REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIM. CASE NO. O-408** For: Violation of Section 254 in relation to Sections 253 and 256 of the National Internal Revenue Code, as amended (Attempt to Evade or Defeat Tax)
-versus-	**Members:** Castañeda, Jr., *Chairperson,* Mindaro-Grulla, and, Bacorro-Villena, *JJ.*
ENVIROAIRE, INC., represented by TYRONE N. ONG & ARLENE CHUA, Accused.	**Promulgated:** NOV 18 2019 4:30 p.m.

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For the Court's resolution is the accused's Partial Motion for Reconsideration (On the Decision dated 04 September 2019), filed on September 19, 2019,[1] without plaintiff's comment despite notice based on the Records Verification dated November 11, 2019.[2]

[1] Docket, Vol. V, pp. 2917-2940.
[2] Docket, Vol. V, p. 3003.

On October 7, 2019, the Court also received a Notice from the Supreme Court First Division stating that a June 17, 2019 Resolution was issued which *dismissed* the "petition for certiorari and prohibition with extremely urgent application for a temporary restraining order and/or writ of preliminary injunction assailing the Resolutions dated October 5, 2018 and January 24, 2019" of the Court in this case and *denied* the prayer for issuance of temporary restraining order and/or writ of preliminary injunction.[3]

Accused seeks reconsideration of the Court's Decision, the dispositive portion of which states:

> "**WHEREFORE**, premises considered, the Court rules as follows:
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> 1. Accused **TYRONE N. ONG** and **ARLENE CHUA** are hereby found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 254 in relation to Section 253 and 256 of the NIRC, as amended, and are hereby **SENTENCED** to suffer an indeterminate penalty of imprisonment of two (2) years as minimum to four (4) years as maximum, and **ORDERED** to pay a fine in the amount of One Hundred Thousand Pesos (₱100,000.00), with subsidiary imprisonment, in case accused have no property with which to meet such fine, pursuant to Section 280 of the NIRC, as amended.
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> 2. **ENVIROAIRE INC.** is found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 254 in relation to Section 256 of the NIRC, as amended, and is **ORDERED TO PAY** a fine of One Hundred Thousand Pesos (₱100,000.00); and,
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> 3. The Preliminary Assessment Notice dated June 28, 2016, and Final Assessment Notice and Formal Letter of Demand for Income Tax and Value Added Tax, all dated July 26, 2016, are hereby declared **VOID**.
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> **SO ORDERED.**"

The accused contends that the Amended Information[4] is fatally defective because it violates their right to be informed of the cause and accusation against them.[5] Specifically, it is alleged that the Amended Information is defective since it charged the accused for violating the National Internal Revenue Code (NIRC) for *taxable year 2007* when the basis for the charges pertain to

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[3] Docket, Vol. V, p. 3002.
[4] Docket, Vol. I, pp. 418-421.
[5] Par. 44, Partial Motion for Reconsideration, Docket, Vol. V, p. 2928.

documents issued in *taxable year 2008*.[6] It is also contended that not all the elements for violation of Section 254 in relation to Sections 253 and 256 of the NIRC, as amended, were present in the case.[7] Accordingly, the motion prays that the accused be acquitted of all offenses charged.

The Court is not convinced.

The related issues raised are not novel. As the main theory of the defense, the Memorandum of the accused has already argued that "there was neither gain or profit nor was there any actual or constructive receipt of income during the taxable year 2007"[8] and, therefore, the accused corporation had *no obligation* to report any income in *2007* since the payments were evidenced by Official Receipts No. 7760 and 7761, both of which were issued in *2008*.[9]

First, the Court finds that Amended Information has sufficiently apprised the accused of the offenses for which they were charged, tried and convicted. It is not accurate to state that the *only* bases of the Amended Information were the January 17, 2008 Official Receipts issued by the accused corporation, Enviroaire, Inc. (Enviroaire).

The accused should note that, *prior* to the filing of information in court, an investigation was conducted by the revenue examiners where *other documents* were obtained. The testimonies of the examiners together with several pieces of documentary evidence they gathered, *i.e.* Enviroaire's corporate papers filed with the Securities and Exchange Commission (SEC), 2007 and 2008 Income Tax Returns, 2007 and 2008 Audited Comparative Financial Reports, the sales invoices issued to the PNP and other documents, formed the bases of the criminal complaint filed with the Department of Justice (DOJ) and the ensuing preliminary investigation.

This was very clearly summarized in the decision of the Court: *gr*

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[6] Pars. 47-53, Partial Motion for Reconsideration, Docket, Vol. V, pp. 2928-2930.
[7] Pars. 54-84, Partial Motion for Reconsideration, Docket, Vol. V, pp. 2930-2937.
[8] Par. 4, Memorandum (For Accused), Docket, Vol. V, p. 2827.
[9] Exhibit "P-24-a" and Exhibit "P-25-a", Docket, Vol. I, pp. 601 and 603.

"***The Relevant Facts***

On April 26, 2012, pursuant to an audit investigation on the purchase of spare parts and repair and maintenance of light armored vehicles (LAVs) by the Philippine National Police (PNP) under COA Office Order No. 2011-866 dated December 29, 2011, the Commission on Audit (COA), through COA Director Leonor D. Boado, issued *Subpoena Duces Tecum*, which ordered the RDO 41 of Mandaluyong to issue a Certification as to whether the following amounts were included in the total gross sales of Enviroaire in its tax returns for calendar year (CY) 2007 and 2008.

Official Receipt Nos.	Amount	Date	Invoice Nos.
7760	₱ 85,179,953.22	January 17, 2008	ER-07-13 to ER-07-25 issued in 2007
7761	₱140,531,250.01	January 17, 2008	ER-07-12 issued in 2007
Total	₱225,711,203.23		

On May 14, 2012, the Fraud Audit and Investigation Office (FAIO), Legal Service Sector (LSS) of COA received a Certification sent by RDO 41 in compliance with the subpoena. The Certification, addressed to COA Director Leonor D. Boado, stated that Enviroaire declared gross sales amounting to ₱12,611,752.93 for taxable year 2008 per Income Tax Return (BIR Form 1702) and that the aggregate amount of ₱225,711,203.23 stated in the Official Receipt Nos. 7760 and 7761 was not included in Enviroaire's declared gross income.

Accordingly, a Letter of Authority (LOA) No. 211-2012000000046 SN: eLA201100018418 dated June 6, 2012 was issued by Commissioner of Internal Revenue (CIR) Kim S. Jacinto-Henares authorizing Revenue Officer (RO) Enrico Omaña and Group Supervisor Jose Pazcoguin, Jr. to examine Enviroaire's books of accounts and other accounting records under the Run After Tax Evaders (RATE) Program of the BIR. The LOA was received by Enviroraire on June 6, 2012 through as certain Leinor Mojica.

During the investigation the examiners obtained certified true copies the following documents relevant to the investigation from the SEC, BIR, the Ombudsman and COA: *Jr*

Exhibit No.	Description
"P-4"	SEC Certificate of Incorporation of Enviroaire, Company Registration No. A200204249 issued on March 13, 2002
"P-4-a"	Enviroaire's Articles of Incorporation
"P-5"	Enviroaire's General Information Sheet for the Year 2007
"P-6"	Enviroaire's Amended Annual Income Tax Return (BIR Form 1702) for CY 2007
"P-7"	Enviroaire's Return Information on the Tax Return for CY 2008
"P-8"	Enviroaire's Audited Comparative Financial Reports for CY 2007 and 2008
"P-9"	RDO 41 Certification dated May 15, 2012
"P-10" to "P-23"	Sales in invoices issued by Enviroaire to PNP, ER-07-12 to ER-07-25 issued in 2007
"P-24"	PNP Check No. 457825 dated December 26, 2007 pay to the order of Enviroaire, Inc. in the amount of ₱85,179,953.22
"P-24-a"	Enviroaire, Inc.'s Official Receipt No. 7760 dated January 17, 2008 in the amount of ₱85,179,953.22
"P-25"	PNP Check No. 457991 dated December 27, 2007 pay to the order of Enviroaire, Inc. in the amount of ₱140,531,250.01
"P-25-a"	Enviroaire, Inc.'s Official Receipt No. 7761 dated January 17, 2008 in the amount of ₱140,531,250.01

Based on the investigation, a comparison of the gross sales declared by Enviroaire in its ITR for CY 2007 (₱27,585,555.35) with the amount paid by the PNP for services rendered and goods sold (₱225,711,203.23) allegedly disclosed substantial underdeclaration of sales.

On June 7, 2012, after concluding the investigation of Enviroaire, CIR Kim Jacinto-Henares referred the case to the Department of Justice (DOJ) for preliminary investigation and the filing of the appropriate information in court.[10] Thus, on even date, the complaint-affidavit of the examiners were filed with the DOJ.

In a Resolution dated February 24, 2014, the Prosecutor General approved the recommendation that charges be filed against Tyrone N. Ong and Arlene Chua, President and Treasurer, respectively, for violation of Section 254 (Attempt to Evade or Defeat Tax) and 255 (Failure to Supply Correct and Accurate Information) in relation to Sections 253 and 256 of the NIRC, as amended.

After filing the criminal complaint with the DOJ, the examiners also forwarded the case docket to the Assessment Division for the preparation of the Preliminary Assessment Notice (PAN) and the Final Assessment Notice (FAN) with

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[10] Letter to the Secretary of Justice dated June 7, 2012, attachment to July 21, 2014 Compliance, Docket, Vol. I, pp. 342-344.

> Formal Letter of Demand for the collection of deficiency internal revenue taxes." (*Citations omitted*)

Second, there is no doubt that the accused were sufficiently apprised of the charges against them during the preliminary investigation before the DOJ where they filed their counter-affidavits,[11] the June 8, 2016 arraignment when the accused were read the Amended Information and when they entered their pleas of "NOT GUILTY,[12] the July 5, 2017 pre-trial conference[13] and during trial itself when counsels for the accused were furnished copies of the judicial affidavits and even cross-examined the prosecution witnesses and, thereafter, presented their own evidence. Prior to their conviction, all these proceedings afforded the accused more than sufficient opportunity to study and comprehend the accusation against them and prepare for their defense thoroughly, contrary to the bare allegations in the motion.

Third, any alleged defect in the Amended Information is deemed waived. Failure of the accused to raise this issue is considered a waiver as explained in *People of the Philippines v. Renandang Mamaruncas, et al.*:[14]

> "The Court cannot accord merit to this argument. It is well to note that appellants failed to raise the issue of the defective Information before the trial court through a motion for bill of particulars or a motion to quash the information. Their failure to object to the alleged defect before entering their pleas of not guilty amounted to a waiver of the defect in the Information."

Fourth, as discussed in the decision, under the accrual method of accounting defined in *Commissioner of Internal Revenue v. Isabela Cultural Corporation*[15] and under the Philippine Accounting Standards to which the accused corporation adheres,[16] Enviroaire is obligated to recognize, *in taxable year 2007*, the income which it earned on the sales of

[11] Omnibus Motion for Determination of Probable Cause and To Hold In Abeyance Issuance of Warrant of Arrest and/or To Recall Warrant of Arrest Issued Against Accused Tyrone Ong and Arlene Chua, Docket, Vol. I, p. pp. 180-181.
[12] Order dated June 8, 2016, Docket, Vol. I, pp. 511-513; Certificates of Arraignment, Docket, Vol. I, pp. 514-515.
[13] Order dated July 5, 2017, Docket, Vol. II, pp. 843-845.
[14] G.R. No. 179497, January 25, 2012.
[15] G.R. No. 172231, February 12, 2007.
[16] Note 2, Audited Financial Statements, Exhibit "P-8", Docket, Vol. I, p. 580.

goods and services to PNP, *regardless of when it received the payments therefor.*

Accordingly, it is liable to declare and pay the income tax due on said sales *in 2007* under Section 27(A) in relation to Section 23(E) of the NIRC, as amended.

An examination of Enviroaire's Audited Financial Statements[17] and Income Tax Returns[18] for 2007 and 2008 has convinced the Court that Enviroaire indeed failed to declare and pay the income tax due *in 2007* and *even in 2008.* This finding remains *unrebutted.* Contrary to the unfounded assertion in the motion,[19] no evidence was presented by the defense to overcome the *prima facie* evidence of false or fraudulent return that arose when *both* the returns and the financial statements consistently showed *substantial underdeclaration* of sales, receipts or income.

This was discussed at length in the decision:

"*Third,* for taxation purposes, Enviroaire used the same accrual method of accounting based on a comparison of the ITR submitted to the BIR and the Audited Financial Statements. The Court finds that the amounts declared in the Audited Financial Statements are identical to those in the ITR:

	Per ITR		**Per Audited FS**	
	2008[20]	**2007**[21]	**2008**[22]	**2007**[23]
Income / Sales / Revenues	₱12,611,752.93	₱27,585,555.35	₱12,611,752.93	₱27,585,555.35
Cost of Income / Sales	7,998,555.03	20,356,397.24	7,998,555.03	20,356,397.24
Gross Income	4,613,197.90	7,229,158.11	4,613,197.90	7,229,158.11
Net Income Before Income Tax	1,423,056.59	2,521,070.25	1,423,056.59	2,521,070.25
Provision for Income Tax / Income Tax	498,069.81	882,374.59	498,069.81	882,374.59

It should be noted that the goods were delivered and the services were rendered in 2007, as invoiced by Enviroaire and inspected by the PNP based on the December 27, 2007 stamp on the invoices. Accordingly, in 2007, the value of the

[17] Exhibit "P-8", Docket, Vol. I, pp. 573-584.
[18] Exhibit "P-6" and "P-7", Docket, Vol. I, pp. 570-572.
[19] Pars. 79-81, Partial Motion for Reconsideration (on the Decision dated 04 September 2019), Docket, Vol. V, p. 2936.
[20] Exhibit "P-2", Docket, Vol I, p. 546.
[21] Exhibit "P-6", Docket, Vol I, p. 570.
[22] Exhibit "P-8", Docket, Vol I, p. 577.
[23] *Id.*

transactions have been reliably measured; the significant risks and rewards of ownership over the goods have been transferred; Enviroaire has fixed its right to the economic benefit from the same transactions; and, correspondingly, the PNP has incurred an obligation to pay. Accordingly, all the income recognition criteria under the accrual method were satisfied in 2007. Therefore, the income from the sales to PNP were earned and should have been recognized as taxable income in 2007.

From the foregoing analysis, it is clear that, for both financial reporting and taxation purposes, Enviroaire is obliged to declare and pay the income tax due on the sales in taxable year 2007.

b. Enviroaire failed to declare and pay the income tax due on the sales in taxable year 2007.

As discussed earlier, the Court finds that the accused's Income from Sales and Services reported in its Audited Financial Statements for the year 2007[24] matched the Sales/Revenues/Receipts declared in its Annual ITR for the same period in the amount of ₱27,585,555.35.[25]

<u>On the face of these documentary evidence, the declared amount clearly failed to include the sales to the PNP amounting to ₱214,197,732.14 as evidenced by the invoices, checks and official receipts</u>, thus:

			Total
Total price	**₱ 133,839,285.71**	**₱ 80,358,446.43**	**₱214,197,732.14**
Add: 12% VAT	16,060,714.29	9,643,013.57	25,703,727.86
Total invoice amount	**₱149,900,000.00**[26]	**₱90,001,460.00**[27]	**₱239,901,460.00**
Less: 2% & 1% CWT	2,676,785.71	803,584.46	3,480,370.17
5% VAT Withheld	6,691,964.28	4,017,922.32	10,709,886.60
Amount paid	**₱140,531,250.01**[28]	**₱85,179,953.22**[29]	**₱225,711,203.23**

[24] Statement of Income, Exhibit P-8, Docket, Vol. I, p. 577.
[25] Line 15, Exhibit P-6, Docket, Vol. I, pp. 570-571.
[26] Exhibit P-10, Docket, Vol. I, p. 586.
[27] Exhibits P-11 to P-23, Docket, Vol I, pp. 587-599.
[28] Exhibits P-25 and P-25-a, Docket, Vol I, pp. 602-603.
[29] Exhibits P-24 and P-24-a., Docket, Vol I, pp. 600-601.

> Contrary to the theory of the defense, the income from the PNP sales were earned in 2007 and should have been recognized as taxable income in 2007.
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> It is evident, from the comparison with the ₱12,611,752.93 (2008) / ₱27,585,555.35 (2007) sales declared per ITR and Audited FS, that the ₱214,197,732.14 sales to PNP were never declared by Enviroaire. Other than insisting that no tax was due in 2007, the accused did not present any evidence at all to prove that there was even a subsequent payment of the taxes due to the government from these sales, even past 2007."[30] (*Underscoring supplied*)

Fifth, under Section 248(B) of the NIRC, there is a *prima facie* evidence of a *false or fraudulent return* if there is substantial underdeclaration of taxable sales, receipt or income. The failure to report sales, receipts or income in an amount exceeding 30% of what is declared in the returns constitute substantial underdeclaration. *On the faces* of the 2007 and 2008 returns and the financial statements there were substantial underdeclaration, which the accused failed to explain, much less justify. A *prima facie* evidence is one which will establish a fact or sustain a judgment unless contradictory evidence is produced.

The motion misreads *Commissioner of Internal Revenue v. Asalus Corporation.*[31] *Asalus* clarifies that, in the absence of evidence to *refute* the presumption of a false or fraudulent return created by Section 248(B), the presumption can sustain a judgement, thus:

> "*Presumption of Falsity of Returns*
>
> In the present case, the CTA opined that the CIR failed to substantiate with clear and convincing evidence its claim that Asalus filed a false return. As it noted that the CIR never presented any evidence to prove the falsity in the returns that Asalus filed, the CTA ruled that the assessment was subject to the three (3)-year ordinary prescriptive period.
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> The Court is of a different view.
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> Under Section 248 (B) of the NIRC, there is a *prima facie* evidence of a false return if there is a substantial

[30] Decision, Docket, Vol V, pp. 2893-2895.
[31] G.R. No. 221590, February 22, 2017.

underdeclaration of taxable sales, receipt or income. The failure to report sales, receipts or income in an amount exceeding 30% what is declared in the returns constitute substantial underdeclaration. A *prima facie* evidence is one which that will establish a fact or sustain a judgment unless contradictory evidence is produced.

In other words, when there is a showing that a taxpayer has substantially underdeclared its sales, receipt or income, there is a presumption that it has filed a false return. As such, the CIR need not immediately present evidence to support the falsity of the return, unless the taxpayer fails to overcome the presumption against it.

Applied in this case, the audit investigation revealed that there were undeclared VATable sales more than 30% of that declared in Asalus' VAT returns. Moreover, Asalus' lone witness testified that not all membership fees, particularly those pertaining to medical practitioners and hospitals, were reported in Asalus' VAT returns. The testimony of its witness, in trying to justify why not all of its sales were included in the gross receipts reflected in the VAT returns, supported the presumption that the return filed was indeed false precisely because not all the sales of Asalus were included in the VAT returns.

Hence, the CIR need not present further evidence as the presumption of falsity of the returns was not overcome. Asalus was bound to refute the presumption of the falsity of the return and to prove that it had filed accurate returns. Its failure to overcome the same warranted the application of the ten (10)-year prescriptive period for assessment under Section 222 of the NIRC. To require the CIR to present additional evidence in spite of the presumption provided in Section 248 (B) of the NIRC would render the said provision inutile." (*Citations omitted and underscoring supplied*)

In this case, the motion simply reiterated the defense that was already articulated in the Memorandum but rejected by the Court. A review of the records confirms that no contradictory evidence was provided to explain why or to refute the evidence that patently showed that the income was *unreported* in both the returns and the financial statements for 2007 and 2008. Therefore, the motion failed to provide any *new* ground in order for the Court to reconsider its findings and conclusion.

All told, after a careful review of the evidence, the Court is satisfied that that prosecution has proven *beyond reasonable doubt* that the accused corporation Enviroaire, its President, Tyrone N. Ong, also known as Tyrone N. Arejola, and its Treasurer, Arlene Chua, also known as Arlene Miyron Chua Arejola,[32] are guilty of *Attempt to Evade or Defeat Tax* for taxable year 2007, in violation of Section 254 in relation to Sections 253 and 256 of the NIRC, as amended.

WHEREFORE, premises considered, the Partial Motion for Reconsideration (On the Decision dated 04 September 2019) is **DENIED** for lack of merit. Accordingly, the September 4, 2019 Decision is hereby **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

[32] Supreme Court Notice, Docket, Vol. V, p. 3002.