REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

CTA EB CRIM. NO. 064
(CTA CRIM. CASE NOS. O-526, O-527, O-528 & O-529)

Present:

- **versus** -

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and,*
MODESTO-SAN PEDRO, *JJ.*

IZUMO CONTRACTORS, INC., represented by **CEDRIC LEE, JOHN K. ONG** and **JUDY GUTIERREZ LEE,**
Respondents.

Promulgated:
OCT 23 2019
3:38 p.m.

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court is a Petition for Review, pursuant to Rule 8, Section 3(b)[1] of the Revised Rules of the Court of Tax Appeals

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1 **SEC. 3.** *Who may appeal; period to file petition.* –

...

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review

(**RRCTA**), filed by the Bureau of Internal Revenue (**BIR/petitioner**). It seeks the reversal of this Court's Second Division Resolutions dated 24 July 2018 and 08 February 2019[2], respectively, in *People of the Philippines v. Izumo Contractors, Inc., represented by Cedric Lee, John K. Ong and Judy Gutierrez Lee,* docketed as CTA Crim. Case Nos. O-526, O-527, O-528 and O-529.[3]

FACTUAL ANTECEDENTS

On 15 June 2015, deputized by the Department of Justice (**DOJ**), the BIR, acting as Special Prosecutor, filed Informations for violation of Section 255[4] of the National Internal Revenue Code (**NIRC**), against Izumo Contractors, Inc. (**Izumo**), as represented by respondents Cedric Lee[5] and Judy Gutierrez Lee[6] (**Lees**) and John K. Ong[7] (**Ong**).

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within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

2 Division Dockets, Volumes III and IV, respectively.

3 CTA Crim. Case O-526
Respondents were charged for not declaring in Izumo's Annual Income Tax Return (ITR) for taxable year 2009 income payments from the "City Government of Davao and Municipality of Tagudin, Ilocos Sur... amounting to a total of P131,400,995.88 resulting in a tax deficiency of **TWENTY-SEVEN MILLION THREE HUNDRED FIFTY-NINE THOUSAND EIGHT HUNDRED SIXTEEN AND SIXTY-ONE CENTAVOS (P27,359,816.61)**, exclusive surcharges and interest..."

CTA Crim. Case O-527
Respondents were charged for not declaring in Izumo's Annual ITR for taxable year 2006 income payments from the "City Government of San Juan City and City Government of Butuan City ... amounting to a total of P94,325,230.83 resulting in a tax deficiency of **THIRTY-ONE MILLION SIXTY-ONE THOUSAND SIX HUNDRED TWENTY-THREE PESOS AND THIRTY-EIGHT CENTAVOS (P31,061,623.38)**, exclusive surcharges and interest..."

CTA Crim. Case O-528
Respondents were charged for not declaring in Izumo's Annual ITR for taxable year 2007 income payments from the "City Government of San Juan City and City Government of Butuan City ... amounting to a total of P46,072,613.26 resulting in a tax deficiency of **TWELVE MILLION FIVE HUNDRED FIFTY-SEVEN THOUSAND TWO HUNDRED EIGHTY-THREE AND FORTY CENTAVOS (P12,557,283.40)**, exclusive surcharges and interest..."

CTA Crim. Case O-529
Respondents were charged for not declaring in Izumo's Annual ITR for taxable year 2008 income payments from the "City Government of Pasay City and Municipality of Tagudin, Ilocos Sur... amounting to a total of P30,826,043.43 resulting in a tax deficiency of **THREE MILLION THREE HUNDRED TWENTY THOUSAND FIVE HUNDRED ELEVEN AND EIGHTY-FIVE CENTAVOS (P3,320,511.85)**, exclusive surcharges and interest..."

4 Section 255, Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.

5 President/Chief Executive Officer.

6 Chief Financial Officer.

7 Vice President/Chief Operating Officer.

The cases were raffled to this Court's Second Division and later consolidated for trial.

Respondents, as then accused, were arraigned and subsequently, petitioner, as then plaintiff, presented its witnesses: (1) Ms. Gertrudes M. Eito, Intelligence Officer III of the BIR; (2) Mr. Gary V. Atanacio, Intelligence Officer I of the BIR; (3) Ms. Mary Grace Parado-Alonzo, Revenue Officer I of the BIR; (4) Ms. Dinah A. Lamsen, Acting City Accountant of the City Government of San Juan; (5) Ms. Dorothy Joy C. Angeles-Ramos, Provincial Accountant of the Provincial Government of Davao Occidental; (6) Ms. Antonietta C. Abella, City Accountant of the City Government of Butuan City; (7) Ms. Leilani L. Cabañero, Municipal Accountant of Tagudin, Ilocos Sur; and, (8) Mr. Pedro R. Ignacio, Administrative Assistant V, Office of the Secretariat of the City Government of Pasay.

As culled from the records of the case, the Second Division summarized the testimonies of plaintiff's witnesses as follows:

> ...
>
> Ms. Gertrudes M. Eito
>
> Ms. Eito testified that she is employed as an Intelligence Officer III of the BIR and was part of the group that conducted the investigation of Izumo's tax liabilities, pursuant to the Letter of Authority SN: eLA201100060813/LOA-211-2014-00000051 dated February 13, 2014. Ms. Eito also stated that she was the one who served the Letter of Authority.
>
> Mr. Gary V. Atanacio
>
> Mr. Atanacio testified that he is presently employed as Intelligence Officer I of the BIR and that his group conducted an investigation on the tax liabilities of Izumo. Mr. Atanacio testified that, after the issuance of the LOA, his group sent a letter request to the local chief executives of the City of San Juan, Pasay City, Butuan City, Tagudin, Ilocos Sur, and to the Provincial Government of Davao del Sur for them to provide documents/certifications as to their income payments made to Izumo.
>
> Mr. Atanacio stated that his group received the following:
>
> ...

x - x

1. Certification of Income Payments to Izumo Contractors, Inc. for taxable years 2006 and 2007 by City Accountant Alicia E. Cruz-Barazon of City of San Juan;
2. Certification of Income Payments to Izumo Contractors, Inc. for taxable years 2008 and 2010 by Pedro R. Ignacio of the Accounting Department of Pasay City;
3. Certification of Income Payments to Izumo Contractors, Inc. for taxable years 2006 and 2007 by City Accountant Antonietta C. Abella of Butuan City;
4. Certification of Income Payments to Izumo Contractors, Inc. for taxable years 2008 and 2009 by Municipal Accountant Leilani Vee L. Cabañero of the Municipality of Tagudin, together with the disbursement vouchers and official receipts issued by Izumo Contractors, Inc.; and,
5. Certification of Income Payments to Izumo Contractors, Inc. for taxable year 2009 by OIC-Provincial Accountant Dorothy Joy C. Angeles of the Provincial Government of Davao del Sur, together with the disbursement vouchers, advice to debit from the Landbank of the Philippines (LBP) and official receipts issued by Izumo Contractors, Inc."

Based thereon, they computed Izumo's gross income for taxable years 2006, 2007, 2008 and 2009 and compared the same with the Income Tax Returns filed by Izumo. By doing so, his group discovered that there was substantial under-declaration of taxable income by Izumo.

His group also accessed the Securities and Exchange Commission (SEC) registration of Izumo in order to determine its responsible corporate officers. In doing so, they were able to secure a copy of the Certificate of Incorporation, Articles of Incorporation, Treasurer's Affidavit, By-Laws and General Information Sheet of Izumo.

Mr. Atanacio testified that General Information Sheet of Izumo shows that its responsible corporate officers are the following: Cedric C. Lee as President, Judy Gutierrez Lee as Chief Financial Officer and John K. Ong as Vice-President/Chief Operating Officer (COO). Thus, his group filed a criminal case against the said officers.

<u>Ms. Mary Grace Parado-Alonzo</u>

Ms. Parado-Alonzo testified that she is a Revenue Officer I of the BIR, that their group conducted an investigation on the tax liabilities of Izumo Contractors, Inc., and eventually filed a criminal complaint against the corporation and its responsible corporate officers.

Ms. Parado-Alonzo stated that she was the one who computed the income tax deficiencies of Izumo for taxable years 2006, 2007, 2008 and 2009. Accordingly, she deducted the declared expenses of the subject corporation per declaration of its ITRs for 2006, 2007, 2008 x - x

and 2009 from the total income payments made per certification of LGUs and not from the declared sales/revenues/receipts of Izumo.

Ms. Parado-Alonzo testified that when they filed a complaint as stated in its ITRs, the total tax due of Izumo for taxable year 2006 was ₱89,768,091.58, ₱33,779,092.35 for 2007, ₱8,268,074.51 for 2008 and P62,653,980.03 for taxable year 2009. Her reason for doing the same was due to the fact that the declared sales/revenues/receipts per ITR of Izumo were different from the income payments it received from its various customer LGUs as shown by the certifications issued by the LGUs concerned.

She computed the percentage of under-declaration of income by comparing the sales/revenues/receipts declared in ITR with the income payments received from the said LGUs and discovered that the under-declaration in 2006 was 1602%, 404% in 2007, 44% in 2008 and 227% in 2009.

Ms. Parado-Alonzo also testified that the ITR of Izumo Contractors Inc. for taxable year 2006 was filed by its Accountant, Susan M. Nace, while the ITRs for taxable years 2007, 2008 and 2009 were filed by its President, Cedric Lee. Ms. Parado-Alonzo identified several documents showing that the accused are the responsible officers of Izumo.

<u>Ms. Dinah A. Lamsen</u>

Ms. Lamsen testified that she is the Acting City Accountant of the City Government of San Juan (CGSJ) and that her duties and responsibilities include overseeing the entire accounting functions including tax matters of CGSJ and other matters related to the records in the Accounting Division.

Ms. Lamsen stated that she received a call from the BIR, requesting her to testify on the certification issued by CGSJ's former City Accountant, Alicia E. Cruz-Barazon, concerning the income payments made by CGSJ to Izumo. She checked the accuracy of the amounts indicated in subject certification.

<u>Ms. Dorothy Joy C. Angeles-Ramos</u>

Ms. Angeles-Ramos testified that she is the Provincial Accountant of the Provincial Government of Davao Occidental (P[G]DO) and that her duties and responsibilities include overseeing the entire accounting functions including tax matters of the P[G]DO and other matters related to the records in the Accounting Department.

Pursuant to the request of the BIR, she issued a Certification showing income payments made by Province of Davao Del Sur (PDDS) to Izumo for taxable years 2006 to 2012. She based her certification on the office records of the office such as ledger, the books of accounts, the disbursement vouchers and the corresponding receipts issued by Izumo upon its receipt of the income payment that they made.

Ms. Antonietta C. Abella

Ms. Abella testified that she is the City Accountant of the City Government of Butuan City (Butuan) and that her duties and responsibilities include overseeing the entire accounting functions including tax matters of Butuan and other matters related to the records in the accounting division. As per request of BIR, she issued a Certification indicating income payments made by Butuan to Izumo for the years 2006 to 2012.

Ms. Leilani L. Cabañero

Ms. Cabañero testified that she is the Municipal Accountant of Tagudin, Ilocos Sur (Tagudin) and that her duties and responsibilities include overseeing the entire accounting functions including tax matters of Tagudin and other matters related to the records in the Accounting Division.

She testified that she issued a Certification indicating the income payments made by Tagudin to Izumo for the years 2006 to 2012.

Mr. Pedro R. Ignacio

Mr. Ignacio testified that he holds the position of Administrative Assistant V at the Office of the Secretariat of the City Government of Pasay (Pasay) and that prior to that, he served as Administrative Assistant V at the Accounting Department of Pasay from 1998 to March 27, 2016. He states that as part of his duties and responsibilities as Administrative Assistant V of the Accounting Department, he acts as the supervising officer for administrative services at the Accounting Department. He testified that he was designated by the City Accountant to certify and verify documents pertaining to the accounting records of Pasay.

Mr. Ignacio testified that he issued a Certification indicating the income payments made by Pasay to Izumo for the years 2006 to 2012.[8]

...

Later, petitioner filed its Formal Offer of Evidence (**FOE**).[9] After respondents filed their Comments, the Second Division denied several

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8 Division Docket, Volume III, pp. 1016-1020.

9 Filed on 09 October 2017, id., CTA Crim. Case No. O-526, Division Docket, Volume III, pp. 765-782.

of petitioner's exhibits[10] on 01 December 2017; among them are photocopies of Izumo's Income Tax Returns **(ITRs)** for taxable years 2006, 2007, 2008, and 2009.[11]

With the exclusion of petitioner's supposedly salient evidence (like the ITRs), respondents separately filed their Demurrers to Evidence.[12] The Second Division, in finding insufficient evidence to prove the guilt of all respondents beyond reasonable doubt, granted both Demurrers in a Resolution dated 24 July 2018. It ruled:

> ...
>
> In the instant consolidated cases, the accused [now respondents] are charged for violation of Section 255 of the NIRC of 1997, as amended because they allegedly failed to supply correct and accurate information in the AITRs for taxable years 2006 to 2009.
>
> ...
>
> Based on the foregoing provisions of law, to sustain a conviction for failure to supply correct and accurate information in the return under Section 255 of the NIRC of 1997, as amended, the following elements must be established:
>
> 1. The accused is a person required to supply correct and accurate information;
> 2. The accused failed to supply correct and accurate information, at the time or times required by law, or rules and regulations;
> 3. That the failure to supply correct and accurate information was willful; and,
> 4. In case of corporate taxpayers, that the accused is the responsible officer.
>
> To prove the guilt of the accused [respondents], the prosecution [now petitioner] presented and formally offered testimonial and documentary evidence. However, out of the documents offered, only the following were admitted as per the Court's Resolution dated December 1, 2017:

P-1	Letter-referral dated March 27, 2014 addressed to Secretary of Justice Leila De Lima from BIR Commissioner Kim S. Jacinto-Henares consisting of two (2) pages
P-3	Izumo Contractors Inc.'s Securities and Exchange Commission (SEC) registration consisting of eighteen

10 Id., pp. 1000-1001.
11 Exhibits "P-51", "P-52", "P-53" and "P-54".
12 Id., pp. 1008-1040.

	(18) pages
P-3-a	Cover Sheet from SEC
P-3-b	Certificate of Incorporation
P-3-c	Articles of Incorporation consisting of six (6) pages
P-3-d	Treasurer's Affidavit
P-3-e	By-Laws of Izumo Contractors Inc. consisting of nine (9) pages
P-4	Izumo Contractors Inc. SEC General Information Sheet consisting of six (6) pages
P-5	Izumo Contractors Inc. BIR Registration
P-6	NID Memo Assignment No. KJH/SCD 2014-02-12-0078 dated February 12, 2014
P-7	Letter of Authority No. SN: Ela201100060813 dated February 13, 2014 with its attached List of Requirements
P-7-a	List of Requirements attached to the Letter of Authority dated February 17, 2014 consisting of two (2) pages
P-8	Letter dated February 13, 2014 addressed to Hon. Guia Gomez, City Mayor of San Juan
P-9	Letter dated February 13, 2014, addressed to Hon. Antonino G. Calixto, City Mayor of Pasay City
P-10	Letter dated February 13, 2014 addressed to Butuan City Tourism Council
P-11	Letter dated February 13, 2014 addressed to Atty. Jose V. Bonuan, Jr., Municipal Mayor of Tagudin
P-12	Letter dated February 13, 2014 addressed to Hon. Claude Bautista, Governor of Davao Del Sur
P-13	Certificate of Income payments made to Izumo Contractors Incorporated by the City of San Juan dated 21 March 2014 issued by Alicia E. Cruz-Barazon, City Accountant II
P-17	Certificate of Income payments made to Izumo Contractors Incorporated by the Municipal Government of Tagudin, Ilocos Sur dated 31 March 2014 issued by Leilani Vee L. Cabanero, Municipal Accountant
P-34	Certificate of Income payments made to Izumo Contractors Incorporated by the Provincial Government of Davao Del Sur
P-48 and P-48-A	Judicial Affidavit of Gertrudes M. Eito
P-49 and P-49-A	Judicial Affidavit of Gary V. Atanacio
P-50 and P-50-A	Judicial Affidavit of Mary Grace Parado-Alonzo
P-59 and P-59-A	Judicial Affidavit of Dinah O. Lamsen

P-60 and P-60-A	Judicial Affidavit of Dorothy Joy C. Angeles-Ramos
P-61 and P-61-A	Judicial Affidavit of Antonietta C. Abella
P-62 and P-62-A	Judicial Affidavit of Leilani L. Cabañero
P-63 and P-63-A	Judicial Affidavit of Pedro R. Ignacio

The first element of Section 255 is present. Records reveal that [respondent] corporation, Izumo Contractors, Inc., is a domestic corporation engaged in the business of general contractor of construction of houses, condominiums, and other buildings, streets, bridges and other civil works. It is duly registered with the Bureau of Internal Revenue with Tax Identification No. 201-054-268-000.

However, [petitioner] failed to prove the second and third elements. It was unable to prove that [respondents] failed to supply correct and accurate information, at the time or times required by law, or rules and regulations.

To recall, in order to ascertain the true income of Izumo, the BIR presented several Certifications of Income Payments, Disbursement Vouchers, Official Receipts and Advice of Debits issued by Izumo's clients for taxable years 2006 to 2009. However, only three (3) documents were admitted by the Court, to wit:

1. Certificate of Income payments made to Izumo Contractors Incorporated by the City of San Juan dated 21 March 2014 issued by Alicia E. Cruz-Barazon, City Accountant II;

2. Certificate of Income payments made to Izumo Contractors Incorporated by the Municipal Government of Tagudin, Ilocos Sur dated 31 March 2014 issued by Leilani Vee L. Cabanero, Municipal Accountant; and,

3. Certificate of Income payments made to Izumo Contractors Incorporated by the Provincial Government of Davao del Sur dated 1 April 2014 issued by Dorothy Joy C. Angeles, OIC-Provincial Accountant.

The other Certifications of Income Payments, as well as the Disbursement Vouchers, Official Receipts and Advice of Debits were denied for failure to identify the same and for failure to present the originals for comparison.

Moreover, the Annual Income Tax Return of Izumo for taxable years 2006 to 2009 presented and offered by [petitioner] were also

> denied admission by the Court for failure to present the originals for comparison, pursuant to the "best evidence rule" stated in Section 320, Rule 130 of the Revised Rules of Court, that is, the original document must be produced whenever its contents are the subject of inquiry. Here, [petitioner] offers no explanation as to why it was not able to present the originals of the said documents.
>
> Considering that the very documents relied upon by the BIR in ascertaining the undeclared income of Izumo for taxable years 2006 to 2009 were indeed not admitted in evidence, [petitioner], therefore, cannot prove that [respondents] herein indeed failed to supply correct and accurate information in the subject AITRs.
>
> Finally, [petitioner] also failed to prove that [respondents] Cedric Lee, Judy Gutierrez Lee and John K. Ong were the responsible officers.
>
> ...
>
> **WHEREFORE,** premises considered, [respondents] Cedric Lee and Judy Guttierrez Lee's **Demurrer to the Prosecution's Evidence,** and [respondent] John K. Ong's **Demurrer to Evidence** are **GRANTED.**
>
> Accordingly, [respondents] Cedric Lee, Judy Gutierrez Lee and John K. Ong are **ACQUITTED** of the offenses charged for failure of the prosecution to establish the guilt of the accused beyond reasonable doubt, and without civil liability. Accordingly, the instant consolidated cases are **DISMISSED.**
>
> **SO ORDERED.**
>
> ...

Not satisfied with the Second Division's findings, petitioner filed a Motion for Reconsideration[13] **(MR)** and Amended MR[14] against the foregoing resolution; particularly on the civil aspect of the cases. With comments from all respondents[15], the Second Division, on 08 February 2018, denied petitioners' MR and Amended MR.[16] Hence, the present petition before the Court *En Banc*.

ISSUES

Before the Court *En Banc*, petitioner now forwards the following for its resolution:

13 Dated 09 August 2018, id., pp. 1039-1046.
14 Dated 15 August 2018, id., pp. 1050-1059; Comment of Accused Ong, pp. 1067-1070.
15 Comment of accused Lees, id., pp. 1074-1077.
16 Division Docket, CTA Crim. Case No. O-526, Volume IV, pp. 1173-1182.

I.
THE COURT'S SECOND DIVISION ERRED WHEN IT RULED THAT PETITIONER FAILED TO PRESENT ANY EVIDENCE PROVING THAT RESPONDENTS UNDER-DECLARED THEIR INCOME FOR TAXABLE YEARS 2006, 2007, 2008, AND 2009.

II.
THE COURT COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT DID NOT ADMIT IZUMO'S ITRS FOR TAXABLE YEARS 2006 TO 2009 DESPITE THE LACK OF OBJECTION ON THE PART OF RESPONDENTS.

In support of the foregoing, petitioner insists that it had proven respondents' civil liability by preponderance of evidence. It contends that the evidence, as admitted by this Court's Second Division, was enough to discharge the burden of proof required by law. It argues further that the Second Division failed to properly appreciate the testimonies of its witnesses in absolving respondents of civil liability. Moreover, petitioner puts in issue the denial of its exhibits' admission; specifically, the photocopies of Izumo's ITRs for taxable years 2006, 2007, 2008 and 2009.[17]

Respondent Ong counters that petitioner is guilty of forum shopping since it, on 24 September 2018, also filed with the Supreme Court a Petition for *Certiorari*[18] under Rule 65 of the Rules of Court against the Second Division's 24 July 2018 Resolution (granting the Demurrers), entitled *People of the Philippines versus Court of Tax Appeals Second Division, Izumo Contractors, Inc., represented by Cedric Lee, John K. Ong and Judy Gutierrez Lee.*

In the petition before the High Court, petitioner cited the following grounds for the allowance of its petition, to wit: *(1)* The CTA committed grave abuse of discretion when it ruled that petitioner failed to present any evidence proving that private respondents under-declared their income for taxable years 2006, 2007, 2008 and 2009; *(2)* The CTA committed grave abuse of discretion when it ruled that petitioner failed to present any evidence proving that respondents are the responsible officers who are liable for the violations of the NIRC; and, *(3)* The CTA committed grave abuse of discretion when it did not admit Izumo's ITRs for taxable years 2006 to 2009 despite lack of

17 Exhibits "P-51", "P-52", "P-53" and "P-54".
18 Id., pp. 1082-1109.

objection from respondents.[19] Respondents further contend that the Second Division's action in the assailed Resolutions was correct.

RULING OF THE COURT EN BANC

Along with respondents' issue of forum shopping on the part of petitioner, the Court shall discuss the issues raised by respondent Ong above, *in seriatim*.

As regards the issue of forum shopping, while indeed it may appear that petitioner pursued two (2) actions to gain similar relief: the Petition for *Certiorari* in the Supreme Court and the present Petition for Review before the Court *En Banc*, the former action has already been decided thus rendering any discussion on the matter moot and academic. As the records show, the Supreme Court dismissed petitioner's Petition for *Certiorari* on 04 January 2019 or before this appeal was filed. It found no grave abuse of discretion in the action of the Second Division in granting respondents' Demurrers. Therefore, in effect, the Supreme Court upheld the Second Division's assailed 24 July 2018 Resolution.

With the Supreme Court's dismissal of petitioner's Petition for *Certiorari*, to the mind of the Court, *res judicata*[20] has set in and we are thus precluded from modifying the issues raised before and already decided (by the Supreme Court). The findings of the Supreme Court that there was no grave abuse of discretion on the part of the Second Division are binding upon this Court.[21] There should then be no repeated litigation over the same issues.[22]

In one case[23], the Supreme Court rather held emphatically:

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19 Id., p. 1096.

20 "Res judicata literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It also refers to the "rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on points and matters determined in the former suit." (*Degayo v. Cecilia-Dinglas*an, G.R. No. 173148, 06 April 2015).

21 "In a hierarchical judicial system like ours, the decisions of the higher courts bind the lower courts". (*De Castro v. Judicial and Bar Council*, G.R. No. 191002, 20 April 2010.)

22 Supra at note 16.

23 *Degayo v. Dinglasan et al.*, G.R. No. 173148, 06 April 2015.

> ...
> The doctrine of res judicata is set forth in Section 47 of Rule 39 of the Rules of Court, which in its relevant part reads:
>
> > Sec. 47. Effect of judgments or final orders. — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
> >
> > (b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and
> > (c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.
>
> This provision comprehends two distinct concepts of res judicata: (1) bar by former judgment and (2) conclusiveness of judgment.
> The first aspect is the effect of a judgment as a bar to the prosecution of a second action upon the same claim, demand or cause of action. In traditional terminology, this aspect is known as merger or bar; in modern terminology, it is called claim preclusion.
>
> The second aspect precludes the relitigation of a particular fact of issue in another action between the same parties on a different claim or cause of action. This is traditionally known as collateral estoppel; in modern terminology, it is called issue preclusion.[24]
> ...

Nevertheless, to put an end to petitioner's attempts to seek a reversal of the Second Division's Resolutions, this Court is constrained to amplify the Second Division's discussion in denying petitioner's MR and Amended MR.

As the records so evince, petitioner made an elementary mistake in presenting its case for trial yet failing to justify before the CTA

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24 Id.

Second Division why the originals of the subject ITRs (that could have otherwise proven respondents' liability) were not presented.

The Rules of Court provide that, "when the subject of inquiry is the contents of a document, **no evidence shall be admissible other than the original document itself.**"[25] This rule or the Best Evidence Rule mandates the party presenting documentary evidence to provide the court with the originals of a document when what is at issue are its contents. However, it is not without exception as secondary evidence may be presented in their stead in the following cases:

> ...
>
> (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
>
> (b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
>
> (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and,
>
> (d) When the original is a public record in the custody of a public officer or is recorded in a public office.[26]
>
> ...

When secondary evidence is sought be presented and offered later on, the party presenting them must comply with the succeeding rules:

> ...
>
> **Sec. 5.** *When original document is unavailable.* — When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.
>
> **Sec. 6.** *When original document is in adverse party's custody or control.* — If the document is in the custody or under the control of adverse party, he must have reasonable notice to produce it. If after

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25 Rules of Court, Rule 130, Section 3.
26 Id.

> such notice and after satisfactory proof of its existence, he fails to produce the document, secondary evidence may be presented as in the case of its loss.
>
> **Sec. 7.** *Evidence admissible when original document is a public record.* — When the original of document is in the custody of public officer or is recorded in a public office, **its contents may be proved by a certified copy issued by the public officer** in custody thereof.[27]
>
> ...

Prior to the filing of respondents' Demurrers in the original criminal cases, petitioner was given the chance to have its evidence admitted when it filed its FOE.[28] Unfortunately, the Second Division denied admission to a large chunk of its evidence due to either a failure to identify these exhibits or failure to present their originals for comparison. The majority of the forgone documents consisted of Certificates of Income Payments made to Izumo by various LGUs, and most importantly, Izumo's ITRs for taxable years 2006 to 2009.

As can be seen in the assailed Resolution of 24 July 2018, the precise reason for the grant of the Demurrers was due to the resulting lack of basis in the computations made by the BIR, as any finding of a false declaration of income would have to be proven by showing discrepancies in the values declared by Izumo's in its ITRs *vis-à-vis* the income payments made to it by its customer-LGUs (as proven by the COIPs issued by the latter). Necessarily, the probative value of the testimonies of petitioner's witnesses was heavily affected since they were left without the very documents from which they had drawn their factual conclusions.

To illustrate, witness BIR Revenue Officer Parado-Alonzo, who computed the alleged under-declaration of Izumo for taxable years 2006 to 2009, made use of Izumo's ITRs and COIPs as the foundation for her examination and computation. Now, even assuming that only the ITRs were excluded, the veracity of Parado-Alonzo's testimony could only be appreciated insofar as her computations regarding the totality of Izumo's income as evidenced by the COIPs are concerned. As regards her claim of under-declaration on respondents' part, she also relied on her findings that Izumo's income was far more

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27 Id. Sections 5-7; emphasis supplied.

28 *Rollo*, Volume III, pp. 765-782.

than what was declared in the corporation's ITRs. Since the ITRs were subsequently excluded as evidence then Parado-Alonzo's statements, relating to the fact of under-declaration, would carry scant probative value for being unsubstantiated.

Furthermore, petitioner argues that the Second Division should have admitted the excluded pieces of evidence since respondents failed to timely object to their admissibility on the same grounds relied upon by the Court. He anchors his assertion on *Lorenzana v. Lelina* (*Lorenzana*)[29] where petitioner there failed to object to the admissibility of a photocopy of a deed of sale invoking the best evidence rule. The trial court admitted the photocopy and petitioner therein lost her case. On her appeals to the Court of Appeals (CA) and finally to the Supreme Court, she raised the inadmissibility of the photocopy of the subject deed of sale. In admitting the assailed document, the Supreme Court explained:

> ...
>
> ... It is only at this time, and not at any other, that objection to the documentary evidence may be made. And when a party failed to interpose a timely objection to evidence at the time they were offered in evidence, such objection shall be considered as waived. This is true even if by its nature the evidence is inadmissible and would have surely been rejected if it had been challenged at the proper time...[30]
>
> ...

Although instructive of litigants and their counsels to be vigilant in exercising their right to object, *Lorenzana* is by no means a mandate upon any court to admit pieces of evidence that do not meet the standards set by the Rules of Court. Absent any prohibition or limitation imposed upon this Court or any of its Divisions to such effect, it will continue to enforce the duly promulgated procedural rules. The Court's Second Division, in resolving to deny admission of petitioner's exhibits, merely applied settled rules and exercised its sound discretion to administer its processes in a manner subservient to law. Besides, in a case where petitioner herein was a party respondent, the Supreme Court upheld this Court's exclusion of photocopies from evidence, to wit:

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[29] G.R. No. 187850, 17 August 2016.
[30] Id.

> ...
>
> The claim for refund hinges on the admissibility and the probative value of the following photocopied documents that allegedly contain a recording of petitioner's excise payments for the period covering June 1, 2004 up to December 31, 2004:
>
> (1) Production, Removals and Payments for All FTC Brands; and,
> (2) Excise Tax Refund Computation Summary.
>
> ... the above-mentioned documents, as well as the other documentary evidence submitted by petitioner were refused admission for being merely photocopies.
>
> Section 3 of Administrative Matter (A.M.) No. 05-11-07 CTA, the Revised Rules of the Court of Tax Appeals, provides that the Rules of Court shall apply suppletorily in the proceeding before the tax tribunal.
>
> In this connection, Section 3 of Rule 130 of the Rules of Court lays down the Best Evidence Rule with respect to the presentation of documentary evidence.
>
> ...
>
> In this case, petitioner did not even attempt to provide a plausible reason as to why the original copies of the documents presented could not be produced before the CTA or any reason that the application of any of the foregoing exceptions could be justified...[31]
>
> ...

The Court is not unmindful of some decisions wherein the Supreme Court upheld a trial court's admission of otherwise, inadmissible evidence or denied the same absent any objection from opposing counsel. Such circumstances are reflected in the cases of, *Republic v. Gimenez* (Republic)[32], *Tapayan v. Martinez* (Tapayan)[33] and *Interpacific Transit, Inc. v. Aviles* (Aviles)[34].

In *Tapayan*, the Supreme Court upheld the trial court's admission and consideration of a photocopy of a Deed of Undertaking, particularly on the ground that petitioner's defense was that the document was a forgery but failed to prove such allegation, and that

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31 *Fortune Tobacco Corporation v. Commissioner of Internal Revenue*, G.R. No. 192024, 01 July 2015.
32 G.R. No. 174673, 11 January 2016.
33 G.R. No. 207786, 30 January 2017.
34 G.R. No. 86062, 06 June 1990.

the document was further supported by other evidence and admissions made by petitioner herself. While in *Republic*, in reversing the Sandiganbayan's denial of the Philippine Commission on Good Governance's (PCGG's) FOE and subsequent grant of a demurrer in favor of the respondent, the Supreme Court held that, "a liberal application of the Rules is in line with the state's policy to recover ill-gotten wealth."[35]

Additionally, in *Aviles*, the Supreme Court held that the trial court erred when it resolved to exclude photocopies of airway bills to prove respondent's liability presented by petitioner with no objection from respondent. There, it held that, since respondent alleged payment of the bills as an affirmative defense, it was incumbent upon him to prove that the said bills were actually paid.

Although persuading at first glance, this Court is of the opinion that these foregoing cases do not fall squarely with that of petitioner. In *Tapayan*, petitioner's admissions and other evidence adduced by the parties evinced the existence of the disputed agreement. This, coupled with an unsubstantiated defense of forgery, proved fatal to petitioner's cause. Likewise, as with *Lorenzana*, *Tapayan* raises the question of whether it was proper for the trial court to admit inadmissible evidence, an issue not identical with what is raised in the petition at bar. Moreover, in *Republic*, the controversy revolved around the denial of petitioner's belated FOE. The Supreme Court's relaxation of the rules in the aforementioned case was underscored by the case's historical significance and PCCG's 19-year struggle in prosecuting the same.

Petitioner's issue at hand is one more appropriately tackled in *Aviles*. However, it is noteworthy that the decision in *Aviles* was rendered in 1990. The more recent case of *Fortune Tobacco Corporation v. Commissioner of Internal Revenue*[36] (Fortune), decided in 2015, not only presents the same issue as the instant petition but depicts a similar factual backdrop.

In *Fortune*, the petitioner submitted mere photocopies of its exhibits to the CTA Division which the latter accordingly denied

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35 Supra at note 31.
36 Supra at note 30.

admission in accordance with the best evidence rule.[37] The petitioner there eventually lost its case due to the insufficiency of its evidence. The CTA *En Banc* affirmed[38] the assailed decision, stating:

> ...
>
> The subject of inquiry is the contents of petitioner's photocopied documentary evidence... But **petitioner failed to prove that the photocopied documentary exhibits presented fall under the exceptions to the best evidence rule...**
>
> The liberal interpretation and application of the rules apply only in proper cases of demonstrable merit and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice. Party litigants and their counsels are well advised to abide by, rather than flaunt, procedural rules.[39]
>
> ...

On appeal, the Supreme Court in *Fortune* upheld the CTA *En Banc*'s Decision in this wise:

> ...
>
> Although both the CTA Division and the CTA *En Banc* provisionally admitted petitioner's Exhibit "C," the above-mentioned documents, as well as the other documentary evidence submitted by petitioner were refused admission for being merely photocopies.
>
> Section 3 of Administrative Matter (A.M.) No. 05-11-07 CTA, the Revised Rules of the Court of Tax Appeals, provides that the Rules of Court shall apply suppletorily in the proceeding before the tax tribunal.
>
> In this connection, Section 3 of Rule 130 of the Rules of Court lays down the Best Evidence Rule with respect to the presentation of documentary evidence...
>
> ....

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37 Resolution, *Fortune Tobacco Corporation v. Commissioner of Internal Revenue*, C.T.A. Case No. 7367, 18 August 2009.

38 *Fortune Tobacco Corporation v. Commissioner of Internal Revenue*, C.T.A. EB Case No. 533, 12 March 2010, with Associate Justice Cielito Mindaro-Grulla as *ponente*.

39 Emphasis supplied.

> In this case, petitioner did not even attempt to provide a plausible reason as to why the original copies of the documents presented could not be produced before the CTA or any reason that the application of any of the foregoing exceptions could be justified. Although petitioner presented one (1) witness to prove its claim, it appears that this witness was not even a signatory to any of the disputed documentary evidence.
>
> As correctly pointed out by the CTA Division, **petitioner knew all along that it had committed the foregoing procedural lapses when it filed its Formal Offer of Evidence. Although petitioner orally manifested that it was going to seek reconsideration of the CTA Division order excluding its evidence, in the end, petitioner did not even bother to file any such motion for reconsideration at all.**[40]
>
> ...

If petitioner truly wanted its evidence to be considered, it would have filed an MR against the denial of its FOE or at the very least, made a tender of excluded evidence[41]. Yet, petitioner here, just like the petitioner in *Fortune*, failed to avail of this remedy provided by the rules. Thus, assuming error could be attributed to the Second Division's denial of Izumo's ITRs and the COIPs, "the result would be the same because petitioner failed to offer any proof or tender of excluded evidence."[42]

In the 01 December 2017 Resolution on petitioner's FOE, the Second Division clearly stated the reasons for the denial of the subject exhibits for being photocopies. Instead of rectifying these defects, petitioner in its MR and amended MR (to the 24 July 2018 Resolution granting respondents' Demurrers) insisted that the admitted exhibits, taken together, were enough to prove respondents' civilly liability by preponderance of evidence. It is worthy to note that it is only now that petitioner assails the Second Division's resolution of its FOE.

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40 Emphasis supplied.

41 Rules of Court, Rule 132, Section 40.
Tender of excluded evidence. — If documents or things offered in evidence are excluded by the court, the offeror may have the same attached to or made part of the record. If the evidence excluded is oral, the offeror may state for the record the name and other personal circumstances of the witness and the substance of the proposed testimony.

42 Supra at note 10.

To reiterate, if petitioner had really wanted to question the Second Division's findings as regards its FOE, the best time to do it would have been after it received the resolution on the matter. The Court concedes that there is no bar in law to petitioner's remedy; nonetheless, we think that this was not petitioner's most prudent option. Again, petitioner herein could have easily filed an MR against the 01 December 2017 Resolution where it could have timely informed the Second Division of the lack of originals thereby, necessitating the presentation of secondary evidence in *lieu* thereof. The Court cannot understand why even in this present petition, petitioner still refuses to explain its failure to provide the originals of these denied exhibits especially, Izumo's original ITRs which should be in petitioner's custody in the first place.

Petitioner must be reminded of the difference between probative value and admissibility. Evidence is admissible when it is relevant to the issue and is not excluded by the law or procedural rules[43] while, a piece of evidence's probative value depends on its capacity to prove a fact in issue. Hence, the Supreme Court in *Heirs of Sabanpan v. Comorposa*[44] distinguished the two concepts, thusly:

> ...
> The admissibility of evidence should not be confused with its probative value. Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue. Thus, **a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence.**
> ...

Now, assuming *ex gratia argumenti* that petitioner's excluded exhibits were admitted, the fact that they were not identified or that they remain to be mere photocopies negatively impacts their evidentiary value. This is true especially in criminal cases or when the property or money involved is of significant value. In the present case, respondents are being assessed for deficiency income tax (exclusive of surcharge and interest) in the following amounts:

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43 Rules of Court, Rule 128, Section 2.
44 G.R. No. 152807, 12 August 2003; emphasis supplied.

YEAR	AMOUNT
2006	₱ 31,061,623.38[45]
2007	₱ 12,557,283.40[46]
2008	₱ 3,320,511.85[47]
2009	₱ 27,359,816.61[48]

Considering the amounts involved, the interest of justice calls for this Court to be more judicious in its determinations of facts. We cannot, in good conscience, rely on photocopies when our judgment may deprive a person of such substantial monetary amounts, *most especially when the person or party bringing suit cannot justify the lack of original documents on which the claim was anchored.*

Additionally, despite petitioner's insistence that respondents' failure to object to the testimony of the former's witnesses should be taken as admissions; such argument has no legal mooring. In fact, petitioner has not cited any legal basis or instances when and how these judicial admissions took place in order to support its assertion. The Supreme Court, citing Justice Florenz D. Regalado, enumerated the sources of judicial admissions, thusly:

> ...
> Judicial admissions may be made in (a) the pleadings filed by the parties, (b) in the course of the trial either by verbal or written manifestations or stipulations, or (c) in other stages of the judicial proceeding, as in the pre-trial of the case. Admissions obtained through depositions, written interrogatories or requests for admission are also considered judicial admissions.[49]
> ....

As can be seen in the above-quoted enumeration, silence is not a source of judicial admissions. A party's silence during the testimony of an opposing party's witness cannot be taken as a judicial admission of the former of any imputation made against him or her. Discrediting the witness and the veracity of his or her statements is after all, the function of cross-examination. That said, the truth or falsity of a statement is not a proper ground for objection. The entirety of the

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45 Division Docket, Crim. Case No. O-527, p. 8.
46 Division Docket, Crim. Case No. O-528, p. 8.
47 Division Docket, Crim. Case No. O-529, p. 8.
48 Division Docket, Crim. Case No. O-526, Volume I, p. 8.
49 *Adolfo v. Adolfo*, G.R. No. 201427, 18 March 2015, citing Regalado, Remedial Law Compendium, Volume II, 9th Revised Edition, p. 686.

stipulations and evidence (true or false) admitted at trial form parts of the *factum probans*, the reliability of which may or may not establish the existence of the *factum probandum*.

Lastly, although petitioner attaches to its petition the certified true copies of respondents' ITRs for 2006[50], 2007[51], 2008[52] and 2009[53]; it is already too late in the day for these pieces of evidence to be introduced or considered. Trial has long been over, and the present appeal to the Court *En Banc* is neither a trial *de novo* nor reopening of the cases appealed from.

WHEREFORE, the foregoing considered, petitioner's Petition for Review is **DENIED** for lack of merit. Accordingly, the assailed 24 July 2018 and 08 February 2019 Resolutions of the Court's Second Division are **AFFIRMED.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

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50 Annex "F", Petition for Review, *Rollo*, pp. 67-69.
51 Annex "G", id., pp. 70-73.
52 Annex "H", id., pp. 74-76.
53 Annex "I", id., pp. 77-80.

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(I join PJ's Concurring Opinion)
CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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 case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES, *Petitioner,*	**CTA EB CRIM. NO. 064** (CTA Crim. Case Nos. O-526, O-527, O-528 & O-529)
-versus-	Present: Del Rosario, *PJ,* Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, Manahan, Bacorro-Villena, and Modesto-San Pedro, *JJ.*
IZUMO CONTRACTORS, INC., represented by CEDRIC LEE, JOHN K. ONG AND JUDY GUTIERREZ LEE, *Respondents.*	Promulgated: OCT 23 2019 3:38 p.m.

x---x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the dismissal of the Petition for Review for lack of merit.

I would like to stress that accused may not be held civilly liable and be ordered to pay the deficiency income tax for taxable years 2006 and 2009, including penalties, surcharges and interests as the civil action for the recovery of the alleged aforestated civil liability is not deemed instituted with the criminal actions filed against the accused.

The pronouncement of the Supreme Court in *Macario Lim Gaw, Jr. vs. Commissioner of Internal Revenue*[1] anent the civil action for

[1] G.R. No. 222837, July 23, 2018.

the recovery civil liability for taxes and penalties that is deemed instituted with the criminal action is enlightening:

> "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. X x x. x x x Considering that the Government 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 exoneration from his liability to pay the taxes. X x x. **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. <u>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 nonexistence of the criminal acts charged</u>.** 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:
>
> > X x x. 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)

The civil action for the recovery of civil liability for taxes and penalties that is deemed instituted with the criminal action is not the Petition for Review *Ad Cautelam* filed by petitioner

Under Sections 254 and 255 of the NIRC, the government can file a criminal case for tax evasion against any taxpayer who willfully attempts in any manner to evade or defeat any tax imposed in the tax code or the payment thereof. The crime of tax evasion is committed by the mere fact that the taxpayer knowingly and willfully filed a fraudulent return with intent to evade and defeat a part or all of the tax. It is therefore not required that a tax deficiency assessment must first be issued for a criminal prosecution for tax evasion to prosper.

While the tax evasion case is pending, the BIR is not precluded from issuing a final decision on a disputed assessment, such as what happened in this case. In order to prevent the assessment from becoming final, executory and demandable, Section 9 of R.A. No. 9282 allows the taxpayer to file with the CTA, a Petition for Review within 30 days from receipt of the decision or the inaction of the respondent.

The tax evasion case filed by the government against the erring taxpayer has, for its purpose, the imposition of criminal liability on the latter. While the Petition for Review filed by the petitioner was aimed to question the FDDA and to prevent it from becoming final. The stark difference between them is glaringly apparent. X x x.

x x x

X x x, what is deemed instituted with the criminal action is only the government's recovery of the taxes and penalties relative to the criminal case. The remedy of the taxpayer to appeal the disputed assessment is not deemed instituted with the criminal case. To rule otherwise would be to render nugatory the procedure in assailing the tax deficiency assessment." (Additional boldfacing and underscoring supplied)

The obligation of the accused to pay the deficiency income tax for taxable years 2006 and 2009, including penalties, surcharges and interests is an obligation that is created by law and does not arise from the offense of tax evasion. Hence, accused may not be held civilly liable in the present proceedings for such deficiency.

All told, I VOTE to dismiss the Petition for Review for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice