REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PEOPLE OF THE PHILIPPINES, Plaintiff,	CTA CRIM. CASE NO. O-012 (I.S. No. 2005-417) *For: Violation of Section 255 of Republic Act No. 8424, as amended.*
- *versus* -	Members: **BAUTISTA**, *Chairperson* **PALANCA-ENRIQUEZ**, and **COTANGCO-MANALASTAS**, *JJ.*
JUDY ANNE SANTOS *y* LUMAGUI, Accused.	**Promulgated:** JAN 16 2013

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DECISION

BAUTISTA, J.:

The accused, **Judy Anne Santos *y* Lumagui**, is charged in an Information,[1] for violation of Section 255 of the 1997 National Internal Revenue Code, as amended, which reads as follows:

> That on or about the 15th day of April 2003, at Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then there, willfully, unlawfully, and feloniously file a false and fraudulent income tax return for taxable year 2002 by indicating therein a gross income of ₱8,033,332.70, when in truth and in fact her correct income for taxable year 2002 is ₱16,396,234.70, or a gross un[der]declaration/difference of ₱8,362,902[.00], resulting to an income tax deficiency of ₱1,395,116.24, excluding interest and penalties

[1] *Records*, pp. 43-45. Raffled to the then First Division of the Court, before the issuance of CTA Administrative Circular No. 01-2010, entitled *"Implementing the Fully Expanded Membership in the Court of Tax Appeals,"* dated January 5, 2010.

thereon of ₱1,319,500.94, or a total income tax deficiency of ₱2,714,617.18, to the damage and prejudice of the government of the same amount.

CONTRARY TO LAW.
Manila, Philippines, November 30, 2005.

FACTS OF THE CASE

On November 3, 2005, the prosecution filed an Information before this Court against the accused.[2]

On November 14, 2005, the Court issued a Resolution, ordering the prosecution for clarification/explanation on the discrepancies appearing on the Information, and submission of other relevant documents.[3] Thus, on December 1, 2005, the prosecution filed its Compliance with *Ex Parte* Motion to Admit Attached Information.[4]

On December 9, 2005, the Court, finding the existence of probable cause to hold the accused liable for the commission of the offense as charged, promulgated a Resolution, ordering for the issuance of a Warrant of Arrest.[5] On even date, a Warrant of Arrest was issued against the accused.[6]

On December 21, 2005, the Court, considering that the accused voluntarily appeared with counsel and posted the required bail bond for her provisional liberty, issued a Resolution, lifting and recalling the Warrant of Arrest.[7]

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[2] *Id.*, at pp. 1-36, with Annexes.
[3] *Id.*, at pp. 37-38.
[4] *Id.*, at pp. 40-222, with Annexes.
[5] *Id.*, at p. 224.
[6] *Id.*, at p. 225.
[7] *Id.*, at p. 230.

On February 23, 2006, the Court, resolving the Motion to Quash filed by the accused on January 10, 2006, issued a Resolution, denying the same.[8] On May 11, 2006, the Court, likewise, denied the Motion for Reconsideration and/or Reinvestigation filed by the accused on March 1, 2006.[9]

On May 23, 2006, a Certificate of Arraignment was issued stating that the accused, with the assistance of counsel, pleaded not guilty to the crime as charged.[10]

On June 19, 2006, the Court sitting *En Banc* issued a Resolution, denying the Motion for Extension of Time to File Petition for Review filed by the accused on June 1, 2006, stating that the Resolutions denying the Motion to Quash and Motion for Reconsideration and/or Reinvestigation are mere interlocutory orders, and thus, are not proper subject of an appeal.[11]

On August 28, 2006, the Court *En Banc* promulgated a Resolution, denying due course, and accordingly, dismissing the Petition for Review filed by the accused by registered mail on June 16, 2006.[12]

On August 26, 2008, the Supreme Court issued a Decision, denying the Petition for Review on *Certiorari* filed by the accused, ruling that the Court sitting *En Banc* did nor err in denying her Motion for Extension of Time to File Petition for Review.[13]

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[8] *Id.*, at pp. 274-279.
[9] *Id.*, at pp. 334-341. See also Resolution dated July 6, 2006; *Records*, pp. 454-456.
[10] *Id.*, at p. 350.
[11] *Id.*, at pp. 393-396.
[12] *Id.*, at pp. 858-866.
[13] *Id.*, at pp. 1606-1632.

After the prosecution had presented and offered its evidence,[14] the Court in a Resolution dated July 6, 2009,[15] denied the Demurrer to Evidence filed by the accused on February 16, 2009 for lack of merit. The Court, likewise, denied the Motion for Reconsideration filed on July 21, 2009.[16]

On January 12, 2010, the Court, in view of CTA Administrative Circular No. 01-2010, entitled *"Implementing the Fully Expanded Membership in the Court of Tax Appeals,"* dated January 5, 2010, transferred the case to the Third Division of the Court.[17]

Following the presentation and offer of evidence for the accused,[18] on March 23, 2012, considering the Memorandum filed by the accused by registered mail on January 4, 2012, the Memorandum filed by the prosecution on January 13, 2012, and the Defense's Reply Memorandum filed on February 1, 2012, the case was submitted for decision.[19] On April 10, 2012, the prosecution also filed a Comment (Defense's Reply Memorandum).

Hence, this Decision.

Evidence for the Prosecution

The prosecution presented documentary evidence marked as *Exhibits "A"* to "II," with submarkings; and fourteen (14) witnesses, namely: Roderick Abad, Beatriz Peliño, Alex Perez, Ma. Theresa Santiago, Beverly Fernandez, Manuel del

[14] *Id.*, at pp. 1983-1984; Resolution dated February 9, 2009.
[15] *Id.*, at pp. 2083-2133.
[16] *Id.*, at pp. 2184-2199; Resolution dated September 10, 2009.
[17] *Id.*, at p. 2278.
[18] *Id.*, at pp. 2763-2764; Resolution dated November 10, 2011.
[19] *Id.*, at pp. 3020-3021.

Barrio, Luz Veras, Analisa Espiritu, Arlene Magdamit, Stimson Cureg, Julie Anne Benitez, Renila Pugay, Elia Dimayuga, and Teresita Fuentes.

The prosecution submitted the Annual Income Tax Return (BIR Form No. 1701) for the taxable year 2002, filed on April 15, 2003.[20] The return shows the name of accused, with a signature above the printed name,[21] and the following figures: *Gross Taxable Professional Income* – ₱8,033,332.70;[22] *Total Taxable Income* – ₱4,941,220.87;[23] *Tax Due* – ₱1,546,190.68;[24] *Creditable Tax Withheld Per BIR Form No. 2307 for the 4th Quarter* – ₱1,543,333.23;[25] and *Total Payable* – ₱2,857.45.[26] The Independent Auditor's Report, signed by Conchita P. Padua, dated April 11, 2003, was likewise submitted.[27]

Also, the prosecution proffered the following pieces of documentary evidence, *inter alia*:

1) Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) for the period covering January 1, 2002 to March 31, 2002, issued by ABS-CBN Broadcasting Corporation to the accused, with the following figures: *Amount of Income Payments* – ₱1,955,555.30, and *Tax Withheld for the Quarter* – ₱327,777.73.[28]

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[20] *Exhibit "A."*
[21] *Exhibit "A-12."*
[22] *Exhibit "A-4."*
[23] *Exhibit "A-5."*
[24] *Exhibit "A-6."*
[25] *Exhibit "A-7."*
[26] *Exhibit "A-8."*
[27] *Exhibits "A-13"* to *"A-15."*
[28] *Exhibits "A-16"* to *"A-21."*

2) Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) for the period covering April 1, 2002 to June 30, 2002, issued by ABS-CBN Broadcasting Corporation to the accused, with the following figures: *Amount of Income Payments* – ₱2,594,444.25, and *Tax Withheld for the Quarter* – ₱518,888.85.[29]

3) Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) for the period covering July 1, 2002 to September 30, 2002, issued by ABS-CBN Broadcasting Corporation to the accused, with the following figures: *Amount of Income Payments* – ₱3,127,777.55, and *Tax Withheld for the Quarter* – ₱625,555.51.[30]

4) Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) for the period covering October 1, 2002 to December 31, 2002, issued by ABS-CBN Broadcasting Corporation to the accused, with the following figures: *Amount of Income Payments* – ₱355,555.60, and *Tax Withheld for the Quarter* – ₱71,111.12.[31]

5) Recapitulation of Gross Income/Computation of Deficiency Income Tax of the accused, for the year ended December 31, 2002, signed by Revenue Officers Roderick Abad, Stimson Cureg, Vilma Caronan, and noted by Group Supervisor Teodora Purino, with the following figures: *Total Talent*

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[29] *Exhibits "A-22" to "A-27."*
[30] *Exhibits "A-28" to "A-33."*
[31] *Exhibits "A-34" to "A-39."*

Fee – ₱16,396,234.70; *Total Per Return* – ₱8,033,332.70; *Total Difference* – ₱8,362,902.00; and *Total % Undeclared* – 104.10%.[32]

6) Certification issued by Chief, Large Taxpayers Document Processing and Quality Assurance Division, Beatriz S. Peliño, dated April 28, 2005, with the following figures for the year 2002: *Income Payment* – ₱11,055,554.70, and *Withholding* – ₱2,147,777.63.[33]

7) Letter of Authority No. 2001-00012434, dated April 11, 2005, with attached Letter addressed to accused.[34]

8) Certification dated April 26, 2005, issued by the President of Viva Productions, Inc., Teresita Cruz, with the following figures for the year 2002: *Professional Fee* – ₱2,925,000.00.[35]

9) Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) for the period covering January 1, 2002 to December 31, 2002, issued by Viva Productions, Inc., to the accused, with the following figures: *Amount of Income Payments* – ₱2,925,000.00, and *Tax Withheld for the Quarter* – ₱585,000.00.[36]

10) Viva Productions, Inc., Alphalist of Payees Subject to Withholding Tax for the year 2002, with the following figures: *Amount of Income Payment* – ₱2,925,000.00, and *Amount of Tax Withheld* – ₱585,000.00.[37]

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[32] *Exhibits* "B" to "B-3."
[33] *Exhibits* "C" to "C-4."
[34] *Exhibits* "E" to "E-5."
[35] *Exhibits* "F" to "F-2."
[36] *Exhibits* "G" to "G-5."
[37] *Exhibits* "G-6" to "G-8."

11) Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) for the period covering January 1, 2002 to December 31, 2002, issued by Star Cinema Productions, Inc., to the accused, with the following figures: *Amount of Income Payments* – ₱815,680.00, and *Tax Withheld for the Quarter* – ₱81,568.00.[38]

12) Star Cinema Productions, Inc., Alphalist of Taxes Withheld for the year 2002, with the following figures: *Gross* - ₱815,680.00; and *Withholding* - ₱81,568.00.[39]

13) Memorandum dated May 17, 2005, addressed to the Commissioner of the Bureau of Internal Revenue.[40]

14) Joint Affidavit of Roderick Abad, Stimson Cureg, Vilma Caronan, Rhodora Delos Reyes and Teodora Purino, dated May 19, 2005.[41]

15) Recommendation for criminal prosecution and/or filing of Information, dated May 19, 2005, issued by then Commissioner of Internal Revenue, Guillermo Parayno, Jr., addressed to then Secretary of Justice, Raul Gonzales.[42]

16) Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) for the period covering January 1, 2002 to December 31, 2002, issued by Regal Entertainment, Inc., to the accused, with the following figures: *Amount of*

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[38] *Exhibits "H" to "H-7."*
[39] *Exhibits "I" to "I-3."*
[40] *Exhibits "J" to "J-8."*
[41] *Exhibits "K" to "K-6."*
[42] *Exhibits "L" to "L-3."*

Income Payments – ₱100,000.00, and *Tax Withheld for the Quarter* – ₱10,000.00.[43]

17) Agreement between Century Canning Corporation and accused, *et al.*, dated April 2002.[44]

18) Reply-Affidavit and Supplemental Affidavit of Roderick Abad, Stimson Cureg, Vilma Caronan, Rhodora Delos Reyes and Teodora Purino, dated July 21, 2005.[45]

19) Letter dated March 23, 2006, issued by the Chief, National Investigation Division, Arnel SD. Guballa to the accused.[46]

20) Notice of Informal Conference dated September 18, 2006, issued by the Chief, National Investigation Division, Arnel SD. Guballa to the accused.[47]

21) Certification issued by AVP, Finance – Controllership, Esperanza P. Armonia, dated April 25, 2007, with attached Schedule/Breakdown of the talent fees/salaries/honorarium/compensation/remuneration paid to the accused by ABS-CBN Broadcasting Corporation for taxable year 2002, with the following figures: *Total Amount* – ₱11,055,555.09, and *Total Withholding Tax* – ₱2,147,777.69.[48]

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[43] *Exhibits "N" to "N-6."*
[44] *Exhibits "O" to "O-9."*
[45] *Exhibits "P" to "P-8."*
[46] *Exhibits "R" to "R-4."*
[47] *Exhibits "S" to "S-5."*
[48] *Exhibits "V" to "V-3."*

22) ABS-CBN Broadcasting Corporation Alphalist 2002, with the following figures: *Amount Received* – ₱11,055,554.70, and *Withholding Tax* – ₱2,147,777.63.[49]

23) Certification issued by AVP, Finance – Controllership, Esperanza P. Armonia, dated April 25, 2007, with attached Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) for the period covering January 1, 2002 to December 31, 2002, issued by ABS-CBN Broadcasting Corporation to the accused, with the following figures: *Amount of Income Payments* – ₱10,066,666.00, and *Tax Withheld for the Quarter* – ₱2,013,333.20.[50]

24) Letter dated May 22, 2007, issued by Viva Productions, Inc., President, Teresita R. Cruz, authorizing Chief Accountant, Arlene Magdamit to bring the requested documents and testify thereto.[51]

25) Viva Productions, Inc., Payment Details of the accused for the year 2002, with the following figures: *Gross Amount* - ₱2,925,000.00, and *Withholding Tax* – ₱585,000.00.[52]

26) Agreement between ABS-CBN Broadcasting Corporation and accused, *et al.*[53]

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[49] *Exhibits "W" to "W-2."*
[50] *Exhibits "X" to "X-3."*
[51] *Exhibit "Y."*
[52] *Exhibits "Z" to "Z-24."*
[53] *Exhibits "AA" to "AA-2."*

27) Agreement between ABS-CBN Broadcasting Corporation and accused, *et al.*, dated May 21, 2002.[54]

28) Contract between Star Cinema Productions and accused, *et al.*, dated October 28, 1998.[55]

29) Preliminary Assessment Notice dated September 25, 2007.[56]

30) Formal Letter of Demand dated January 14, 2008, with Assessment Notice dated January 15, 2008.[57]

31) Letter dated November 16, 2007, issued by the counsel of accused to ACIR, Enforcement Service, Celia A. King, requesting for an informal conference regarding the Preliminary Assessment Notice dated September 25, 2007.[58]

Further, the prosecution presented the following testimonial evidence from fourteen (14) witnesses, to wit:

1) *Roderick Abad* – Revenue Officer under the National Investigation Division of the Bureau of Internal Revenue ("BIR"). He is one of the members of the team who conducted the investigation on the tax liability of the accused pursuant to Letter of Authority No. 00012434 dated April 11, 2005. He testified that he had examined, among others, the Annual Income Tax of the accused, Auditor's Report signed by Ms. Conchita P.

[54] *Exhibits "BB" to "BB-2."*
[55] *Exhibits "CC" to "CC-2."*
[56] *Exhibits "DD" to "DD-2."*
[57] *Exhibits "EE" to "EE-2."*
[58] *Exhibit "FF."*

Padua, Balance Sheet, Income Statement, Certificates of Creditable Tax Withheld at Source, all for the taxable year 2002.

He pointed out that based on the Annual Income Tax Return for the year 2002, and Certificates of Creditable Tax Withheld issued by ABS-CBN Broadcasting Corporation, the income reflected is in the total amount of merely ₱8,033,332.70, with creditable tax withheld in the amount of ₱1,543,333,23; however, (a) in the Certification issued by the Chief of the Large Taxpayers Document Processing and Quality Assurance Division of the BIR, Ms. Beatriz Peliño, the income received by accused from ABS-CBN Broadcasting Corporation for year 2002, is in the amount of ₱11,055,554.70, with creditable tax withheld in the amount of ₱2,147,777.63; while, (b) in the Certification issued by Viva Production, Inc., and Certificate of Creditable Tax Withheld at Source issued by the same, the income received by accused from January 2002 to December 2002, is in the total amount of ₱2,925,000.00, with creditable tax withheld in the amount of ₱585,000.00; and (c) in the Certificate of Creditable Tax Withheld at Source issued by Star Cinema Productions, Inc., and Alphalist of Taxes Withheld for the year 2002, the total amount of income received by accused is ₱815,680.00, with creditable tax withheld in the amount of ₱81,568.00. Further, that: (a) in the Agreement between accused and Century Canning Corporation, the former received the amount of ₱1,500,000.00 for taxable year 2002; and (b) in the Certificate of

Creditable Tax Withheld at Source issued by Regal Entertainment, Inc., for taxable year 2002, accused received the amount of ₱100,00.00, with creditable tax withheld in the amount of ₱10,000.00.

On cross-examination, he admitted that there is yet a Final Assessment Notice from the time the case against the accused was filed to the Court and as of the time of his testimony, and that he has no personal knowledge of whether the earlier mentioned corporations were able to furnish the accused with copies of her Certificates of Creditable Tax Withheld at Source, and of the extent of participation of the accused in the preparation of her Financial Statements for the year 2002.

2) *Beatriz Peliño* – Division Chief of the Large Taxpayers Document Processing and Quality Assurance Division under the Large Taxpayers Service of the BIR. She testified that upon receipt of a Letter dated April 18, 2005 from Assistant Commissioner of the Enforcement Services, Celia C. King, she issued a Certification on the income received by the accused, as well as the corresponding creditable tax withheld by ABS-CBN Broadcasting Corporation for the taxable year 2002, based on the data of her office.

On cross-examination, she admitted that the Certification is based on the print-out generated by the computer-based electronic submission of ABS-CBN Broadcasting Corporation, and that she has no personal knowledge of whether the accused received the amount indicated in her Certification.

3) *Alex Perez* – Section Chief of the Data Processing Section of Revenue District Office No. 39, South, Quezon City of the BIR. He testified that upon presentation of Revenue District Officer, Clavelina Nakar, of Revenue District Office No. 39, of a Letter issued by Assistant Commissioner – Enforcement Service, Celia C. King, he certified the machine copy of the Income Tax Return for the year 2002 of the accused, as well as, the Independent Auditor's Report, Balance Sheet, Certificates of Creditable Tax Withheld at Source, and the Income Tax Statement.

   On cross-examination, he admitted that he is merely the custodian of the documents that he had certified, and that he cannot make a determination whether the taxpayer is guilty of fraud in the payment or in the declarations made in her Income Tax Return.

4) *Ma. Theresa Santiago* – Comptroller of Viva Productions, Inc. Under the instruction and authority of the President of Viva Productions, Inc., Teresita R. Cruz, she testified that she had certified the machine copy of the corporation's Alphalist of Payees Subject to Withholding Tax for the year 2002, and the Certificate of Creditable Tax Withheld at Source for taxable year 2002; that the name of the accused is included in the said Alphalist of Payees Subject to Withholding Tax for the year 2002; and that the accused earned, as a professional entertainer, the amount of

₱2,925,000.00, with withholding tax in the amount of ₱585,000.00, for the subject year.

On cross-examination, she admitted that she was not yet the Comptroller of the corporation during the year 2002, and that she has no personal knowledge of whether the accused was furnished with a copy of the Certificate of Creditable Tax Withheld at Source for the taxable year 2002.

5) *Beverly Fernandez* – Assistant Vice President and Chief Finance Officer of ABS-CBN Broadcasting Corporation. She affirmed that for the taxable year 2002, included in the Alphalist is the name of the accused; that for the second half of the taxable year 2002, the accused received a total amount of ₱815,680.00, from which ten percent (10%) was withheld in the amount of ₱81,568.00.

On cross-examination, she admitted that despite being the signatory to all the checks issued to the accused, the actual receipt of the checks is being handled by the company cashier; and considering that the corporation only maintains the records for five (5) years, she cannot confirm who received and encashed the checks issued to the accused.

6) *Manuel del Barrio* – Group Controller of Century Canning Corporation. He affirmed that he certified a copy of an Agreement entered into by the accused, her Manager Alfie Lorenzo, the Booking Agent Joe Barrameda,

with the corporation's Marketing Representative Ayeth Evangelista, for and in consideration of the amount of ₱1,500,000.00 net of taxes.

On cross-examination, he admitted that he had no hand in the negotiation and preparation of the Agreement, and that he was not even present when the parties affixed their signatures thereto. He pointed out that albeit he is one of the signatories in the checks, the same were issued through Mr. Alfie Lorenzo; that the total amount of the Agreement is ₱1,800,000.00, *i.e.*, ₱300,000.00 represents the tax, and the ₱1,500,000.00 is for the accused; that the payor in the Agreement is not Century Canning Corporation, but Columbus Seafoods Corporation; and that he did not prepare the Certificate of Creditable Tax Withheld at Source, issued in the name of Alfie Lorenzo, and not to the accused.

7) *Luz Veras* – Assistant to the Owner and Producer of Regal Entertainment, Inc., Mrs. Lily Monteverde. She testified that she was told by her principal to pay the accused, the amount of ₱100,000.00, as talent fee for the year 2002, and that she had signed, upon the instruction of her principal, a Certificate of Creditable Tax Withheld at Source issued to the accused.

On cross-examination, she admitted that while she has personal knowledge that the accused received a copy of the Certificate of Creditable Tax Withheld at Source, she cannot remember the circumstances when the accused had personally received the same, or whether it was her or other employee who gave a copy of the said Certificate to the accused, or whether she was the one who handed the check to the accused.

8) *Analisa Espiritu* – Director for Finance and Accounting Services of ABS-CBN Broadcasting Corporation; she appeared to represent Ms. Esperanza Armonia, Assistant Vice-President for Finance for ABS-CBN Broadcasting Corporation. She stated that during the year 2002, she was the Senior Manager for Accounts Payable. She testified, *inter alia:* (a) that based on the Schedule/Breakdown of Talent Fees, Salaries, Honorarium, Compensation and Remuneration paid to the accused by ABS-CBN Broadcasting Corporation for taxable year 2002, of which she signed for Ms. Armonia, accused received a total of ₱11,055,554.70; (b) that based on the Alphalist for 2002 of the corporation, accused was paid the amount of ₱11,055,554.70, with a withholding tax of ₱2,147,777.62; and (c) that based on the Certificate of Creditable Tax Withheld at Source of the accused for year 2002, of which she signed for Ms. Armonia, accused received a total of ₱11,055,554.70, with total tax withheld of ₱2,147,777.63.

On cross- examination, she admitted that her department only processes the payments to be made; that the approved vouchers are endorsed to the Treasury Department, who prints the checks; and that the same are forwarded to the Cashier for release, thus, albeit the checks are issued in the name of the accused, she has no personal knowledge of whether the accused personally received the income.

9) *Arlene Marie Magdamit* – Chief Accountant of Viva Productions, Inc.; she was authorized to appear for the corporation by Ms. Teresita R. Cruz, President of the corporation. She testified that she prepared a Schedule of Payments made by the corporation in favor of the accused for the year 2002, which was also signed by Ms. Ma. Theresa Santiago, Controller of the same corporation, and that based on the said schedule and the nineteen (19) checks issued to accused, she received the total amount of ₱2,925,000.00, with the amount of ₱585,000.00 as the twenty percent (20%) withholding tax. However, she was able to reproduce only eleven (11) microfilm copies out of the nineteen (19) checks issued to the accused. She also testified that she prepared the Certificate of Creditable Tax Withheld at Source of the accused, which was signed by her superior, Maria Theresa Santiago, Controller of the corporation.

On cross-examination, she admitted that she has no personal knowledge of whether accused personally received the checks and copies of the Certificate of Creditable Tax Withheld at Source.

10) *Stimson Cureg* – Revenue Officer III of the National Investigation Division of the BIR. He testified, among others: that he directly participated in the tax audit and investigation of the case against the accused covering the year 2003 and prior years; that after audit, his group found a tax

deficiency on income tax for the year 2002; that his group served a Preliminary Assessment Notice for deficiency taxes in the amount of ₱3,333,000.00 against the accused, which was received by Ms. Sabina Quintana on November 13, 2007; that the requested conference by the counsel of accused did not push through; and that as a result, his group prepared and served the Final Assessment Notice for deficiency taxes in the amount of ₱3,418,034.00, which was received by Ana Magtanob.

On cross-examination, he admitted that upon receipt of the letter of the counsel for the accused, his group did not communicate with the counsel for the meeting.

11) *Julie Ann Benitez* – Production Director of ABS-CBN Broadcasting Corporation. She identified the contracts entered into by the accused with the corporation for taxable year 2002. She testified that she was present when the parties to the contract affixed their respective signatures, namely: the accused, Mr. Enrico Santos, and Ms. Socorro Vidanes. She also testified that based on the contracts, accused is to receive as follows: ₱80,000.00 net; ₱40,000.00 net; and ₱70,000.00 net per day.

12) *Renila Pugay* – Cashier in ABS-CBN Broadcasting Corporation. She stated that during the year 2002, she was the Treasury Assistant of the corporation. She testified that for the period covering January to August 10, 2002, the corporation issued Union Bank and Manager's Check to the

accused, while for August 25 onwards, the corporation issued Security Bank checks to the accused, and that, while the checks were claimed by a representative of the accused, the authorization letters were already shredded as the corporation only retain their records for three (3) years.

On cross-examination, she admitted that, albeit she was the one who handed the checks to the representative of the accused, she had no knowledge on the amount indicated in the checks, and after the same were claimed by the representative.

13) *Elia Dimayuga* – Accounts Payable Supervisor of Star Cinema Productions, Inc.; she appeared in behalf of the Chief Finance Officer, Beverly Fernandez. She stated that the corporation cannot produce the checks issued to the accused, as required by the Subpoena, for the same had already been disposed after the corporation has secured a tax clearance from BIR in May 2005.

14) *Teresita Fuentes* – Head of Production of Star Cinema Productions, Inc.; she appeared to represent the Managing Director of Star Cinema Productions, Inc., Malou Santos. She identified the contract entered into by the accused with the corporation, as well as, the signatures of Malou Santos and of the accused. She testified that based on the checks issued, accused received ₱800,000.00 for the year 2002.

On cross-examination, she admitted that she has no participation in the preparation of the checks, and has no personal knowledge of whether accused personally received the same.

Upon clarification, she admitted that she was not present when the parties executed the contract.

Evidence for the Defense

On the other hand, the defense presented documentary evidence marked as *Exhibits "5"* to *"9"*; and two (2) witnesses: the accused herself and Conchita Padua.

The documentary exhibits are as follows:

1) Preliminary Assessment Notice dated September 25, 2007, for deficiency income tax for calendar year 2002, in the aggregate amount of ₱3,333,490.74, addressed to the accused, signed by ACIR, Enforcement Service, Celia C. King, and received by Sabina Quintana on November 13, 2007, with attached Details of Discrepancies.[59]
2) Formal Letter of Demand dated January 14, 2008, for deficiency income tax for the year ending December 31, 2002, in the aggregate amount of ₱3,418,034.78, addressed to the accused, signed by ACIR, Enforcement Service, Celia C. King, and received by Ana T. Maglanob on January 15, 2008, with attached Details of Discrepancies and Assessment Notices.[60]

[59] *Exhibits "5," "5-a"* and *"5-b."*
[60] *Exhibits "6," "6-a"* and *"6-b."*

3) Counter-Affidavit with Counter-Charge of the accused dated July 7, 2005.[61]

4) Rejoinder-Affidavit of the accused dated August 3, 2005.[62]

5) Independent Auditor's Report dated April 11, 2003.[63]

6) Balance Sheet dated December 31, 2002.[64]

The defense also offered the following testimonies from its two (2) witnesses, to wit:

1) *Accused Judy Anne Santos* – Movie actress, celebrity endorser and showbiz personality. She testified that she started in the industry at a young age of eight (8) years old in 1986; that, at the age of twelve (12), she had engaged the services of Mr. Alfonso Lorenzo, as her Manager, thus, she has entrusted all her transactions, *i.e.*, contract negotiations, contract signing, handling of fees, *etc.*, to him, who at the time was also the manager of her older brother, Jeffrey Santos, likewise, an actor. She admitted, however, the absence of a written contract on the engagement of her Manager, out of trust and confidence to the latter, whom she considered a member of her family. She testified as well that out of that trust and confidence on her Manager, she had signed contracts without reading the same, since her Manager assured her that he already made a read through of it. She testified further that in the handling of fees, the checks were sometimes

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[61] *Exhibits "7"* and *"7-a."*
[62] *Exhibits "8"* and *"8-a."*
[63] *Exhibits "9"* and *"9-a."*
[64] *Exhibit "9-b."*

issued in her name, but most of the time, the same were issued in the name of her Manager, and that it was her Manager who received the same on her behalf, with the understanding that her Manager is entitled to a portion of her fees as his commission. With the above set-up, she claims that she has no knowledge of how much she was earning per project.

She denied the allegations on the Information against her that she willfully filed a false and fraudulent Income Tax Return for the taxable year 2002. She also denied having received any BIR Forms No. 2307 issued to her, nor made aware of the issuance of the same. She further denied the signature appearing on top of the name "Judy Anne Santos" in the Income Tax Return for taxable year 2002, presented by the prosecution. She counters that since she started working, it is her Manager who is in charge of filing the relevant returns and paying the corresponding taxes, which makes her Manager the custodian of her records. She testified further that her Manager hired an accountant, Ms. Conchita Padua, for the preparation of her Financial Statements and Income Tax Returns.

On cross-examination, she admitted the signatures appearing in the Counter-Affidavit with Counter-Charge dated July 7, 2005, and Rejoinder-Affidavit dated August 3, 2005, as well as, those appearing on the contracts presented by the prosecution. However, she claims that she was never given a chance by her Manager and her then counsel to read the contents of the affidavits, and that she really intends to settle the case were it not for the opposition against the settlement by her Manager and then counsel.

2) *Conchita Padua* – Certified Public Accountant. She stated that she was the external auditor of the accused for taxable year 2002. She testified that the Financial Statement was based on the Balance Sheet and Income Statement provided by the Manager of the accused, as well as the value-added tax returns, Income Tax Return for year 2002, quarterly tax return, schedule of input taxes and creditable tax certificates, and that the Audited Financial Statement was also submitted to the Manager.

On cross-examination, she stated that she was hired as an external auditor by a representative of the Manager of the accused. She admitted that she did not verify from third parties the actual income earned by the accused, nor examine the sourced documents, *e.g.*, contracts, and merely relied on the creditable tax certificates provided by the Manager of the accused. She also admitted that despite she signed an engagement letter for her appointment, the same was already shredded considering the lapse of five (5) years, and that she cannot recall the representative of the Manager of the accused, whom she discussed to before finalizing the Financial Statement. She denied that she prepared the Income Tax Return of the accused.

ISSUE

From the foregoing, the Court is now confronted with the lone issue of:

WHETHER OR NOT THE ACCUSED MAY BE HELD LIABLE FOR VIOLATION OF SECTION 255 OF THE 1997 NATIONAL INTERNAL REVENUE CODE, AS AMENDED.

RULING OF THE COURT

In the Information, the accused is charged for filing a false and fraudulent Income Tax Return ("ITR") for taxable year 2002, for her failure to supply correct and accurate information, which resulted to an income tax deficiency in the amount of ₱1,395,116.24, excluding interest and penalties thereon in the amount of ₱1,319,500.94, or in the aggregate income tax deficiency of ₱2,714,617.18.

With this, Section 255 of the 1997 National Internal Revenue Code ("NIRC"), as amended, specifically provides as follows:

> 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 and remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (₱10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.
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> xxx xxx xxx

The afore-quoted provision enumerates the following offenses, *viz.*:

a. Willful failure to pay tax;

b. Willful failure to make a return;

c. Willful failure to keep any record;

d. Willful failure to supply correct and accurate information;

e. Willful failure to withhold or remit taxes withheld; or

f. Willful failure to refund excess taxes withheld on compensation.

One of the offenses above-enumerated is willful failure to supply correct and accurate information, which is being attributed to the accused. And in accordance with the earlier-quoted Section 255, the essential elements of the said offense are as follows:

1) That a person is required to supply correct and accurate information;
2) That there is failure to supply correct and accurate information at the time or times required by law or rules and regulations; and
3) That such failure to supply correct and accurate information is done willfully.

Required to Supply Correct and Accurate Information

Section 51 of the 1997 NIRC, as amended, mandates, as follows:

> SEC. 51. *Individual Return.* –
>
> (A) *Requirements.* –
>
> (1) Except as provided in paragraph (2) of this Subsection, the following individuals are required to file an income tax return:
>
> **(a) Every Filipino citizen residing in the Philippines;**

xxx xxx xxx

(4) The income tax return shall be filed in duplicate by the following persons:

(a) **A resident citizen – on his income from all sources;**

xxx xxx xxx

(C) *When to File.* –

(1) The return of any individual specified above shall be **filed on or before the fifteenth (15th) day of April of each year covering income for the preceding taxable year.** (*Boldfacing supplied.*)

The above provision prescribes that every Filipino citizen residing in the Philippines is required to file an income tax return on income from all sources, on or before the fifteenth (15th) day of April of each year, covering the income for the preceding taxable year.

Also, Section 2.57(B) of Revenue Regulations No. 2-98,[65] dated April 17, 1998, further provides, as follows:

SECTION 2.57. *Withholding of Tax at Source*

xxx xxx xxx

(B) *Creditable Withholding Tax.* – Under the creditable withholding tax system, taxes withheld on certain income payments are intended to equal or at least approximate the tax due of the payee on said income. **The income recipient is still required to file an income tax return, as prescribed in Sec. 51 and Sec. 52 of the NIRC, as amended, to report the income and/or pay the difference between the tax withheld and the tax due on the income.** Taxes withheld on income payments covered by the

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[65] Implementing Republic Act No. 8424, "An Act Amending The National Internal Revenue Code, as Amended," Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.

> expanded withholding tax (referred to in Sec. 2.57.2 of these regulations) and compensation income (referred to in Sec. 2.78 also of these regulations) are creditable in nature. (*Boldfacing supplied.*)

And in relation to the above-quoted provisions, among those required to be performed under Section 255 of the same Code, is to supply correct and accurate information on the return. Thus, read together, every Filipino citizen residing in the Philippines is required not only to file an income tax return on income from all sources, on or before the fifteenth (15th) day of April of each year, covering the income for the preceding taxable year, but also to supply correct and accurate information thereof. Further, even under the creditable tax system, the income recipient is still required to file an income tax return, and to report the income and/or pay the difference between the tax withheld and the tax due on the income.

Based on the records of the case, the accused unequivocally admitted that as early as eight (8) years old, she entered the entertainment industry, and that at present is an established movie actress, celebrity endorser and showbiz personality. Further, for the subject taxable year 2002, she admitted that she entered into contracts for her engagement as a professional entertainer, movie actress and product endorser. Furthermore, there is no dispute that she is a resident Filipino citizen. With this, accused is required to file an income tax return for all her income from all sources.

The prosecution then presented the Annual ITR (BIR Form No. 1701) of the accused for the taxable year 2002, filed on April 15, 2003,[66] with the following figures: *Gross Taxable Professional Income* – ₱8,033,332.70;[67] *Total Taxable Income* – ₱4,941,220.87;[68] *Tax Due* – ₱1,546,190.68;[69] *Creditable Tax Withheld Per BIR Form No. 2307 for the 4th Quarter* – ₱1,543,333.23;[70] and *Total Payable* – ₱2,857.45.[71] Likewise, attached to the ITR is the Independent Auditor's Report, signed by Conchita P. Padua, dated April 11, 2003.[72]

Likewise, the prosecution offered the following Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by ABS-CBN Broadcasting Corporation to the accused, with the following details, to wit:

EXHIBIT	PERIOD COVERED	AMOUNT OF INCOME PAYMENTS	TAX WITHHELD FOR THE QUARTERS
"A-16" to "A-21"	January 1 to March 31, 2002	₱1,955,555.30	₱327,777.73
"A-22" to "A-27"	April 1 to June 30, 2002	₱2,594,444.25	₱518,888.85
"A-28" to "A-33"	July 1 to September 30, 2002	₱3,127,777.55	₱625,555.51
"A-34" to "A-39"	October 1 to December 31, 2002	₱355,555.60	₱71,111.12
TOTAL		**₱8,033,332.70**	**₱1,543,333.21**

A comparison of the ITR of the accused and the Certificates of Creditable Tax Withheld at Source issued by ABS-CBN Broadcasting Corporation, shows that the amounts of income payments tallied from both said documents, while the amount of taxes withheld has a difference of 0.02 centavos, due to rounding off.

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66 *Exhibit "A."*
67 *Exhibit "A-4."*
68 *Exhibit "A-5."*
69 *Exhibit "A-6."*
70 *Exhibit "A-7."*
71 *Exhibit "A-8."*
72 *Exhibits "A-13" to "A-15."*

From the foregoing, the prosecution was able to prove that the accused, earning her professional income as an entertainer is required to file an income tax return, as she did, and that accused apparently supplied correct and accurate information thereof.

Failure to Supply Correct and Accurate Information at the Time Required by Law

To reiterate, Section 51(C) of the 1997 NIRC, as amended, prescribes that every Filipino citizen residing in the Philippines is required to file an income tax return on income from all sources, on or before the fifteenth (15th) day of April of each year, covering the income for the preceding taxable year.

As earlier discussed, the prosecution presented the Annual ITR (BIR Form No. 1701) of the accused for taxable year 2002, filed on April 15, 2003, thus, showing that the accused had indeed filed her ITR at the time required by law. Further, apparent from a plain observation of the ITR for the taxable year 2002 as against the Certificates of Creditable Tax Withheld at Source issued by ABS-CBN Broadcasting Corporation, demonstrates the same amounts of taxable income and taxes withheld.

Nonetheless, the prosecution presented both documentary and testimonial evidence proving as follows:

a. *Undeclared Income from ABS-CBN Broadcasting Corporation*

Based on the Certification issued by Chief, Large Taxpayers Document Processing and Quality Assurance Division, Beatriz S. Peliño, dated April 28, 2005;[73] and ABS-CBN Broadcasting Corporation Alphalist 2002,[74] the income payments received by the accused for the subject year amounted to ₱11,055,554.70, with tax withheld in the amount of ₱2,147,777.63.

On the other hand, based on the Certification issued by AVP, Finance – Controllership, Ezperanza P. Armonia, dated April 25, 2007, the total amount received by the accused is ₱11,055,555.09, with withholding tax of ₱2,147,777.69.[75] While on another Certification issued by the same person on even date, the accused received a total payment of ₱10,066,666.00, with tax withheld in the amount of ₱2,013,333.20.[76]

Analisa Espiritu, Director for Finance and Accounting Services of the corporation testified on the above figures: (a) that based on the Schedule/Breakdown of Talent Fees, Salaries, Honorarium, Compensation and Remuneration paid to the accused, she received a total of ₱11,055,554.70; (b) that based on the Alphalist for 2002, accused was paid the amount of ₱11,055,554.70, with a withholding tax of ₱2,147,777.62; and (c) that based on the Certificate of Creditable Tax Withheld at Source of the accused for year 2002, accused received a total of ₱11,055,554.70, with total tax withheld of ₱2,147,777.63.

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[73] *Exhibits* "C" to "C-4."
[74] *Exhibits* "W" to "W-2."
[75] *Exhibits* "V" to "V-3"; with attached Schedule/Breakdown of the talent fees/ salaries/ honorarium/ compensation/ remuneration paid to the accused.
[76] *Exhibits* "X" to "X-3"; with attached Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) for the period covering January 1, 2002 to December 31, 2002.

Likewise, Julie Ann Benitez, Production Director of the corporation, identified the contracts entered into by the accused with the corporation for taxable year 2002, and that she was present when the parties to the contract affixed their respective signatures.

Further, Renila Pugay, Cashier, testified that for the period covering January to August 10, 2002, the corporation issued Union Bank and Manager's Check to the accused, while for August 25 onwards, the corporation issued Security Bank checks to the accused, and that the checks were claimed by a representative of the accused.

b. *Undeclared Income from Viva Productions, Inc.*

Based on the Certification dated April 26, 2005, issued by the President of Viva Productions, Inc., Teresita Cruz;[77] Certificate of Creditable Tax Withheld at Source (BIR form No 2307) for the period covering January 1, 2002 to December 31, 2002, issued by Viva Productions, Inc.;[78] Viva Productions, Inc., Alphalist of Payees Subject to Withholding Tax for the year 2002;[79] and Viva Productions, Inc., Payment Details of the accused for the year 2002,[80] accused received income payments in the amount of ₱2,925,000.00, with withholding tax of ₱585,000.00.

Further, Ma. Theresa Santiago, Comptroller of the corporation, testified that the name of the accused is included in the Alphalist of Payees Subject to Withholding Tax for the year 2002; and that accused earned, as a professional

[77] *Exhibits* "F" to "F-2."
[78] *Exhibits* "G" to "G-5."
[79] *Exhibits* "G-6" to "G-8."
[80] *Exhibits* "Z" to "Z-24."

entertainer, the amount of ₱2,925,000.00, with withholding tax in the amount of ₱585,000.00, for the subject year.

Also, Arlene Marie Magdamit, Chief Accountant, testified that based on the Schedule of Payments made by the corporation in favor of the accused for the year 2002, and the nineteen (19) checks issued to accused, she received the total amount of ₱2,925,000.00, with the amount of ₱585,000.00 as the twenty percent (20%) withholding tax.

c. *Undeclared Income from Star Cinema Productions, Inc.*

Based on the Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) for the period covering January 1, 2002 to December 31, 2002, issued by Star Cinema Productions, Inc.,[81] and Star Cinema Productions, Inc., Alphalist of Taxes Withheld for the year 2002,[82] accused received income payments of ₱815,680.00, with tax withheld at ₱81,568.00.

Also, Teresita Fuentes, Head of Production, identified the contract entered into by the accused with the corporation, as well as, the signatures therein, and that based on the checks issued, accused received ₱800,000.00 for the year 2002.

d. *Undeclared Income from Regal Entertainment, Inc.*

Based on the Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) for the period covering January 1, 2002 to December 31, 2002, issued by Regal

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[81] *Exhibits* "H" to "H-7."
[82] *Exhibits* "I" to "I-3."

Entertainment, Inc.,[83] accused received the amount of ₱100,000.00, with tax withheld at ₱10,000.00.

Also, Luz Veras, Assistant to the Owner and Producer of Regal Entertainment, Inc., Mrs. Lily Monteverde, testified that she was told by her principal to pay the accused, the amount of ₱100,000.00, as talent fee for the year 2002, and that she had signed the Certificate of Creditable Tax Withheld at Source issued to the accused.

e. *Undeclared Income from Century Canning Corporation*

Based on the Agreement between Century Canning Corporation and the accused, *et al.*, dated April 2002,[84] the accused is to receive the amount of ₱1,500,000.00 net of taxes.

Likewise, Manuel del Barrio, Group Controller, testified that he is one of the signatories in the checks, issued through Mr. Alfie Lorenzo, and that the total amount of the Agreement is ₱1,800,000.00, *i.e.*, ₱300,000.00 represents the tax, and the ₱1,500,000.00 is for the accused, and further that the payor in the Agreement is not Century Canning Corporation, but Columbus Seafoods Corporation.

Total Undeclared Income

From the foregoing, the prosecution was able to show that from the declared *Gross Taxable Professional Income* of the accused in the amount of ₱8,033,332.70,[85] in

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[83] *Exhibits* "N" to "N-6."
[84] *Exhibits* "O" to "O-9."

her ITR for the taxable year 2002, accused also received income payments from: (a) ABS-CBN Broadcasting Corporation for year 2002, in the amount of ₱11,055,554.70, with creditable tax withheld in the amount of ₱2,147,777.63; (b) Viva Production, Inc., from January 2002 to December 2002, in the total amount of ₱2,925,000.00, with creditable tax withheld in the amount of ₱585,000.00; (c) Star Cinema Productions, Inc., for the year 2002, in amount of ₱815,680.00, with creditable tax withheld in the amount of ₱81,568.00; (d) Columbus Seafoods Corporation for taxable year 2002 in the amount of ₱1,500,000.00, with withholding tax of ₱300,000.00; and (e) Regal Entertainment, Inc., for taxable year 2002, in the amount of ₱100,000.00, with creditable tax withheld in the amount of ₱10,000.00, or in the aggregate amount of ₱16,396,234.70, or a gross underdeclaration of ₱8,362,902.00.

For emphasis, every Filipino citizen residing in the Philippines is required not only to file an income tax return on income from all sources, on or before the fifteenth (15th) day of April of each year, covering the income for the preceding taxable year, but also to supply correct and accurate information thereof.

Thus, the prosecution was able to prove the element of failure to supply correct and accurate information at the time required by law.

Willful Failure to Supply Correct and Accurate Information

In the case of *Commissioner of Internal Revenue v. The Estate of Benigno P. Toda, Jr., et al.*,[86] the Supreme Court ruled as follows:

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[85] *Exhibit "A-4."*
[86] G.R. No. 147188, September 14, 2004, 438 SCRA 290.

> Tax evasion connotes the integration of three factors: (1) the end to be achieved, *i.e.*, the payment of less than that known by the taxpayer to be legally due, or the non-payment of tax when it is shown that a tax is due; (2) **an accompanying state of mind which is described as being "evil," in "bad faith," "willful," or "deliberate and not accidental"**; and (3) a course of action or failure of action which is unlawful.[87] (*Boldfacing supplied.*)

Also, in the case of *Commissioner of Internal Revenue v. Japan Air Lines, Inc., et al.*,[88] the High Court made the following pronouncement:

> The willful neglect to file the required tax return or the fraudulent intent to evade the payment of taxes, considering that the same is **accompanied by legal consequences, cannot be presumed.**[89] The fraud contemplated by law is actual and constructive. **It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some legal right.** (*Boldfacing supplied.*)

Citing *Black's Law Dictionary*, the term "willful" is defined as voluntary and intentional.[90] And in *Merten's Law of Federal Income Taxation*,[91] "willful" in tax crimes statutes is defined as voluntary, intentional violation of a known legal duty.

Applying the foregoing in the case at bench, the element of willful failure to supply correct and accurate information must be fully established as a positive act or state of mind; it cannot be presumed nor attributed to mere inadvertent or negligent acts.

Based on the records of the case, the accused testified that as early as the age of twelve (12) years old, she had engaged the services of Mr. Alfonso Lorenzo,

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[87] De Leon, Fundamentals of Taxation, 1988 Ed., *citing Balter, Fraud under Federal Tax Law, 1953 Ed.*
[88] G.R. No. 60714, October 4, 1991, 202 SCRA 450.
[89] *Ibid., citing Commissioner of Internal Revenue v. Air India and the Court of Tax Appeals, G.R. No. 72443, January 29, 1988, 157 SCRA 648.*
[90] 8th Ed., p. 1630.
[91] Vol. 15, 1988 Ed., Chapter 55A, p. 76.

without any written contract, considering that the same was also the Manager of her older brother, and that she has considered him a family member. Further, she maintains that the set-up of their Manager-Talent relationship is that the former shall handle all her transactions, *inter alia*, contract negotiations, contract signing, handling of fees, including the collection thereof, and that out of trust, respect and confidence on her Manager, she had signed contracts upon his mere assurances, even without reading the same, and that her fees, were most of the time, issued in the name of her Manager, who collects the same, and thus, she has no knowledge of how much she was earning per project.

In addition, she denied the signature appearing on top of the name "Judy Anne Santos" in the ITR for taxable year 2002, presented by the prosecution, and that while she admitted the signatures appearing in the Counter-Affidavit with Counter-Charge dated July 7, 2005, and Rejoinder-Affidavit dated August 3, 2005, as well as, those appearing on the contracts presented by the prosecution, she claims that she was never given a chance by her Manager and her then counsel to read the contents of the same.

Lastly, she maintains her intention to settle the case were it not for the opposition against it by her Manager and then counsel.

Her testimony was supported by Conchita Padua, Certified Public Accountant, hired as an external auditor by a representative of the Manager of the accused. She testified that all the working papers were provided by the Manager of the accused.

With the foregoing, the Court finds the landmark case of *Jose B. Aznar, in his capacity as Administrator of the Estate of the deceased, Matias H. Aznar, v. Court of Tax Appeals and Collector of Internal Revenue,*[92] instructive, to wit:

> As could be readily seen from the above rationalization of the lower court, no distinction has been made between **false returns (due to mistake, carelessness or ignorance)** and **fraudulent returns (with intent to evade taxes)**. The lower court based its conclusion on the petitioner's alleged fraudulent intent to evade taxes on the substantial difference between the amounts of net income on the face of the returns as filed by him in the years 1946 to 1951 and the net income as determined by the inventory method utilized by both respondents for the same years. **The lower court based its conclusion on a presumption that fraud can be deduced from the very substantial disparity of incomes as reported and determined by the inventory method and on the similarity of consecutive disparities for six years.** Such a basis for determining the existence of fraud (intent to evade payment of tax) suffers from an inherent flaw when applied to this case. It is very apparent here that the respondent Commissioner of Internal Revenue, when the inventory method was resorted to in the first assessment, concluded that the correct tax liability of Mr. Aznar amounted to ₱723,032.66 (*Exh. 1, B.I.R. rec. pp. 126-129*). After a reinvestigation the same respondent, in another assessment dated February 16, 1955, concluded that the tax liability should be reduced to ₱381,096.07. This is a crystal-clear, indication that even the respondent Commissioner of Internal Revenue with the use of the inventory method can commit a glaring mistake in the assessment of petitioner's tax liability. When the respondent Court of Tax Appeals reviewed this case on appeal, it concluded that petitioner's tax liability should be only ₱227,788.64. The lower court in three instances (elimination of two buildings in the list of petitioner's assets beginning December 31, 1949, because they were destroyed by fire; elimination of expenses for construction in petitioner's assets as duplication of increased value in buildings, and elimination of value of house and lot in petitioner's assets because said property was only given as collateral) supported petitioner's stand on the wrong inclusions in his lists of assets made by the respondent Commissioner of Internal Revenue, resulting in the very substantial reduction of petitioner's tax liability by the lower court. The foregoing shows that it was not only Mr. Matias H. Aznar who committed mistakes in his report of his income but also the respondent

[92] G.R. No. L-20569, August 23, 1974, 58 SCRA 519.

> Commissioner of Internal Revenue who committed mistakes in his use of the inventory method to determine the petitioner's tax liability. The mistakes committed by the Commissioner of Internal Revenue which also involve very substantial amounts were also repeated yearly, and yet we cannot presume therefrom the existence of any taint of official fraud.
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> From the above exposition of facts, we cannot but emphatically reiterate the well established doctrine that **fraud cannot be presumed but must be proven**. As a corollary thereto, we can also state that fraudulent intent could not be deduced from mistakes however frequent they may be, especially if such mistakes emanate from erroneous entries or erroneous classification of items in accounting methods utilized for determination of tax liabilities. The predecessor of the petitioner undoubtedly filed his income tax returns for the years 1946 to 1951 and those tax returns were prepared for him by his accountant and employees. It also appears that petitioner in his lifetime and during the investigation of his tax liabilities cooperated readily with the B.I.R. and there is no indication in the record of any act of bad faith committed by him.
>
> The lower court's conclusion regarding the existence of fraudulent intent to evade payment of taxes was based merely on a **presumption and not on evidence establishing a willful filing of false and fraudulent returns so as to warrant the imposition of the fraud penalty. The fraud contemplated by law is actual and not constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some legal right. Negligence, whether slight or gross, is not equivalent to the fraud with intent to evade the tax contemplated by the law.** It must amount to intentional wrong-doing with the sole object of avoiding the tax. **It necessarily follows that a mere mistake cannot be considered as fraudulent intent**, and if both petitioner and respondent Commissioner of Internal Revenue committed mistakes in making entries in the returns and in the assessment, respectively, under the inventory method of determining tax liability, it would be unfair to treat the mistakes of the petitioner as tainted with fraud and those of the respondent as made in good faith. (*Boldfacing supplied.*)

As earlier discussed, the prosecution was able to prove that the accused failed to supply correct and accurate information in her ITR for the year 2002 for her failure declare her other income payments received from other sources.

However, it is well-settled that mere understatement of a tax is not itself proof of fraud for the purpose of tax evasion.[93]

Based on the records of the case, the accused denied the signature appearing on top of the name "Judy Anne Santos" in the ITR for taxable year 2002, presented by the prosecution, and that the Certified Public Accountant, who's participation is limited to the preparation of the Financial Statements attached to the return, likewise, denied signing the return on behalf of the accused. Further, the working papers, *i.e.*, the Balance Sheet and Income Statement, as well as the value-added tax returns, Income Tax Return for year 2002, quarterly tax return, schedule of input taxes and creditable tax certificates, were all provided by the Manager of the accused.

The Court, therefore, finds the records bereft of any evidence to establish the key element of willfulness on the part of the accused to supply the correct and accurate information on her subject return.

The burden of proof is on the prosecution to prove beyond reasonable doubt that accused willfully failed to supply correct and accurate information. Stated differently, the prosecution must prove that the accused, a Filipino citizen residing in the Philippines, is required not only to file an income tax return on income from all sources, on or before the fifteenth (15th) day of April of each year, covering the income for the preceding taxable year, but also to supply correct and accurate information thereof, and that any failure thereof is done willfully.

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[93] Yutivo Sons Hardware *v.* Court of Tax Appeals, G.R. No. L-13203, January 28, 1961, 1 SCRA 169.

The Court, however, only finds the accused negligent; and such is not enough to convict her in the case at bench.

Negligence, whether slight or gross, is not equivalent to the fraud with intent to evade the tax contemplated by the law. Fraud must amount to intentional wrong-doing with the sole object of avoiding the tax.[94]

The Court also notes the intention of the accused to settle the case were it not for the opposition of her Manager and then counsel, which negates any motive of the accused to commit fraud.

In all criminal cases, mere speculations cannot substitute for proof in establishing the guilt of the accused.[95] Indeed, suspicion no matter how strong must never sway judgment. Where there is reasonable doubt, the accused must be acquitted even though their innocence may not have been established. The Constitution presumes a person innocent until proven guilty by proof beyond reasonable doubt. When guilt is not proven with moral certainty, it has been our policy of long standing that the presumption of innocence must be favored, and exoneration granted as a matter of right.[96]

In sum, the Court finds the failure of the prosecution to establish the guilt of the accused beyond the required reasonable doubt.

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[94] *Supra*, note 92.
[95] Aurea R. Monteverde *v.* People of the Philippines, G.R. No. 139610, August 12, 2002, 387 SCRA 196, *citing Fernandez v. People, G.R. No. 138503, September 28, 2000, 341 SCRA 277.*
[96] *Ibid.*

Assessment Against the Accused

Well-settled is the rule that an acquittal for failure of the prosecution to prove all elements of the offense beyond reasonable doubt does not include the extinguishment of the civil liability.[97]

In case of acquittal, the accused may still be adjudged civilly liable. The extinction of the penal action does not carry with it the extinction of the civil action where: (a) the acquittal is based on reasonable doubt as only preponderance of evidence is required; (b) the court declares that the liability of the accused is only civil; and (c) the civil liability of the accused does not arise from or is not based upon the crime of which the accused was acquitted.[98]

Based on the records of the case, a Preliminary Assessment Notice dated September 25, 2007, for deficiency income tax for calendar year 2002, in the aggregate amount of ₱3,333,490.74, was received on November 13, 2007;[99] and that a Formal Letter of Demand dated January 14, 2008, for deficiency income tax for the year ending December 31, 2002, in the aggregate amount of ₱3,418,034.78, was received on January 15, 2008.[100]

Section 203 of the 1997 NIRC, as amended, states as follows:

> SECTION 203. *Period of Limitation upon Assessment and Collection.* – Except as provided in the succeeding section, internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment

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[97] Jaime Alferez v. People of the Philippines, G.R. No. 182301, January 31, 2011 641 SCRA 116, *citing Ambito v. People, G.R. No. 127327, February 13, 2009, 579 SCRA 69, 94.*
[98] *Ibid., citing Hun Hyung Park v. Eung Won Choi, G.R. No. 165496, February 12, 2007, 515 SCRA 502, 513.*
[99] *Exhibits "5," "5-a" and "5-b."*
[100] *Exhibits "6," "6-a" and "6-b."*

> for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. For the purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. (*Boldfacing supplied.*)

Undisputed from the records that the ITR for the taxable year 2002 of the accused was filed on April 15, 2003; thus, counting three (3) years from said date, the Commissioner can validly issue an assessment against the accused until April 15, 2006. An assessment issued thereafter is deemed invalid.

Nonetheless, as earlier determined, the ITR of the accused failed to fully declare her other income payments, thus, the same falls under one of the exceptions in Section 222(a) of the same Code, *viz*:

> SECTION 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> (a) **In the case of a false** or fraudulent return with intent to evade tax or of failure to file a return, the tax may **be assessed, or a proceeding in court** for the collection of **such** tax may **be filed without assessment, at any time** within ten (10) years **after the discovery of the falsity**, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

Therefore, the Preliminary Assessment Notice dated September 25, 2007, received on November 13, 2007; and the Formal Letter of Demand dated January 14, 2008, received on January 15, 2008, were made within the ten (10)-year period.

In accordance thereto, Section 228 of the 1997 NIRC, as amended, prescribes as follows:

> SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; **otherwise, the assessment shall become final.**
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable. (*Boldfacing supplied.*)

And records of the case clearly show that accused failed to file any protest against the Formal Letter of Demand dated January 14, 2008, which was received on January 15, 2008. Thus, the same had become final, and may no longer be set aside.

In sum, accused is still liable to pay the deficiency income taxes for the taxable year 2002, in the amount of ₱3,418,034.78.

WHEREFORE, on the ground of reasonable doubt, accused **JUDY ANNE SANTOS *y* LUMAGUI** is hereby **ACQUITTED** of the crime charged.

As regards the civil liability, accused **JUDY ANNE SANTOS *y* LUMAGUI** is hereby **ORDERED** to **PAY** the amount of **₱3,418,034.78**, representing income tax deficiency for the taxable year 2002, including penalties and interests.

In addition, accused **JUDY ANNE SANTOS *y* LUMAGUI** is hereby further **ORDERED** to **PAY** the twenty percent (20%) delinquency interest on the total amount of **₱3,418,034.78**, computed from January 15, 2008, until fully paid, pursuant to Section 249(C) of the 1997 NIRC, as amended.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(Inhibited)
OLGA PALANCA-ENRIQUEZ
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

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's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice