioner as to the tax liability is necessary in order for the Court to rule on the civil liability.[83]

However, no assessment notices were presented to prove the assessment of deficiency income tax against accused Arceo, therefore, there is no basis for the Court to rule upon the civil liability of the accused.

WHEREFORE, accused Leonila Tolentino Arceo is **ACQUITTED** in CTA Case No. O-271 for failure of the prosecution to establish her guilt beyond reasonable doubt.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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[80] Republic Act No. 9282, Section 7(b)(1).
[81] Docket, Vol. I, Information, p. 5.
[82] G.R. Nos. L-41919, May 30, 1980.
[83] *People v. Dr. Vicente Gana Castillo and Dr. Ma. Teresa Chan Castillo*, CTA Crim. Case No. O-219, October 7, 2013.

ATTESTATION

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

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice