REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff, - versus - **CARLO J. CAPARAS,** Accused. x- - - - - - - - - - - - - - - - - - x	**CTA CRIM. CASE NO. O-321** For: Failure to File Value-Added Tax (VAT) Return, in Violation of Section 108, in relation to Section 255 of the NIRC of 1997
PEOPLE OF THE PHILIPPINES, Plaintiff, - versus - **CARLO J. CAPARAS,** Accused. x- - - - - - - - - - - - - - - - - - x	**CTA CRIM. CASE NO. O-322** For: Failure to File Value-Added Tax (VAT) Return, in Violation of Section 108, in relation to Section 255 of the NIRC of 1997
PEOPLE OF THE PHILIPPINES, Plaintiff, - versus - **CARLO J. CAPARAS,** Accused. x- - - - - - - - - - - - - - - - - - x	**CTA CRIM. CASE NO. O-323** For: Failure to File Value-Added Tax (VAT) Return, in Violation of Section 108, in relation to Section 255 of the NIRC of 1997

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

CARLO J. CAPARAS,
Accused.

CTA CRIM. CASE NO. O-324

For: Failure to File Value-Added Tax (VAT) Return, in Violation of Section 108, in relation to Section 255 of the NIRC of 1997

Members:

DEL ROSARIO, *P.J., Chairperson,*
FABON-VICTORINO, and
MANAHAN, *JJ.*

Promulgated:

MAR 04 2020 ; 8:36 a.m.

x - x

DECISION

DEL ROSARIO, P.J.:

Before the Court are the consolidated cases against accused **Carlo J. Caparas** involving four (4) separate Informations which are docketed as CTA Crim. Case Nos. O-321, O-322, O-323 and O-324, for his alleged failure to file Value-Added Tax (VAT) Returns and to pay the VAT due for taxable years (TYs) 2006, 2008, 2007 and 2009, respectively, in violation of Section 108, in relation to Section 255, of the National Internal Revenue Code (NIRC) of 1997, as amended.

FACTS

Accused Carlo J. Caparas is a Filipino citizen with address at No. 202 M. Santos Street, Barangay Ugong, Pasig City.[1] He is registered as a "Professional" engaged in dramatic arts, among others.[2] Specifically, he is a comic strip creator/writer, script writer, director and producer for movie and television.[3]

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[1] Exhibit "A-28", CTA Crim. Case No. O-321 Docket, Volume 1, p. 299; Transcript of Stenographic Notes (TSN) of the February 26, 2014 Hearing, CTA Crim. Case No. O-321 Docket, Volume 1, p. 393-II.
[2] Exhibit "P-2", CTA Crim. Case No. O-321 Docket, Volume 4, p. 1370.
[3] Exhibit "A-28", CTA Crim. Case No. O-321 Docket, Volume 1, p. 300.

From 2006 to 2009, the accused entered into twenty-one (21) Memoranda of Agreement (MOAs)[4] with the Philippine Charity Sweepstakes Office (PCSO) to produce television programs that will help raise its revenues.

A television news report regarding the alleged plan of PCSO to stop the airing of its two (2) television shows featuring lottery winners entitled "Pangarap Kong Jackpot" and "Kroko" triggered the investigation of the accused as the contracts for the said shows were deemed irregular. These two (2) shows were reportedly part of the P1.3 Billion worth of contracts entered into between PCSO and the accused, as the shows' producer, for a period of five (5) years.[5]

In the Memorandum dated September 31, 2010[6] issued by Chief Roberto A. Baquiran of the National Investigation Division (NID) of the Bureau of Internal Revenue (BIR), documents bearing on the schemes of tax evasion allegedly being perpetrated by Spouses Carlo J. Caparas (accused) and Marian P. Caparas and Golden Lions Film Productions, Inc. were referred to Group Supervisor Josefa C. Torrenueva with the instruction that a thorough preliminary investigation be conducted to ascertain the veracity of the information.

In separate letters,[7] the NID requested the: (a) Information Systems Operation Service (ISOS) of the BIR and Revenue District Office No. 41 – Mandaluyong City, to issue a certification as to whether accused with Tax Identification Number (TIN) 157-741-560-000 filed Annual Income Tax Returns (ITRs) and/or VAT Returns for TYs 2000 to 2009, and; (ii) PCSO, to issue a certification indicating the annual total payments it made to the accused and/or any other individual or entity for production of the television programs "Pangarap Kong Jackpot" and "Kroko".

In the Certification dated October 6, 2010,[8] Assistant Commissioner Victoria V. Santos of the ISOS of the BIR certified that information have been extracted from the BIR database indicating that with respect to taxpayer Carlo Jose Caparas with address at 503 Boni Ave., Mandaluyong City and TIN 157-741-560-000, there is no record of income tax and VAT returns filed with said office.

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[4] Exhibits "A-1" to "A-21" inclusive of submarkings, CTA Crim. Case No. O-321 Docket, Volume 1, pp. 321 - 383.
[5] Exhibit "P-2", CTA Crim. Case No. O-321 Docket, Volume 4, pp. 1369-1370.
[6] Exhibit "P-43", CTA Crim. Case No. O-321 Docket, Volume 4, p. 1429.
[7] Exhibits "P-4", "P-6" and "P-12", CTA Crim. Case No. O-321 Docket, Volume 4, pp. 1376, 1378 and 1391.
[8] Exhibit "P-5", CTA Crim. Case No. O-321 Docket, Volume 4, p. 1377.

In the Certification dated October 19, 2010,[9] Officer-in-Charge (OIC) Manager Dorothy C. Robles of the Budget and Accounting Department of PCSO, issued a certification anent the payments made to the accused for the production of different television programs and the corresponding withholding taxes remitted to the BIR, to wit:

YEAR	GROSS AMOUNT	5% EXPANDED WITHHOLDING TAX	10% EXPANDED WITHHOLDING TAX	5% VALUE ADDED TAX	SUB-TOTAL OF TAXES WITHHELD	NET AMOUNT PAID
2006	196,888,888.69		19,688,888.69		19,688,888.69	177,200,000.00
2007	182,888,888.83		18,288,888.83		18,288,888.83	164,600,00.00
2008	201,388,888.88		20,138,888.88		20,138,888.88	181,250,000.00
2009	200,722,222.20		20,072,222.20		20,072,222.20	180,650,000.00
2009	69,062,500.00	3,453,125.00	6,906,250.00	3,453,125.00	13,812,5000.00	55,250,000.00
	269,784,722.20	3,453,125.00	26,978,472.20	3,453,125.00	33,884,722.20	235,900,000.00
2010	360,312,500.00	18,015,625.00	18,015,625.00	72,062,500.00	72,062,500.00	288,250,000.00
TOTAL	1,211,263,888.60	21,468,750.00	21,468,750.00	164,063,888.60	164,063,888.60	1,047,200,000.00

On October 8, 2010, Letter of Authority (LOA) No. LOA-211-2010-00000238 (SN: eLA201000015036)[10] was issued by then Commissioner of Internal Revenue (CIR), Kim S. Jacinto-Henares, to Revenue Officers Mercedes Espina, Nelson Gonzales, Jonas Punzal and Group Supervisor Josefa Torrenueva, authorizing them to examine the accused's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2000 to December 31, 2009 pursuant to Run After Tax Evaders (R.A.T.E.) Program. The LOA was received by the accused through Marlon F. Caparas on October 9, 2010.

On October 21, 2010, then CIR Henares referred for preliminary investigation and filing of the appropriate Information in court, the Joint Complaint-Affidavit[11] of Revenue Officers Josefa C. Torrenueva, Nelson Gonzales, Mercedes J. Espina, and Jonas P. Punzal, recommending the prosecution of the accused, to the Department of Justice (DOJ).[12]

The Joint Complaint-Affidavit averred in part that:

> "8. The payments received by Respondent Caparas from PCSO is also subject to VAT under Section 108 of the NIRC of 1997, as amended, to wit:
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> xxx xxx xxx

[9] Exhibit "P-13", CTA Crim. Case No. O-321 Docket, Volume 4, p. 1392.
[10] Exhibit "P-3", CTA Crim. Case No. O-321 Docket, Volume 4, p. 1375.
[11] Exhibit "P-2", CTA Crim. Case No. O-321 Docket, Volume 4, pp. 1369-1374.
[12] Exhibit "P-1", CTA Crim. Case No. O-321 Docket, Volume 4, pp. 1367-1368.

9. Like his ITR, Respondent Caparas also did not file his VAT Returns for taxable years 2006 to 2009. Similarly, he failed to pay VAT on his sales of services for the aforesaid taxable years in the amount of P195,613,874.93, detailed as follows:

Taxable Year	Basic Tax	Surcharge	Interest	Total
2006	P23,332,222.20	P11,666,111.10	P17,499,166.65	P52,497,499.95
2007	P21,496,666.66	P10,973,333.33	P12,070,666.66	P44,990,666.65
2008	P24,166,666.67	P12,083,333.33	P8,458,333.33	P44,708,333.33
2009	P23,374,166.66	P16,187,083.33	P4,856,125.00	P53,417,375.00

On March 24, 2011, a Notice of Informal Conference was issued.[13] A Preliminary Assessment Notice (PAN) dated May 25, 2011[14] and a Formal Demand Letter (FDL) dated August 24, 2011[15] were subsequently issued.

On March 14, 2013, pursuant to DOJ Resolution dated October 5, 2011,[16] as aforementioned, four (4) separate Informations against the accused were filed with the Court of Tax Appeals (CTA). The Informations state, as follows:

CTA Crim. Case No. O-321

"The undersigned Senior Assistant Prosecutor of the Department of Justice, Manila, accuses CARLO J. CAPARAS for violation of Section 108, in relation to Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

'That on or about January 25, 2007, in Pasig City, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, being a seller of service, and at that time required by law, rules and regulations to file the Value-Added Tax (VAT) return for taxable year 2006, did then and there willfully, unlawfully and feloniously failed to file the said VAT return and pay the VAT due in the amount of Twenty-Three Million Three Hundred Thirty-Two Thousand Two Hundred Twenty-Two Pesos and Twenty Centavos (P23,332,222.20) in violation of the aforesaid provisions of the NIRC.'

CONTRARY TO LAW." [17]

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[13] Exhibit "P-15", CTA Crim. Case No. O-321 Docket, Volume 4, p. 1394.
[14] Exhibits "P-16" to "P-16-2", CTA Crim. Case No. O-321 Docket, Volume 4, pp. 1395-1397.
[15] Exhibits "P-25", CTA Crim/ Case No. O-321 Docket, Volume 4, pp. 1408-1409.
[16] CTA Crim. Case No. O-321 Docket, Volume 1, pp. 6-17.
[17] CTA Crim. Case No. O-321 Docket, Volume 1, p. 4.

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CTA Crim. Case No. O-322

"The undersigned Senior Assistant Prosecutor of the Department of Justice, Manila, accuses CARLO J. CAPARAS for violation of Section 108, in relation to Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

'That on or about January 25, 2009, in Pasig City, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, being a seller of service, and at that time required by law, rules and regulations to file the Value-Added Tax (VAT) return for taxable year 2008, did then and there willfully, unlawfully and feloniously failed to file the said VAT return and pay the VAT due in the amount of Twenty-Four Million One Hundred Sixty-Six Thousand, Six Hundred Sixty-Six Pesos and Sixty-Seven Centavos (P24,166,666.67) in violation of the aforesaid provisions of the NIRC.'

CONTRARY TO LAW." [18]

CTA Crim. Case No. O-323

"The undersigned Senior Assistant Prosecutor of the Department of Justice, Manila, accuses CARLO J. CAPARAS for violation of Section 108, in relation to Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

'That on or about January 25, 2008, in Pasig City, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, being a seller of service, and at that time required by law, rules and regulations to file the Value-Added Tax (VAT) return for taxable year 2007, did then and there willfully, unlawfully and feloniously failed to file the said VAT return and pay the VAT due in the amount of Twenty-One Million Nine Hundred Forty-Six Thousand Six Hundred Sixty-Six Pesos and Sixty-Six Centavos (P21,946,666.66) in violation of the aforesaid provisions of the NIRC.'

CONTRARY TO LAW." [19]

CTA Crim. Case No. O-324

"The undersigned Senior Assistant Prosecutor of the Department of Justice, Manila, accuses CARLO J. CAPARAS for

[18] CTA Crim. Case No. O-322 Docket, p. 4.
[19] CTA Crim. Case No. O-323 Docket, p. 4.

violation of Section 108, in relation to Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

'That on or about January 25, 2010, in Pasig City, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, being a seller of service, and at that time required by law, rules and regulations to file the Value-Added Tax (VAT) return for taxable year 2009, did then and there willfully, unlawfully and feloniously failed to file the said VAT return and pay the VAT due in the amount of Thirty-Two Thousand Three Hundred Seventy-Four Thousand, One Hundred Sixty-Six Pesos and Sixty-Six Centavos (P32,374,166.66) in violation of the aforesaid provisions of the NIRC.'

CONTRARY TO LAW." [20]

PROCEEDINGS IN THE CTA

CTA Crim. Case Nos. O-321 and O-322 were initially raffled to the Court's Third Division while CTA Crim. Case Nos. O-323 and O-324 were initially raffled to the Court's Second Division.

The Court's Third Division[21] found probable cause to issue a warrant of arrest against the accused in CTA Crim. Case Nos. O-321[22] and O-322. [23] Likewise, the Court's Second Division[24] found probable cause to issue a warrant of arrest against the accused in CTA Crim. Case Nos. O-323[25] and O-324.[26]

On July 1, 2013, upon motion[27] of the prosecution, CTA Crim. Case Nos. O-322, O-323 and O-324 were consolidated with CTA Crim. Case No. O-321,[28] under the Court's Third Division.

On July 4, 2013, the warrants of arrest were lifted, set aside, and declared without further force and effect after the accused voluntarily

[20] CTA Crim. Case No. O-324 Docket, p. 4.
[21] Composed of Associate Justice Lovell R. Bautista and Associate Justice Esperanza R. Fabon-Victorino.
[22] Resolution dated April 10, 2013, CTA Crim. Case No. O-321 Docket, Volume 1, p. 161.
[23] Resolution dated April 10, 2013, CTA Crim. Case No. O-322 Docket, p. 161.
[24] Composed of Associate Justice Juanito C. Castañeda, Jr., Associate Justice Caesar A. Casanova and Associate Justice Amelia R. Cotangco-Manalastas.
[25] Resolution dated May 15, 2013, CTA Crim. Case No. O-323 Docket, pp. 295-297.
[26] Resolution dated June 3, 2013, CTA Crim. Case No. O-324, Docket, pp. 431-432.
[27] *Ex-Parte* Motions for Consolidation, CTA Crim. Case No. O-321 Docket, Volume 1, pp. 173-174; CTA Crim. Case No. O-322 Docket, pp. 171-172; CTA Crim. Case No. O-323 Docket, pp. 303-304; and, CTA Crim. Case No. O-324, Docket, pp. 435-436.
[28] Resolution dated July 1, 2013, CTA Crim. Case No. O-321 Docket, Volume 1, pp. 182-183.

submitted himself to the jurisdiction of the CTA by personally appearing and posting the required cash bond of P20,000.00 for each of the four (4) cases. [29]

On July 19, 2013, the accused filed a Consolidated Omnibus Motion[30] praying that the Court dismiss/quash the Informations for lack of probable cause, conduct judicial determination of probable cause and defer arraignment until his motion is resolved. Accused's motion to quash and dismiss was denied for lack of merit but his motion to conduct anew judicial determination of probable cause was granted and the reception of his evidence only for the purpose of judicial determination of probable cause was set on December 11, 2013. [31]

In the December 11, 2013 Hearing, the presentation of the accused was reset to February 26, 2014 considering that the accused has yet to mark several documents for identification during his presentation and as prayed for, a commissioner's hearing was set on January 30, 2014.[32]

In the February 26, 2014 Hearing, the accused, who is the sole witness for the judicial determination of probable cause, testified by way of a judicial affidavit. [33]

Accused admitted that as early as 1997, he was invited by the PCSO to produce a daily teledrama series to combat illegal 'jueteng' and to promote/improve the sales and revenues of PCSO's sweepstake tickets, a legal gambling. He accepted PCSO's invitation and entered into a contract with it. Owing to the success of his teledramas, the accused entered into several MOAs with PCSO to produce " Pangarap Kong Jackpot", "Diyos Ko Mahal Mo Ba Sila?", "Krusada Kontra Krimen", and "Count Your Blessings."

In response to PCSO's request for reduced production cost, he formulated ways and means to reduce the cost of production by minimizing the participants and the location as well as reducing his talent fees as a story writer, director and supervisor. He signed the MOAs with PCSO, with the assurance and representation of PCSO that it will shoulder the taxes in consideration of the reduced cost of producing the teledramas.

[29] Resolution dated July 4, 2013, CTA Crim. Case No. O-321 Docket, Volume 1, p. 193.
[30] CTA Crim. Case No. O-321 Docket, Volume 1, pp. 199-249.
[31] Resolution dated October 23, 2010, CTA Crim. Case No. O-321 Docket, Volume 1, pp. 279-290.
[32] Resolution dated December 26, 2013, CTA Crim. Case No. O-321 Docket, Volume 1, p. 294.
[33] Exhibit "A-28", CTA Crim. Case No. 0-321 Docket, Volume 1, pp. 299-320; Resolution dated March 12, 2014, CTA Crim. Case No. O-321 Docket, Volume 1, pp. 398-399.

During the negotiation with PCSO, he claimed that he was not assisted by counsel because he trusted PCSO with utmost confidence and fairness that it will fulfill its commitment that the payments to him would be net of all taxes. He asserted that the terms and conditions of the MOAs for all the teledramas were drafted and prepared by PCSO.

To his understanding, the respective paragraph 8, Article III, captioned Mode of Payment of the MOAs, are the provisions placed by PCSO to reflect their agreement that PCSO will shoulder all the taxes in exchange for the reduced cost of production.

He added that his former house was gutted by fire together with his files, records and documents of his professional transactions, including the records/documents of his transactions with PCSO.

Before the complaint against him was filed with the DOJ, he received a Letter dated October 8, 2010 requiring him to present documents listed therein at the scheduled conference on October 22, 2013. Even before he could present the requested documents, however, the BIR filed the complaint against him before the DOJ, a day before the scheduled conference.

On cross-examination, the accused emphasized that since 1997, he was already engaged by PCSO to produce teledramas and was told that he will have no tax liabilities. Per representation of the PCSO, all payments made to him by PCSO are net of taxes. He was paid based on the MOAs but the release thereof was irregular and depends upon PCSO's release of funds. He does not, however, know how much tax is deducted by PCSO from the amounts due to him. He has not verified nor inquired with PCSO whether the taxes due were indeed deducted by PCSO. He recalled that when he asked if the taxes were indeed deducted, Atty. Bobby Yuseco, replied: "Why are you asking, do you not trust us?"

He avowed that he did not file VAT returns since he relied on PCSO's representation that it will shoulder all taxes and file the tax returns. He contended that since 1997, he did not have a problem with the BIR. He confirmed that he came to know of the filing of the complaint against him with the DOJ through news on television and he was able to file a counter-affidavit thereon.

On March 12, 2014, the accused filed his Formal Offer of Evidence.[34] In the Resolutions dated April 11, 2014[35] and dated July 22, 2014,[36] despite the prosecution's objection,[37] the Court's Third Division admitted in evidence accused's offered exhibits except Exhibit "A-27" due to the discrepancies noted.

On May 21, 2014, the parties filed their respective memoranda[38] and on October 17, 2014, the Court's Third Division affirmed its previous Resolutions declaring that probable cause exists to hold the accused for trial in the consolidated cases and set his arraignment on November 12, 2014.[39]

On November 4, 2014, the accused filed an Urgent Motion for Reconsideration[40] seeking the reversal of the denial of his motion for judicial determination of probable cause which the Court's Third Division denied for lack of merit on December 9, 2014.[41] The arraignment of the accused was set on February 18, 2015.[42]

In the February 18, 2015 Hearing, in view of accused's manifestation that he filed a Petition for Certiorari[43] with the Supreme Court on February 16, 2015 and commitment to resume and set his arraignment a month from February 18, 2015, over the objection of the prosecution, the Court cancelled the hearing and reset the arraignment to March 25, 2015. [44]

In the March 25, 2015 Hearing, the accused refused to plead. Thus, in accordance with Section 1(d) of Rule 116 of the Rules of Court (ROC), the Court's Third Division entered a plea of 'not guilty' for him.[45]

The Pre-Trial Conference proceeded on May 27, 2015.[46]

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[34] CTA Crim. Case No. O-321 Docket, Volume 1, pp. 400-411.
[35] CTA Crim. Case No. O-321 Docket, Volume 1, pp. 436-437.
[36] CTA Crim. Case No. O-321 Docket, Volume 2, pp. 498-499.
[37] Comment/Opposition (To Accused's Formal Offer of Evidence), CTA Crim. Case No. O-321 Docket, Volume 1, pp. 413-434.
[38] Memorandum [On Accused's Motion for Judicial Determination of Probable Cause], CTA Crim. Case No. O-321 Docket, Volume 1, pp. 451-461; Memorandum (in Support of the Motion for Judicial Determination of Probable Cause), CTA Crim. Case No. O-321 Docket, Volume 1, pp. 462-480.
[39] Resolution dated October 17, 2014, CTA Crim Case No. O-321 Docket, Volume 2, pp. 504-510.
[40] CTA Crim. Case No. O-321 Docket, Volume 2, pp. 511-521.
[41] Resolution dated December 9, 2014, CTA Crim. Case No. O-321 Docket, Volume 2, pp. 528-530.
[42] Resolution dated January 21, 2015, CTA Crim. Case No. O-321 Docket, Volume 2, p. 536.
[43] CTA Crim. Case No. O-321 Docket, Volume 2, pp. 538-885.
[44] Resolution dated March 4, 2015, CTA Crim. Case No. O-321 Docket, Volume 2, p. 889.
[45] Resolution dated March 30, 2015, CTA Crim. Case No. O-321 Docket, Volume 2, pp. 899-900.
[46] Minutes of the May 27, 2015 Hearing, CTA Crim. Case No. O-321 Docket, Volume 3, p. 918.

On June 18, 2015, the Court's Third Division received the Notice of Resolution dated February 23, 2015[47] issued by the Supreme Court in G.R. Nos. 216524-27 (*Carlo J. Caparas vs. Court of Tax Appeals [3rd Division] and Commissioner of Internal Revenue, represented by Nelson Gonzales, Mercedes J. Espina, Jonas P. Punzal, and Josefa Torrenueva*) dismissing the accused's Petition for Certiorari.

The Pre-Trial Order was issued on July 30, 2015.[48]

Trial ensued. The prosecution presented five (5) witnesses, namely: Nelson Gonzales,[49] Jonas P. Punzal,[50] Ma. Gracia R. Bolutano,[51] Dorothy C. Robles,[52] and Elmer C. Camba.[53]

Nelson Gonzales, Revenue Officer II of the NID of the BIR, testified that he is part of the team that investigated the accused. Their team is composed of himself, Mercedita Espina, Jonas Punzal and Group Supervisor Josefa Torrenueva.

He stated that their team profiled the accused by accessing BIR's database to see where he is registered as a taxpayer, whether he is filing tax returns, his correct address and other personal matters.

After profiling, they prepared access letters for PCSO, Revenue District Office No. 41 - Mandaluyong City and the ISOS of the BIR.

The access letters yielded positive answers. PCSO certified the monthly payments made to the accused for 2006 to 2009 and provided a summary of his annual earnings. From the answer of the Revenue District Office No. 41- Mandaluyong City, they learned that the accused did not file any income and VAT tax returns with said office. From ISOS, they found out that the accused did not file any returns.

Thereafter, they requested for the issuance of an LOA so that they could conduct a thorough investigation of the books of accounts of the accused.

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[47] CTA Crim. Case No. O-321 Docket, Volume 3, p. 950.
[48] CTA Crim. Case No. O-321 Docket, Volume 3, pp. 996-1005.
[49] Resolution dated August 18, 2015, CTA Crim. Case No. O-321 Docket, Volume 3, pp. 1101-1103.
[50] Resolution dated November 25, 2015, CTA Crim. Case No. O-321 Docket, Volume 3, pp. 1129-1130.
[51] Resolution dated December 7, 2015, CTA Crim. Case No. O-321 Docket, Volume 3, pp. 1180-1181.
[52] Resolution dated January 27, 2016, CTA Crim. Case No. O-321 Docket, Volume 3, pp. 1234-1235.
[53] Resolution dated April 25, 2016, CTA Crim. Case No. O-321 Docket, Volume 4, pp. 1342-1343.

They computed accused's tax liability based on the documents provided by PCSO, Revenue District Office No. 41 - Mandaluyong City and ISOS.

After their investigation, they submitted their findings recommending to the CIR that a criminal case be filed against the accused; in turn, the CIR sent a letter to the Secretary of Justice referring the case to the DOJ. They also prepared a Joint Complaint-Affidavit which they submitted to the DOJ.

On cross-examination, he testified that among the requirements to be submitted to the BIR pursuant to an LOA are the books of accounts, income tax returns filed, and all accounting records which are in accused's possession. Attached to the LOA is the first request for presentation of records, and then the second and final notice. In the First Request for Presentation of Records dated October 8, 2010, the accused was given up to October 22, 2010 to submit the required documents. He also confirmed that the criminal case against the accused was filed with the DOJ on October 21, 2010.

He further testified that they were provided with the contracts between PCSO and the accused. He asserted, however, that he was not a party to the contracts and he is only aware of the payments made by PCSO to the accused for 2006, 2007, 2008 and 2009.

On redirect-examination, he stated that the criminal case against the accused was filed immediately with the DOJ as the case involves tax fraud. He added that the accused did not file an ITR or VAT Returns although PCSO withheld tax from his payments.

Jonas P. Punzal, Revenue Officer III of the NID of the BIR, testified that he was part of the team, composed of Nelson Gonzales, Mercedes Espina and their Group Supervisor Josefa Torrenueva, that investigated the accused pursuant to an LOA.

He stated that they served the LOA to the accused and requested for the issuance of a Notice for Informal Conference. They submitted their findings recommending the filing of a case against the accused to the CIR, who then wrote to the DOJ for filing of the criminal case against the accused. They also executed a Joint Complaint Affidavit dated October 21, 2010.

After the informal conference, they issued the PAN dated May 25, 2011 against the accused. He personally served the same at

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accused's Muntinlupa residence on June 28, 2011 which was received by accused's wife, who identified herself as such.

He explained that since the accused did not submit documents, they based their assessment on the data gathered from their preliminary investigation report, and certifications from PCSO as to the amount of income payment made to the accused and tax withheld thereon by PCSO.

He recounted that a representative of the accused even went to their office requesting to delay the issuance of the final assessment notice. The FDL dated August 24, 2011 was subsequently sent to the accused via licensed courier and mail as they were not allowed entry at the village, where accused's residence was located.

On cross-examination, he expounded that the FDL was sent to the accused via licensed courier and mail as they were not allowed entry at the village, where accused's residence was. Allegedly, the security guard informed them that there was an instruction not to let them inside. The PAN, on the other hand, was received by accused's wife, who signed receipt thereof in front of them, but they did not affix their signature on the PAN during its service.

He also confirmed that in the First Request for Presentation of Records dated October 8, 2010, the accused was required to submit documents until October 22, 2010 but their complaint was nonetheless filed with the DOJ on October 21, 2010. After the filing of the case, they issued a Notice of Informal Conference to the accused.

On re-direct examination and upon questions propounded by the Court, he testified that there is no regulation requiring them to affix their signature on the PAN during its service. He explained that the case was filed on October 21, 2010 upon the instruction of the CIR who found that there is probable cause for a tax evasion case. He also affirmed that there is a letter stating their team's findings which they submitted to the CIR but he cannot recall the date of said letter.

Ma. Gracia R. Bolutano, Administrative Section Chief of the Document Processing of Revenue Region 6, Manila, testified in her capacity as the former Section Chief of the Document Processing Section of Revenue District No. 41 - Mandaluyong City. She stated that as Document Processing Section Chief, she supervised and monitored the processing of tax returns in the Integrated Tax Accounting System which is the system used by the BIR in the processing of tax returns under the jurisdiction of Revenue District Office No. 41.

According to her, she encountered the name Carlo J. Caparas, when Revenue District Officer Isabel L. Paulino forwarded to her an access to record letter pertaining to the name Carlo J. Caparas coming from the NID asking his income tax returns and VAT returns filed for TYs 2001 to 2009.

After verification from the Integrated Tax Accounting System, she found that there were no income tax and VAT returns filed for the TYs 2001 to 2009 pertaining to subject taxpayer. She issued a certification to that effect.

In response to the questions propounded by the Court, she replied that she personally verified whether there were income tax and VAT returns filed by the accused from the Integrated Tax Accounting System in October 2010 and November 25, 2015 and found that there was none filed by the accused.

Dorothy C. Robles, OIC Manager of the Accounting and Budget Department of PCSO, testified that as OIC Manager, her duties, among others, include the supervision of the preparation of financial statements of PCSO and the corporate operating budget of PCSO, and signing of disbursement vouchers pertaining to operating fund, charity fund and prize fund.

She stated that she signed the schedule of payments to Carlo J. Caparas and summary of payments that were made to Carlo J. Caparas and the corresponding taxes paid by PCSO remitted to the BIR for TYs 2006 to 2010.

According to her, PCSO paid for the services rendered by the accused relative to its promotional and advertisement campaign for the dramas "Pangarap Kong Jackpot", "Krusada Kontra Krimen" and "Count Your Blessings".

On cross-examination, she explained that expanded withholding tax (EWT) and VAT were deducted from the payments made to the accused. Taxes were deducted from PCSO's payments to the accused because per MOAs with the accused, PCSO will pay the accused net of all taxes, including VAT.

She elaborated that for the period from January 22 to September 3, 2009, PCSO did not withhold 5% VAT on its payments to the accused but from September 3, 2009 to December 18, 2009, PCSO withheld 5% VAT thereon upon the instructions of the Commission on Audit (COA).

She claimed that she cannot recall if PCSO transmitted to the accused the documents relating to the remittances to the BIR for 5% VAT.

She recounted that in 2009, all vouchers were audited by COA before the same were forwarded to PCSO's Accounting Department. COA found that the taxes withheld were insufficient. From then on they corrected the taxes withheld from payments to the accused. Further, she affirmed that prior to August 18, 2009, PCSO did not remit any 5% VAT to the BIR.

On re-direct examination, she clarified that the 10% tax deducted from PCSO's payments to the accused refers to professional tax, and from 2009, the deducted taxes included the 5% expanded withholding tax and 10% professional tax. She noted that the Division Chief of Accounting Division remits the taxes to the BIR.

On re-cross examination, she presented a sample BIR form evidencing PCSO's remittance of taxes to BIR.

In response to the questions propounded by the Court, she explained that she does not know if there is a provision in the MOAs that states that a copy of the payment of the taxes remitted to the BIR be transmitted to the accused but it is their practice to do so.

Elmer C. Camba, Accountant IV of PCSO – Bulacan Branch, testified in his capacity as the former OIC Division Chief of the Accounting Division of PCSO Main Office. He stated that as OIC Division Chief, he recorded and prepared reports regarding the financial operation of PCSO on payments, remittances and other reports to other regulating agencies and he signed documents relative to the payments made by PCSO to the accused for his services rendered regarding promotional activities of PCSO such as "Pangarap Kong Jackpot".

On cross-examination, he explained that he signed Exhibits "P-7", "P-8", "P-9", "P-10" and "P-11" as OIC Division Chief, certifying that the details contained therein were true and correct. According to him, the net amounts indicated therein were based from the original disbursement vouchers and checks. He asserted that he did not have any knowledge of the MOA executed by the accused and PCSO. He elaborated that the 10% tax and 5% tax indicated in the exhibits were withholding taxes, however, he was not the one who computed the tax, and that he merely recorded the same.

On re-direct examination, he detailed that the vouchers for promotion or publicity originate from the Publicity Department then forwarded to the Expense Control Division of the Budget and Accounting Department for journal entries. Next, the vouchers pass through the Internal Audit Department for auditing, and then transmitted to the Treasury Department for payment. After payment, all the vouchers are delivered to the Accounting Division for proper recording and transmittal to the COA. He added that he relied on the said documents as they were the official and original documents.

Meanwhile, on October 21, 2015, the Court's Third Division received the Notice of the Resolution dated July 13, 2015[54] issued by the Supreme Court in G.R. No. 216524-27 denying with finality accused's Motion for Reconsideration of the Resolution dated February 23, 2015 which dismissed his Petition for Certiorari.

On December 4, 2015, the accused filed a Motion to Strike Out and Expunge from the Records (the Testimony of Ma. Gracia R. Bolutano and Exhibit "P-42", including its submarkings)[55] which the Court's Third Division denied for lack of merit in its Resolution dated January 20, 2016.[56]

On May 2, 2016, the prosecution filed its Formal Offer of Evidence.[57] After considering, the accused's Comment/Opposition (To Plaintiff's Formal Offer of Evidence),[58] the Court's Third Division admitted in evidence the prosecution's offered exhibits, except Exhibit "P-42" for failure to present the original for comparison.[59] The prosecution moved[60] for the reconsideration of the denial of the admission in evidence of its Exhibit "P-42" but the same was denied by the Court's Third Division on August 11, 2016.[61]

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[54] CTA Crim. Case No. O-321 Docket, Volume 3, p. 1123.
[55] CTA Crim. Case No. O-321 Docket, Volume 3, pp. 1131-1135.
[56] CTA Crim. Case No. O-321 Docket, Volume 3, pp. 1210-1214.
[57] CTA Crim. Case No. O-321 Docket, Volume 4, pp. 1344-1366.
[58] CTA Crim. Case No. O-321 Docket, Volume 4, pp. 1430-1440.
[59] Resolution dated May 30, 2016, CTA Crim. Case No. O-321 Docket, Volume 4, pp. 1466-1467.
[60] Motion for Partial Reconsideration (of Resolution dated May 30, 2016), CTA Crim. Case No. O-321 Docket, Volume 4, pp. 1473-1477.
[61] Resolution dated August 11, 2016, CTA Crim. Case No. O-321 Docket, Volume 4, pp. 1510-1514.

On June 8, 2016, the accused filed a Motion for Leave to File Demurrer to Evidence[62] which was denied by the Court's Third Division for being prematurely filed.[63]

On August 22, 2016, the accused again filed a Motion for Leave to File Demurrer to Evidence and to Admit Attached Demurrer to Evidence.[64] After considering the prosecution's Comment/Opposition (To the Accused's Motion for Leave to File Demurrer to Evidence and to Admit Attached Demurrer to Evidence dated August 22, 2016),[65] the Court's Third Division denied the accused's Demurrer to Evidence.[66]

The accused moved for the reconsideration of the denial of his Demurrer to Evidence.[67] After considering the prosecution's Comment/Opposition (To the Accused's Motion for Reconsideration filed on January 31, 2017) and accused's Reply (to Prosecution's Comment/Opposition),[68] the Court's Third Division denied the accused's Motion for Reconsideration.[69]

Undaunted, the accused filed a Motion to Admit Petition for Certiorari[70] with the Court *En Banc* to challenge the denial of his Demurrer to Evidence, which was docketed as CTA EB Crim. No. 041. His Motion to Admit Petition for Certiorari and Petition for Certiorari were both denied by the Court *En Banc*.[71]

The accused proceeded to present his two (2) witnesses, Elmer C. Camba,[72] and Mercedes J. Hinayon[73] and adopted his testimony during the hearing of judicial determination of probable cause.

Elmer C. Camba, the same witness presented by the prosecution, testified that from 2006 to 2010, he was the OIC Division Chief of the Accounting Department of PCSO's Main Office. He stated that the Accounting Department was in charge of the financial statements and various remittances to various government agencies

[62] CTA Crim. Case No. O-321 Docket, Volume 4, pp. 1468-1470.
[63] Resolution dated July 13, 2016, CTA Crim. Case No. O-321 Docket, Volume 4, pp. 1493-1495.
[64] CTA Crim. Case No. O-321 Docket, Volume 4, pp.1518-1539.
[65] CTA Crim. Case No. O-321 Docket, Volume 4, pp. 1548-1563.
[66] Resolution dated January 12, 2017, CTA Crim. Case No. O-321 Docket, Volume 4, pp. 1570-1578.
[67] Motion for Reconsideration, CTA Crim. Case No. O-321 Docket, Volume 4, pp. 1579-1590.
[68] CTA Crim. Case No. O-321 Docket, Volume 4, pp. 1601-1605.
[69] Resolution dated June 2, 2017, CTA Crim. Case No. O-321 Docket, Volume 4, pp. 1607-1619.
[70] CTA Crim. Case No. O-321 Docket, Volume 4, pp. 1622-1657.
[71] Resolution dated September 22, 2017 in Carlo J. Caparas vs. Court of Tax Appeals (3rd Div.), People of the Philippines and the Commissioner of Internal Revenue, CTA EB Crim. No. 041.
[72] Order dated October 11, 2017, CTA Crim. Case No. O-321 Docket, Volume 4, pp. 1695-1696.
[73] Order dated June 20, 2018, CTA Crim. Case No. O-321 Docket, Volume 4, p. 1799.

such as BIR, GSIS, Pag-IBIG and other mandatory remittances, including remittance of taxes. He avowed that all withholding taxes collected by PCSO whether from a supplier of goods or services are remitted to the BIR. He assured that PCSO has an alpha list of remittances to prove remittance of the taxes to the BIR.

He added that the column "net amount" appearing on the certifications, means that there are some deductions made to the vouchers, which can be a tax or disallowance. He expounded that for 2006 to 2008, the deductions were for 10% withholding tax and for 2009 and 2010, the deductions were for 10% withholding tax and 5% withholding on VAT. He declared that the amounts reflected in the certifications were merely picked up from the vouchers transmitted to them by other departments of PCSO.

Mercedes J. Hinayon, Department Manager of PCSO's Internal Audit, testified in his capacity as the former OIC, Department Manager of Treasury of the PCSO Main Office. She stated that she issued certifications relative to the payments of PCSO to the accused from 2006 to 2010. She explained that her certification is based on the records of the Treasury Department. The figures appearing in the certifications were verified by PCSO's accountant. Based on the certifications, the checks issued to the accused were based on net amount, meaning to say minus the withholding tax. She asserted that the Treasury Department has nothing to do with the computation of the withheld tax, as it is merely involved in the preparation of checks.

On September 20, 2018, the consolidated cases were subsequently transferred to the Court's First Division pursuant to CTA Administrative Circular No. 02-2018 dated September 18, 2018, reorganizing the three (3) Divisions of the Court.[74]

On March 6, 2019, the Formal Offer of Evidence (of the Accused) was filed.[75] After considering the prosecution's comment,[76] the Court admitted in evidence the accused's offered exhibits except Exhibits "A-38", "A-39", "A-40", "A-41" and "A-42" pursuant to Section 3, Rule 130 of the Rules of Court.[77]

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[74] Order dated September 20, 2018, CTA Crim. Case No. O-321 Docket, Volume 4, p. 1809.
[75] CTA Crim. Case No. O-321 Docket, Volume V, pp. 1818-2044.
[76] Comment to the Formal Offer of Evidence of Accused, CTA Crim. Case No. O-321 Docket, Volume V, pp. 2047-2052; Comment/Opposition (to the Motion for Reconsideration dated June 6, 2019), CTA Crim. Case No. O-321 Docket, Volume V, pp. 2111-2113.
[77] Resolutions dated May 17, 2019 and November 22, 2019, CTA Crim. Case No. O-321 Docket, Volume V, pp. 2057-2058, 2120-2122.

On December 5, 2019,[78] with the submission of the prosecution's Memorandum[79] on June 20, 2019 and the Memorandum (of the Accused)[80] on July 1, 2019, the consolidated cases were submitted for decision of the Court.

On December 16, 2019, the accused filed a Tender of Excluded Evidence,[81] which the Court noted in the Resolution dated January 3, 2020.[82]

On February 27, 2020, the accused filed a Manifestation and Motion praying for the Court to take Judicial Notice of the Resolution[83] of the Court's Third Division in CTA Crim. Case Nos. O-549 to O-552 entitled "People of the Philippines vs. Carlo J. Caparas."

ISSUES

The stipulated issues to be resolved by the Court are:

1. Whether the accused is guilty of the offenses charged in the Informations;

2. Whether the accused is liable to pay VAT despite contention that the PCSO already withheld VAT from the amounts paid for the services he had rendered;

3. Whether the accused willfully failed to file VAT returns and pay the corresponding VAT due for TYs 2006, 2007, 2008 and 2009.[84]

PARTIES' ARGUMENTS

Plaintiff's arguments

The prosecution argues that the accused willfully failed to file VAT returns and pay the corresponding VAT due for TYs 2006, 2007, 2008 and 2009. Allegedly, the accused did not even deny that he did not file his VAT returns for TYs 2006, 2007, 2008 and 2009 and merely repeatedly state that he relied in good faith on the undertaking of PCSO that the compensation for his services would be paid to him net of all taxes as indicated in their MOAs.

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[78] Resolution dated December 5, 2019, CTA Crim. Case No. O-321 Docket, Volume V, p. 2124.
[79] CTA Crim. Case No. O-321 Docket, Volume V, pp. 2064-2081.
[80] CTA Crim. Case No. O-321 Docket, Volume V, pp. 2082-2107.
[81] CTA Crim. Case No. O-321 Docket, Volume V, pp. 2127-2130.
[82] CTA Crim. Case No. O-321 Docket, Volume V, pp. 2133-2134.
[83] Dated October 23, 2019.
[84] Pre-Trial Order (PTO), CTA Crim. Case No. O-321, pp. 996-997.

While the accused denies that TIN 157-741-560-000 does not belong to him, the prosecution claims that it has presented evidence to prove beyond reasonable doubt that the accused owns TIN 157-741-560-000 and has failed to file and pay his Quarterly VAT Returns (QVATRs) for the questioned taxable years. The prosecution asserts that there is no record of the accused's alleged TIN 158-139-684-000 in the BIR records and that the same has not yet been issued to any person and no tax return has ever been filed under such TIN. A certification dated October 6, 2010 issued by Assistant Commissioner Victoria V. Santos (Exhibit "P-5") further proves that the accused has not filed his QVATRs for taxable years 2000 to 2009 under TIN 157-741-560-000.

The prosecution explains that the BIR's taxpayer records are TIN based. BIR records show that the accused applied and was issued TIN 157-741-560-000 on November 29, 2001. The accused is consequently identified and associated in all tax records with such TIN. He is also expected to write down his TIN in all tax returns and documents he files and submits to the BIR.

The prosecution submits that the accused is liable to pay VAT from the amounts paid for the services he rendered to PCSO. While PCSO, as accused's client and withholding agent, had the legal obligation to withhold appropriate taxes from payments it made in his favor, accused cannot pass on the criminal liability to PCSO. The prosecution notes that accused did not present evidence to prove his payment of VAT and filing of VAT returns.

Allegedly, the testimony of prosecution witness, Dorothy C. Robles, shows that the 10% tax deducted from PCSO's payments to the accused is a professional tax and the 5% VAT deduction only appeared in the 2009 Schedule of Payments (Exhibit "P-10") made to the accused and nowhere else.

Anent the accused's claim that the assessments against him are invalid, the prosecution contends that the accused is deemed to have received the copies of the PAN and the FDL since they were sent to his registered address. The prosecution posits that should he no longer reside thereat, he should have updated his profile records with the BIR. His failure to do so only shows his intent to evade receipt of notices from the BIR.

Accused's counter-arguments

The accused counters that the BIR flagrantly violated his constitutional right to due process when the criminal complaint against him was filed with the DOJ even before the deadline for him to present his books of accounts and other accounting records lapsed and by BIR's non-compliance with Revenue Memorandum Order (RMO) No. 27-2010, the policies and procedures for the R.A.T.E. Program.

He is adamant that the prosecution failed to prove his guilt beyond reasonable doubt for violating Section 255 of the NIRC of 1997, as amended, considering that the evidence presented by the prosecution pertained to a taxpayer with TIN 158-139-684-000 and not 157-741-560-000, his TIN.

He insists further that the prosecution failed to prove that his alleged failure to file VAT returns was willfully done, reiterating that he wholeheartedly and honestly believed that the payments he received from PCSO were net of all taxes and that he no longer had tax responsibilities or filings to undertake. Even assuming *arguendo* that he indeed failed to file VAT returns, such was neither willful nor deliberate that would amount to a criminal offense.

RULING OF THE COURT

Jurisdiction of the CTA over cases involving criminal offenses

At the outset, the Court finds it imperative to make a determination of its jurisdiction over the present case.

Section 7 of Republic Act (RA) No. 1125, as amended by RA No. 9282, provides:

> "Sec. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) xxx;
>
> (b) Jurisdiction over cases involving criminal offenses as herein provided:

(1) Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs: *Provided, however,* **That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate.** Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized." *(Boldfacing supplied)*

Section 3(b)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) states:

"SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

xxx

(b) Exclusive jurisdiction over cases involving criminal offenses, to wit:

(1) Original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs, **where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is one million pesos or more**; and

xxx." *(Boldfacing supplied)*

After a judicious perusal of the four (4) Informations, this Court finds that all four (4) Informations suffer from fatal infirmity that deprived the Court of jurisdiction to take cognizance of the case. To be sure, the four (4) Informations palpably failed to allege facts sufficient to qualify the consolidated cases as among those falling within the exclusive jurisdiction of the CTA.

There is no denying that the CTA has exclusive original jurisdiction on criminal offenses arising from violations of the NIRC or Tariff and Customs Code and other laws administered by the BIR and the Bureau of Customs **provided that the principal amount of taxes and fees, exclusive of charges and penalties, claimed is at least P1,000,000.00**. On the other hand, where the principal amount of **taxes and fees, exclusive of charges and penalties**, claimed is less than P1,000,000.00 or where there is no specified amount claimed, the case shall be tried by the regular courts and the jurisdiction of this Court shall be appellate.

The Informations did not indicate that the unpaid amounts of VAT involved, which the government claims against the accused are **exclusive of charges and penalties**. The Informations respectively allege that:

1. CTA Crim. Case No. O-321: ". . . accused, being a seller of service, and at that time required by law, rules and regulations to file the Value-Added Tax (VAT) return for taxable year 2006, did then and there willfully, unlawfully and feloniously failed to file the said VAT return and pay the VAT due in the amount of **Twenty-Three Million Three Hundred Thirty-Two Thousand Two Hundred Twenty-Two Pesos and Twenty Centavos (P23,332,222.20)** in violation of the aforesaid provisions of the NIRC."

2. CTA Crim. Case No. O-322: ". . . accused, being a seller of service, and at that time required by law, rules and regulations to file the Value-Added Tax (VAT) return for taxable year 2008, did then and there willfully, unlawfully and feloniously failed to file the said VAT return and pay the VAT due in the amount of **Twenty-Four Million One Hundred Sixty-Six Thousand, Six Hundred Sixty-Six Pesos and Sixty-Seven Centavos (P24,166,666.67)** in violation of the aforesaid provisions of the NIRC."

3. CTA Crim. Case No. O-323: ". . . accused, being a seller of service, and at that time required by law, rules and regulations to file the Value-Added Tax (VAT) return for taxable year 2007, did then and there willfully, unlawfully and feloniously failed to file the said VAT return and pay the VAT due in the amount of **Twenty-One Million Nine Hundred Forty-Six Thousand Six Hundred Sixty-Six Pesos and Sixty-Six Centavos (P21,946,666.66)** in violation of the aforesaid provisions of the NIRC."

4. CTA Crim. Case No. O-324: ". . . accused, being a seller of service, and at that time required by law, rules and regulations to file the Value-Added Tax (VAT) return for taxable year 2009, did then and

there willfully, unlawfully and feloniously failed to file the said VAT return and pay the VAT due in the amount of **Thirty-Two Thousand Three Hundred Seventy-Four Thousand, One Hundred Sixty-Six Pesos and Sixty-Six Centavos (P32,374,166.66)** in violation of the aforesaid provisions of the NIRC.'

It is at once glaring that the amounts of deficiency VAT as indicated in the Informations are just too ambiguous to qualify them as referring to the "principal amount of taxes and fees, exclusive of penalties and charges" which the government claims against the accused.

To vest jurisdiction upon this Court, a vital allegation in the Informations, that is - - that the "principal amount of taxes and fees" is at least P1,000,000.00, exclusive of charges and penalties - - must be unequivocal and unmistakable. Otherwise stated, while the four (4) Informations stated the VAT due from the accused as amounting to **P23,332,222.20**, **P24,166,666.67**, **P21,946,666.66** and **P32,374,166.66**, respectively, there is nothing therein that the VAT due refer to the basic or principal amount of tax liability of the accused for TYs 2006, 2008, 2008 and 2009, exclusive of charges and penalties.

It is well-settled that the averments in the complaint or information characterize the crime to be prosecuted and the court before which it must be tried.[85] To determine the jurisdiction of the court in criminal cases, the complaint must be examined for the purpose of ascertaining whether or not the facts set out therein and the punishment provided for by law fall within the jurisdiction of the court where the complaint is filed.[86] **Evidence presented could not cure the defect in the information**.[87] Thus, the allegations in the four (4) Informations shall be the basis in determining whether this Court has jurisdiction over the consolidated criminal cases.

In *Allen A. Macasaet, et al. vs. The People of the Philippines and Joselito Trinidad,*[88] the Supreme Court in *esse* declared that the failure of an Information to allege matters that specifically vest jurisdiction upon the court with which it is filed effectively deprives the court of jurisdiction to take cognizance of the case, *viz.*:

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[85] Solemnidad M. Buaya vs. The Honorable Wenceslao M. Polo, Presiding Judge, Branch XIX, Regional Trial, Court of Manila and the Country Bankers Insurance Corporation, G.R. No. L-75079 January 26, 1989, citing Balite v. People, L-21475, Sept. 30,1966 cited in People v. Masilang, 142 SCRA 680.
[86] Id., citing Villanueva v. Ortiz, et al., L-15344, May 30, 1960, 108 Phil, 493.
[87] Francisco I. Chavez vs. Court of Appeals, G.R. No. 125813, February 6, 2007.
[88] G.R. No. 156747, February 23, 2005.

"Jurisdiction has been defined as 'the power conferred by law upon a judge or court to try a case the cognizance of which belongs to them exclusively' and it constitutes the basic foundation of judicial proceedings. Xxx.

xxx

Xxx, the jurisdiction of a court over the criminal case is determined by the allegations in the complaint or information. And once it is so shown, the court may validly take cognizance of the case.

xxx

In the case at bar, private respondent was a private citizen at the time of the publication of the alleged libelous article, hence, he could only file his libel suit in the City of Manila where Abante was first published or in the province or city where he actually resided at the time the purported libelous article was printed.

A perusal, however, of the information involved in this case easily reveals that the allegations contained therein are utterly insufficient to vest jurisdiction on the RTC of Quezon City. Other than perfunctorily stating Quezon City at the beginning of the information, the assistant city prosecutor who prepared the information did not bother to indicate whether the jurisdiction of RTC Quezon City was invoked either because Abante was printed in that place or private respondent was a resident of said city at the time the claimed libelous article came out. **As these matters deal with the fundamental issue of the court's jurisdiction, Article 360 of the Revised Penal Code, as amended, mandates that either one of these statements must be alleged in the information itself and the absence of both from the very face of the information renders the latter fatally defective.** Sadly for private respondent, the information filed before the trial court falls way short of this requirement. The assistant city prosecutor's failure to properly lay the basis for invoking the jurisdiction of the RTC, Quezon City, effectively denied said court of the power to take cognizance of this case." *(Boldfacing supplied)*

Applying *Macasaet*, matters dealing with the issue of the CTA's jurisdiction must be alleged in the Information itself. Since Section 7(b)(1) of RA No. 1125, as amended, sets forth this Court's jurisdiction based on the **principal amount of taxes and fees, exclusive of charges and penalties claimed**, such fact must be alleged in the Information, lest the same would be fatally infirmed. As afore-discussed, the four (4) Informations involved in the present controversy are wanting of the appropriate allegation anent the jurisdictional amount - - the principal amount of tax, exclusive of penalties and charges - - that could have vested upon this Court jurisdiction over the consolidated criminal cases.

While defects in an information may be cured by amendment pursuant to Section 14, Rule 110 of the ROC,[89] not all defects in an information can be cured. Before the accused enters a plea, a formal or substantial amendment of the complaint or information may be made without leave of court. After the entry of a plea, only a formal amendment may be made but with leave of court and only if it does not prejudice the rights of the accused. After arraignment, a substantial amendment is proscribed, except if the same is beneficial to the accused.[90] **The substantial matter in a complaint or information is the recital of facts constituting the offense charged and <u>determinative of the jurisdiction</u> of the court. All other matters are merely of form.**[91]

In the cases at bar, accused was arraigned but refused to enter a plea, thus the Court entered a "not guilty" plea for him. With his arraignment, any subsequent amendment of the four (4) Informations to specify the principal amount of tax, exclusive of penalties and charges, is proscribed, more so, any amendment that relates to the Court's jurisdiction.

In *Victor C. Agustin vs. Hon. Fernando Vil Pamintuan*,[92] a case which had its roots in four (4) criminal cases for libel, the Supreme Court declared that amendments of the information to vest jurisdiction upon a court is not permissible, *viz.*:

> "We do not agree with the ruling of the CA that the defects in the Informations are merely formal. Indeed, the absence of any allegations in the Informations that the offended party was actually residing in Baguio City, where the crimes charged were allegedly committed, is a substantial defect. **Indeed, the amendments of the Informations to vest jurisdiction upon the court cannot be allowed.**" *(Boldfacing supplied)*

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[89]Section 14. Amendment or substitution. — A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.

However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party.

If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with section 19, Rule 119, provided the accused shall not be placed in double jeopardy. The court may require the witnesses to give bail for their appearance at the trial. (Boldfacing supplied)

[90] *Jose Antonio C. Leviste vs. Hon. Elmo M. Alameda*, G.R. No. 182677, August 3, 2010.

[91] *Leonarda Alameda vs. Hon. Onofre A. Villaluz*, G.R. No. L-31665, August 6, 1975.

[92] G.R. No. 164938, August 22, 2005.

There being no allegation in the Informations on the jurisdictional amount of tax liability of accused, specifically that the principal amount of its VAT liability for TY 2006, 2007, 2008, and 2009, respectively, is at least P1,000,000.00, exclusive of charges and penalties, this Court finds all four (4) Informations substantially defective as to vest jurisdiction upon this Court.

In the absence of the required jurisdictional allegation in the Informations as to the amount of basic tax that the government claims against the accused, **the Court is constrained to dismiss the case for lack of jurisdiction.**

Elements of the criminal offenses charged

Even assuming that the Court has jurisdiction to take cognizance of the consolidated cases, the evidence presented by the prosecution failed to prove the guilt of the accused beyond reasonable doubt.

Section 255 of the NIRC of 1997, as amended, reads:

> "SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* – Any person required under this Code or by rules and regulations promulgated thereunder **to pay any tax**, **make a return**, keep any record, or supply correct and accurate information, **who willfully fails to pay such tax, make such return,** keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine 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. xxx " (Boldfacing and underscoring supplied)

The elements of the crime of failure to file return and pay the tax under the afore-quoted Section 255 of the NIRC of 1997, as amended, are as follows:

1. Accused is the person required under the NIRC of 1997, as amended, or by the rules and regulations to file the tax return and pay the tax;

2. Accused failed to file the tax return and pay the tax at the time required under the NIRC of 1997, as amended, or by the rules and regulations; and

3. ***Such failure to file the tax return and pay the tax was willful.***

Requirement that the accused's failure to file VAT returns and pay the VAT due, if any, was willful

To secure the accused's conviction under the four (4) Informations, it is indispensable that the prosecution prove beyond reasonable doubt that his failure to file VAT returns and pay the VAT due thereon was willful.

Willful in tax crime statutes means voluntary and intentional violation of a known legal duty; and bad faith or bad purpose need not be shown.[93] An act or omission is "willfully" done if done voluntarily and intentionally and with specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done; that is, with bad purpose to either disobey or disregard the law. A willful act may be described as one done intentionally, knowingly and purposely, without justifiable excuse.[94]

Willfulness, being a "state of mind" is rarely susceptible of direct proof but must ordinarily be inferred from the facts and circumstances of the case. Thus, willfulness may be, and usually is, shown by circumstantial evidence alone.[95] For circumstantial evidence to be sufficient to support a conviction, all the circumstances must be consistent with one another and must constitute an unbroken chain leading to one fair and reasonable conclusion that a crime has been committed and that the accused is probably guilty thereof. The pieces of evidence must be consistent with the hypothesis that the accused was probably guilty of the crime and at the same time inconsistent with the hypothesis that he was innocent, and with every rational hypothesis except that of guilt. Circumstantial evidence is sufficient, therefore, if: (a) there is more than one circumstance, (b) the facts from which the inferences are derived have been proven, and (c) the combination of

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[93] Mertens' Law of Federal Income Taxation, Chapter 47.05, page 28, Volume 13, see U.S. vs. Green, 757 F2d 116, 85-1 USTC 9178 (CA7 1985), in which the Court, citing *U.S. vs. Moore*, 627 F2d 830 (CA7 1980) and *U.S. vs. Verkuilen*, 690 F2d 648, 82-2 USTC 9618 (CA7 1982), upheld the conviction of a tax protester for willful failure to file returns.
[94] Black's Law Dictionary, 5th ed., p. 1434.
[95] *United States vs. Grumka*, 728 F.2d 794, 796-97 (6th Cir. 1984); United States vs. Gleason, 726 F.2d 385, 388 (8th Cir. 1984); *United States vs. Marabelles*, 724 F.2d 1374, 1379 (9th Cir. 1984).

all the circumstances is such as to produce a conviction beyond reasonable doubt.[96]

Accused's willful intent not to file VAT returns and pay the VAT due thereon, may be deduced through his overt and external acts and conduct before, during and after he has been informed of his alleged failure.

As afore-discussed, the CIR instantaneously referred the case of the accused to the DOJ on October 21, 2010 or merely twelve (12) days from receipt by the accused of the LOA on October 9, 2010. No extensive audit has been conducted on accused's books of accounts and other records by the authorized revenue officers prior to the execution and filing of their Joint Complaint Affidavit with the DOJ on October 21, 2010.

While the filing of the case against the accused was triggered by news of the alleged schemes of tax evasion he allegedly perpetrated with his wife and Golden Lions Film Productions, Inc., and precipitated by the certification issued by the ISOS of the BIR that there is no record of income tax and VAT returns filed with by the accused with the said office as well as the certification of the PCSO that payments were made to the accused for the production of different television programs, there is nothing on record which would reveal that the accused was informed or confronted of his alleged failure to file VAT returns and pay his VAT due, if any, prior to the filing of the complaint with the DOJ.

Section 6 (B) of the NIRC of 1997, as amended, provides:

> "SECTION 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
>
> (A) Examination of Returns and Determination of Tax Due. — xxx
>
> (B) Failure to Submit Required Returns, Statements, Reports and other Documents. — When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by laws or rules and regulations or when there is reason to believe that any such report is false, incomplete or erroneous, the Commissioner shall assess the proper tax on the best evidence obtainable.

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[96] *Marie Callo-Claridad vs. Philip Ronald P. Esteban and Teodora Alyn Esteban*, G.R. No. 191567, March 20, 2013.

> **In case a person fails to file a required return** or other document at the time prescribed by law, or willfully or otherwise files a false or fraudulent return or other document, **the Commissioner shall make** or amend **the return from his own knowledge and from such information as he can obtain through testimony or otherwise, which shall be prima facie correct and sufficient for all legal purposes."** *(Boldfacing supplied)*

Upon discovery of the accused's failure to file VAT returns, the then CIR immediately referred the case to the DOJ instead of performing her mandatory duty of making the accused's VAT returns from her own knowledge and from such information which she obtained by that time from the PCSO. Such non-performance of a mandatory duty or nonfeasance, aside from being itself actionable, prevented the BIR from discerning the accused's real intent relative to his failure to file VAT returns and pay any VAT due.

Had the then CIR performed her mandatory duty under Section 6 of the NIRC of 1997, as amended, and confronted the accused with the VAT returns that she herself, as the then CIR prepared, and subsequently required the accused to pay the VAT thereon, the accused's attitude or behavior towards the CIR's demand would have confirmed accused's intention. Stated otherwise, the willful intent of the accused to violate the provisions of Section 108, in relation to Section 255, of the NIRC of 1997, as amended, could have been shown if, after being told of what he was supposed to have done, still refused or failed to act thereon.

What is clear and glaring from the records of these consolidated cases is accused's honesty and candidness. While he admits that he did not file any VAT returns, he is consistent in his assertion that he did not do so wilfully for he relied in good faith on the representations of PCSO that the payments to be made to him are net of all taxes as provided for in their MOAs and that PCSO will take care of the filing of the corresponding returns. He maintains that provisions in the respective MOAs were placed by PCSO to reflect its assurance and representation that it will shoulder all the taxes in exchange for the reduced cost of production of the teledramas.

Accused's assertion is corroborated by his witnesses Mercedes Hinayon, Elmer Camba as well as by the testimony of prosecution witness, Dorothy Robles, and the several MOAs between him and PCSO, which contain the following stipulations, to wit:

Exhibit	Document	Provision
"A-1"	Memorandum of Agreement notarized on February 3, 2006 (Diyos Ko Mahal Mo Ba Sila?)	"III. Mode of Payment Xxx 3. The contract price herein stipulates shall be net of taxes"
"A-2"	Memorandum of Agreement notarized on April 4, 2006 (Diyos Ko Mahal Mo Ba Sila?)	
"A-3"	Memorandum of Agreement dated July 12, 2006 (Diyos Ko Mahal Mo Ba Sila?)	
"A-4"	Memorandum of Agreement dated October 5, 2006 (Diyos Ko Mahal Mo Ba Sila?)	
"A-5"	Memorandum of Agreement notarized on February 1, 2007 (Diyos Ko Mahal Mo Ba Sila?)	
"A-6"	Memorandum of Agreement notarized on May 2, 2007 (Diyos Ko Mahal Mo Ba Sila?)	
"A-7"	Memorandum of Agreement undated and not notarized (Diyos Ko Mahal Mo Ba Sila?)	
"A-8"	Memorandum of Agreement notarized on November 6, 2007 (Diyos Ko Mahal Mo Ba Sila?)	
"A-9"	Memorandum of Agreement notarized on February 5, 2005 (Krusada Kontra Krimen)	"III. Mode of Payment Xxx 3. All taxes shall be paid by PCSO."
"A-10"	Memorandum of Agreement notarized on February 5, 2005 (Krusada Kontra Krimen)	
"A-11"	Memorandum of Agreement notarized on December 4, 2006 (Krusada Kontra Krimen)	
"A-12	Memorandum of Agreement notarized on May 2, 2007 (Krusada Kontra Krimen)	
"A-13"	Memorandum of Agreement notarized on March 7, 2007 (Krusada Kontra Krimen)	
"A-14"	Memorandum of Agreement notarized on March 7, 2007 (Count Your Blessings)	"III. Mode of Payment Xxx 3. All payment shall be net of taxes."
"A-15"	Memorandum of Agreement notarized on March 31, 2008 (Count Your Blessings)	
"A-16"	Memorandum of Agreement notarized on March 31, 2008 (Count Your Blessings)	
"A-17"	Memorandum of Agreement notarized on June 2, 2008 (Count Your Blessings)	
"A-18"	Memorandum of Agreement dated December 24, 2008 (Pangarap Kong Jackpot)	"III. Mode of Payment Xxx 3. All payment shall be net of taxes."
"A-19"	Memorandum of Agreement dated March 31, 2009 (Pangarap Kong Jackpot)	
"A-20"	Memorandum of Agreement dated June 17, 2009 (Pangarap Kong Jackpot)	
"A-21"	Memorandum of Agreement dated December 15, 2009 (Pangarap Kong Jackpot)	"III. Mode of Payment Xxx

		3. All payments shall be net of All taxes."

Under Sections 106 and 108 of the NIRC of 1997, as amended, PCSO is required (before making payment on account of each purchase of goods and/or services taxed at 12% VAT) to deduct and withhold a Final VAT due at the rate of 5% of the gross payment. The 5% final VAT withholding rate shall represent the net VAT payable of the seller.

Considering PCSO's legal duty to withhold final VAT on its payments to the accused, its representations and undertaking to the accused, as well as the stipulations in their MOAs, the accused had strong reason to believe that there was no necessity for him to file VAT Returns for purposes of declaring the payments he received from PCSO since the same would have already been subjected to appropriate **final withholding VAT** by PCSO.

Further, there is no proof that accused was aware of such non-withholding or that COA found that PCSO was withholding insufficient taxes on its payments to him and despite such knowledge, he did nothing to remedy the erroneous withholding.

Accused should not be faulted for relying on PCSO's representations that it had complied with its legal obligation to withhold and remit the VAT due on its payments to the accused as he could neither be expected to fully understand tax matters which involve technical and legal rules nor could he be knowledgeable of PCSO's procedures in complying with its tax obligations.

The evidence taken altogether, it is clear that that there was no willful or intentional failure on the part of the accused not to file VAT returns for TYs 2006, 2007, 2008 and 2009 and not to pay the VAT due thereon.

Proof beyond reasonable doubt charges the prosecution with the immense responsibility of establishing moral certainty. The prosecution's case must rise on its own merits, not merely on its relative strength as against that of the defense. Should the prosecution fail to discharge its burden, as in the cases at bar, the acquittal of the accused in all the charges follows as a matter of course.[97]

[97] *Capistrano Daayata et al., vs. People of the Philippines*, G.R. No. 205745, March 8, 2017.

In fine, the prosecution has not discharged its burden to prove beyond reasonable doubt that the accused's failure to file VAT returns and pay the VAT due thereon was willful. Thus, his acquittal from the charges necessarily follows.

Civil Liability

Section 7(b)(1) of RA No. 1125, as amended, states that "[a]ny provision of law or Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be **simultaneously instituted** with, and **jointly determined in the same proceeding by the CTA**, the **filing of the criminal action shall be deemed to necessarily carry with it the filing of the civil action**, and no right to reserve the filing of such civil action separately from the criminal action will be recognized."

Civil liability arising from obligation to pay tax under the NIRC of 1997, as amended

Records disclose that a PAN dated May 25, 2011[98] and an FDL dated August 24, 2011[99] were issued against the accused.

Under Paragraph 3.1.6 of Revenue Regulations (RR) No. 18-2013,[100] service of notice (*i.e.,* PAN and FDL) to taxpayers may be done through personal service, substituted service or registered mail.

To prove service of the FDL, the prosecution offered in evidence the FDL with attached LBC Express receipt[101] and a Registry Return Receipt.[102] Prosecution witness, Jonas P. Punzal, also testified that he personally served the PAN, which was received by accused's spouse while the FDL was served via registered mail and licensed courier since allegedly they were no longer allowed to enter the village where accused's residence was located.

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[98] Exhibit "P-16" to "P-16-2", CTA Crim. Case No. O-321 Docket, Volume 4, pp. 1395-1397.
[99] Exhibit "P-25", CTA Crim. Case No. O-321 Docket, Volume 4, pp. 1408-1411.
[100] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.
[101] CTA Case No. O-321 Docket, Volume 4, p. 1410.
[102] CTA Case No. O-321 Docket, Volume 4, p. 1411.

Accused, however, denies receiving the FDL and claims that the person named Jana Gelogo, who allegedly received the FDL sent through LBC, is unknown to him.[103]

In *Protector's Services, Inc. vs. Court of Appeals,*[104] it was ruled that when a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3(v), Rule 131 of the Rules of Court,[105] that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.[106]

The presumption that a letter duly directed and mailed was received in the regular course of the mail is not applicable in this instance considering that the accused directly denies receipt thereof.

Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.,[107] enunciates that if the taxpayer denies receiving an assessment from the CIR, it becomes incumbent upon the CIR to prove by competent evidence that such notice was indeed received by the addressee, *viz.*:

> "**If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee.**[8] Flere, the *onus probandi* has shifted to the BIR to show by contrary evidence that GJM indeed received the assessment in the due course of mail. It has been settled that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee.
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> xxx xxx xxx

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[103] Paragraph 28, Demurrer to Evidence, CTA Case No. O-321 Docket, Volume 4, p. 1538.
[104] G.R. No. 118176, April 12, 2000.
[105] Section 3. Disputable presumptions. – The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
xxx xxx xxx
(v) That a letter duly directed and mailed was received in the regular course of the mail; xxx
[106] *Barcelon, Roxas Securities, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 157064, August 7, 2006.
[107] G.R. No. 202695, February 29, 2016.

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> The BIR's failure to prove GJM's receipt of the assessment leads to no other conclusion but that no assessment was issued." (Boldfacing supplied)

The service of a mail matter by private courier is considered as equivalent to filing by ordinary mail.[108] Under Section 13, Rule 13 of the ROC, if the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with Section 7 of Rule 13 of the ROC. To prove service by a private courier or ordinary mail, a party must attach an affidavit of the person who mailed the motion or pleading.[109]

It was incumbent upon the prosecution to establish that not only was the FDL sent to the accused at his registered address but also that the FDL was actually received by him. In view of the accused's categorical denial of his receipt of the FDL, the prosecution should have proven adequate service thereof to accused, by presenting, among others, the affidavit of the person who caused the service of the FDL via LBC. The prosecution, however, miserably failed to do so.

The sending of the assessment notice to the taxpayer to inform him of the assessment made is part of the due process requirement in the issuance of a deficiency tax assessment. The prosecution's failure to prove actual receipt of the FDL by the accused, leads to the conclusion that no valid assessment was issued. Thus, the FDL, being void, bears no fruit[110] and may be slain at sight. Needless to say, a void assessment cannot be used as basis in collecting deficiency VAT from accused.

Civil liability arising from the criminal violation of the NIRC of 1997, as amended

Even assuming that the assessment issued against the accused is valid, still, the accused may not be held civilly liable.

In *Macario Lim Gaw, Jr. vs. Commissioner of Internal Revenue*,[111] the Supreme Court elucidated on the nature of civil liability arising from a criminal violation of the NIRC of 1997, as amended, *viz.*:

> "The civil action filed by the

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[108] *Philippine Savings Bank vs. Josephine L. Papa*, G.R. No. 200469, January 15, 2018.
[109] *Id.*
[110] *Metro Star Superama, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 185371, December 8, 2010.
[111] G.R. No. 222837, July 23, 2018.

petitioner to question the FDDA is
not deemed instituted with the
criminal case for tax evasion

Rule 9, Section 11 of A.M. No. 05-11-07-CTA, 43 otherwise known as the Revised Rules of the Court of Tax Appeals (RRCTA), states that:

> SEC. 11. Inclusion of civil action in criminal action. — In cases within the jurisdiction of the Court, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall be deemed jointly instituted in the same proceeding. The filing of the criminal action shall necessarily carry with it the filing of the civil action. No right to reserve the filing of such civil action separately from the criminal action shall be allowed or recognized.

Petitioner claimed that by virtue of the above provision, the civil aspect of the criminal case, which is the Petition for Review *Ad Cautelam*, is deemed instituted upon the filing of the criminal action. Thus, the CTA had long acquired jurisdiction over the civil aspect of the consolidated criminal cases. Therefore, the CTA erred in dismissing the case.

We do not agree.

Rule 111, Section 1 (a) of the Rules of Court provides that what is deemed instituted with the criminal action is only the action to recover civil liability arising from the crime. Civil liability arising from a different source of obligation, such as when the obligation is created by law, such civil liability is not deemed instituted with the criminal action.

It is well-settled that **the taxpayer's obligation to pay the tax is an obligation that is created by law and does not arise from the offense of tax evasion, as such, the same is not deemed instituted in the criminal case**.

In the case of Republic of the Philippines v. Patanao, We held that:

> Civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him. The criminal liability arises upon failure of the debtor to satisfy his civil obligation. The incongruity of the factual premises and foundation principles of the two cases is one of the reasons for not imposing civil indemnity on the criminal infractor of the income tax law. x x x **Considering that the Government <u>cannot seek satisfaction of the taxpayer's civil liability in a criminal proceeding under the tax law or, otherwise stated, since the said civil liability is not deemed included in the criminal action, acquittal of the taxpayer in the criminal proceeding does not necessarily entail</u>**

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> **exoneration from his liability to pay the taxes. It is error to hold, as the lower court has held that the judgment in the criminal cases nos. 2089 and 2090 bars the action in the present case. The acquittal in the said criminal cases cannot operate to discharge defendant appellee from the duty of paying the taxes which the law requires to be paid, since that duty is imposed by statute prior to and independently of any attempts by the taxpayer to evade payment. Said obligation is not a consequence of the felonious acts charged in the criminal proceeding nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of non-existence of the criminal acts charged.** x x x. (Citations omitted and emphasis ours)

Further, in a more recent case of Proton Pilipinas Corp. v. Republic of the Phils., We ruled that:

> While it is true that according to the aforesaid Section 4, of Republic Act No. 8249, the institution of the criminal action automatically carries with it the institution of the civil action for the recovery of civil liability, however, in the case at bar, **the civil case for the collection of unpaid customs duties and taxes cannot be simultaneously instituted and determined in the same proceedings as the criminal cases before the Sandiganbayan, as it cannot be made the civil aspect of the criminal cases filed before it. It should be borne in mind that the tax and the obligation to pay the same are all created by statute; so are its collection and payment governed by statute. The payment of taxes is a duty which the law requires to be paid. Said obligation is not a consequence of the felonious acts charged in the criminal proceeding nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of non-existence of the criminal acts charged. Hence, the payment and collection of customs duties and taxes in itself creates civil liability on the part of the taxpayer. Such civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him.** (Citations omitted and emphasis ours)
>
> Xxx. *(Boldfacing and underscoring supplied)*

The obligation to pay the tax is an obligation that is created by law; it does not arise from the offense of tax evasion, and, as such, is not deemed instituted in the criminal case. The civil liability that is deemed instituted with the criminal case is the civil liability imposed under Section 253 of the NIRC of 1997, as amended.

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As oft-repeated, the prosecution miserably failed to prove that accused's failure to file VAT returns and pay the VAT due thereon was willful. Indubitably, evidence is wanting of the fact upon which the civil liability may arise.[112] In view of the prosecution's failure to prove the guilt of the accused beyond reasonable doubt for violation of Section 108, in relation to Section 255, of the NIRC of 1997, as amended, accused cannot be held civilly liable for the penalty imposed under Section 253(a) and (e) of the NIRC of 1997, as amended.[113]

WHEREFORE, premises considered, the present case is **DISMISSED** for lack of jurisdiction.

Moreover, even assuming that the Court has jurisdiction over the consolidated cases, accused **CARLO J. CAPARAS** is **ACQUITTED** of the offenses charged in CTA Crim. Case Nos. O-321, O-322, O-323 and O-324 for failure of the prosecution to establish his guilt beyond reasonable doubt, without any civil liability.

The cash bail bonds of the accused are hereby **CANCELLED** and ordered **RELEASED** to the accused upon presentation of proper documents, in accordance with usual accounting rules and regulations.

The accused's Manifestation and Motion dated February 24, 2020, filed on February 27, 2020, is **NOTED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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[112] Section 2, Rule 120, Rules of Court.
[113] SECTION 253. General Provisions. —
(a) Any person convicted of a crime penalized by this Code shall, in addition to being liable for the payment of the tax, be subject to the penalties imposed herein: Provided, That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution for violation of any provision of this Code or in any action for the forfeiture of untaxed articles.
(b) Xxx;
(e) The fines to be imposed for any violation of the provisions of this Code shall not be lower than the fines imposed herein or twice the amount of taxes, interests and surcharges due from the taxpayer, whichever is higher.

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the consolidated cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice