23-000162-0065

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. O-1047

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

TRANSTECH SHUTTLE SERVICE,
JOSE NAPLIS MAGCALAYO,
HENRY V. LI and
LORNA LI MAGCALAYO ,
Accused.

NOTICE OF DECISION

To:

PROSECUTOR GENERAL RICHARD ANTHONY D. FADULLON
ASSISTANT STATE PROSECUTOR JEANNETTE M. DACPANO
Department of Justice
Padre Faura St., Ermita, Manila

ATTY. CATHERINE ROSE R. TORTOLES
ATTY. ROBERTO G. DAMIAN, JR.
ATTY. JAMAICA KAY S. DELA CRUZ
ATTY. JIMLAN S. ISMAEL
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MS. LORNA LI MAGCALAYO
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ATTY. JOSEPH R. ALINSOD
Clerk of Court VI
Regional Trial Court
Fourth Judicial Region
Branch 108
Cabuyao City, Laguna

GREETINGS:

You are hereby notified by these presents that on **May 7, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **May 7, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	CTA Crim. Case No. **O-1047** For: Violation of Section 255 (Failure to Pay Tax of the NIRC of 1997, as amended)
- versus -	Members:
	DEL ROSARIO, P.J., *Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** JJ.
TRANSTECH SHUTTLE SERVICE, INC., JOSE NAPLIS MAGCALAYO, HENRY V. LI, and LORNA LI MAGCALAYO, Accused.	Promulgated: MAY 07 2025; 8:35 a.m.

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court is the Information[1], filed on 20 April 2023, by plaintiff People of the Philippines (**plaintiff**), charging accused Transtech Shuttle Service, Inc. (**TSSI**) and its responsible officers, Jose Naplis Magcalayo (**Jose**), Henry V. Li (**Henry**) and Lorna Li Magcalayo (**Lorna**) (collectively "**accused**"), in their capacities as President, Secretary and Treasurer, respectively, for violation of Section 255[2], in relation to Sections 253(d)[3] and 256[4], of the National Internal Revenue Code (**NIRC**) of 1997, as amended.

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1 Division Docket, pp. 5-7.

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

3 **SEC. 253.** *General Provisions. —*

. . .

(d) In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation.

4 **SEC. 256.** *Penal Liability of Corporations.*

PARTIES OF THE CASE

Plaintiff is represented by the Bureau of Internal Revenue (**BIR**), the government agency mandated to collect national internal revenue taxes, with office address at the Prosecution Division, Room 704, 7th Floor, BIR National Office Building, Senator Miriam Defensor-Santiago Avenue, Diliman, Quezon City.[5]

Accused TSSI is a corporation duly registered with the Securities and Exchange Commission (**SEC**) under SEC Registration No. CS200500066.[6] It is primarily engaged in the business of providing shuttle services.[7] TSSI is likewise registered with the BIR Revenue District Office (**RDO**) No. 057-Biñan, Laguna, under Taxpayer Identification Number (**TIN**) 239-400-066.[8] Its registered address is at Filsyn Compound, Brgy. Don Jose, Sta. Rosa, Laguna.[9]

Accused Jose is the President of TSSI, with a residential address at 128 Bulusan Street, PhVi San Jose Village, LTAI Biñan, Laguna, as indicated in TSSI's 2016 General Information Sheet (**GIS**).[10] However, his actual residence is at #176 Mozart Street, Santa Rosa Estates 1, Barangay Don Jose, City of Santa Rosa, Laguna, as reflected in the Certificate of Residency[11] issued for purposes of his bail.

Accused Henry is the Secretary of TSSI, with a residential address at 74 AT Reyes Street, Mandaluyong City, as indicated in TSSI's 2016 GIS.[12] However, his actual residence is at Block 8, Lot 14, Imperial Drive, San Lorenzo Royale, Barangay Dita, City of Santa Rosa, Laguna, as reflected in the Certificate of Residency[13] issued for purposes of his bail.

Accused Lorna is the Treasurer of TSSI, with a residential address at 128 Bulusan Street, PhVi San Jose Village, LTAI Biñan, Laguna, as indicated in TSSI's 2016 GIS.[14] However, her actual residence is at #176

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5 Paragraph 3, THE PARTIES, Plaintiff's Memorandum, Division Docket, Volume II, p. 769.
6 See General Information Sheet (**GIS**) of Transtech Shuttle Service, Inc. (**TSSI**), Exhibit "P-2", id., Volume I, pp. 263-272.
7 Id., p. 264.
8 Par. 3, III. ADMITTED FACTS, Pre-Trial Order dated 30 July 2024, id., Volume II, p. 607.
9 Par. 4, id.
10 See GIS of TSSI, Exhibit "P-2", supra at note 6, p. 267.
11 Division Docket, Volume I, p. 451.
12 See GIS of TSSI, Exhibit "P-2", supra at note 6, p. 267.
13 Division Docket, Volume I, p. 227.
14 See GIS of TSSI, Exhibit "P-2", supra at note 6, p. 267.

Mozart Street, Santa Rosa Estates 1, Barangay Don Jose, City of Santa Rosa, Laguna, as reflected in the Certificate of Residency[15] issued for purposes of her bail.

ANTECEDENT FACTS

On 20 April 2023, plaintiff filed an Information[16] against accused for violation of Section 255[17], in relation to Sections 253(d)[18] and 256[19], of the NIRC of 1997, as amended, the accusatory portion thereof reads:

> ...
> That on or about March 28, 2016 and thereafter, in the City of Sta Rosa, Laguna, Philippines, and within the jurisdiction of this Honorable Court, accused JOSE NAPLIS MAGCALAYO, HENRY V. LI AND LORNA LI MAGCALAYO, all Filipino citizens, president, secretary and treasurer, respectively, of accused Transtech Shuttle Service, Inc. (Transtech) which was engaged in the business of land transportation and carriage of passenger, goods and merchandise to any place in the Philippine with Tax Identification No. 239-400-066-000, and therefore subject and liable to file income tax returns and to pay the corresponding tax due thereon, pursuant to Section 255 of the National Internal Revenue Code of 1997, as amended, did then and there knowingly, unlawfully and willfully fail and refuse to pay their the income tax deficiency in the amount of Php23,974,549.82, exclusive of surcharges and interests, for the taxable year 2010 despite receipt of several notices and demands as specified under the law and regulations, the last of which are the Preliminary Assessment Notice (PAN) and Formal Letter of Demands, including the Final Notice Before Seizure dated March 28, 2016 issued by the Bureau of Internal Revenue, to the damage and prejudice of the government.
>
> CONTRARY TO LAW.
>
> ...

Plaintiff attached the following supporting documents to the Information:

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15 Division Docket, Volume I, p. 205.
16 Supra at note 1.
17 Supra at note 2.
18 Supra at note 3.
19 Supra at note 4.

1. Certified True Copy of the Resolution dated 15 January 2020[20], signed by Assistant State Prosecutor Jeannette M. Dacpano (**ASP Dacpano**), with recommending approval of Senior Deputy State Prosecutor Miguel F. Gudio, Jr. and approved by Prosecutor General Benedicto A. Malcontento;

2. Certified True Copy of the National Prosecution Service (**NPS**) Investigation Data Form dated 06 June 2019;[21]

3. Certified True Copy of the Referral Letter[22] of the then BIR Commissioner Caesar R. Dulay (**Commissioner Dulay**), addressed to Secretary of Justice Menardo I. Guevarra (**Secretary Guevarra**); and,

4. Certified True Copy of the Joint Complaint-Affidavit (**JCA**) dated 06 June 2019[23] of Revenue Officers (**ROs**) Grace Gonzaga (**Gonzaga**), Nimpha Malaguit (**Malaguit**), Chona D. De Ramos (**De Ramos**) and Don Johnson F. Guevarra (**Guevarra**), with attached Annexes "A" to "R-16", inclusive of sub-markings.[24]

In the Resolution dated 26 May 2023[25], the Court ordered plaintiff to submit, within five (5) days from notice, proof of receipt by accused TSSI of the Preliminary Assessment Notice (**PAN**) allegedly sent *via* registered mail, but for which no registry return receipt was attached to the JCA. Thereafter, upon noting and granting the "Entry of Appearance with Motion for Extension of Time"[26] filed by the Deputized Special Prosecutors, the Court granted plaintiff an additional period of five (5) days from 12 June 2023, or until 19 June 2023, to submit said proof of receipt by accused TSSI of the PAN.[27]

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20 Division Docket, Volume I, pp. 8-12.
21 Id., p. 13.
22 Id., pp. 14-15.
23 Id., pp. 16-23.
24 Id., pp. 24-93.
25 Id., pp. 95-97.
26 Id., pp. 98-102, with Annex "A".
27 See Minute Resolution dated 30 June 2023, id., p. 105.

Since plaintiff failed to comply with the Court's directive, in the Resolution dated 14 August 2023[28], the Court dismissed the case for lack of probable cause.

On 07 September 2023, plaintiff filed a "Motion for Reconsideration (*of the Resolution promulgated on August 14, 2023*)"[29] (**MR on the Dismissal**).

Later, in a Resolution dated 05 October 2023[30], the Court issued a corrected copy of the 14 August 2023 Resolution, indicating the position of Associate Justice Lanee S. Cui-David, and ordered plaintiff to manifest whether it adopts the MR on the Dismissal as its MR on the corrected Resolution dated 05 October 2023[31] or to file a separate MR thereto, within fifteen (15) days from receipt of the corrected Resolution.

On 31 October 2023, plaintiff filed a "Manifestation (*of the Resolution promulgated on October 5, 2023*)"[32] (**Manifestation**), stating that it adopts the MR on the Dismissal as its MR on the corrected Resolution dated 05 October 2023. The Court then noted plaintiff's Manifestation and submitted the MR on the Dismissal for resolution.[33]

In the Resolution dated 17 January 2024[34], the Court granted plaintiff's MR on the Dismissal and, consequently, ordered the issuance of Warrants of Arrest (**WOAs**) against accused TSSI's responsible officers, *i.e.*, Jose, Henry and Lorna. On 22 January 2024, the corresponding WOAs were issued against them.[35]

On 27 March 2024, the Court ordered the issuance of an alias WOA against Jose, recalled and set aside the WOAs issued against accused Lorna and Henry considering that they have posted cash bail on 14 February 2024 and 20 February 2024, respectively, and set the preliminary conference for the marking of the parties' exhibits as well as the arraignment of accused Henry and Lorna and the pre-trial

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28 Id., pp. 108-115, with Associate Justice Jean Marie A. Bacorro-Villena's Dissenting Opinion.
29 Id., pp. 120-138, with annexes.
30 Id., pp. 142-143.
31 Id., pp. 145-155, with Associate Justice Jean Marie A. Bacorro-Villena's Dissenting Opinion and Associate Justice Lanee S. Cui-David's Concurring Opinion.
32 Id., pp. 156-160.
33 See Resolution dated 01 December 2023, id., pp. 169-171.
34 Id., pp. 173-176.
35 Id., pp. 177-179.

conference on 17 April 2024 and 15 May 2024, respectively.[36] Accordingly, on 03 April 2024, an alias WOA was issued against Jose.[37]

On 22 May 2024, the Court also recalled and set aside the WOA and alias WOA issued against accused Jose after he posted cash bail on 12 April 2024. The Court also set another preliminary conference for the marking of the parties' exhibits as well as the arraignment of accused Jose and the pre-trial conference on 05 June 2024 and 19 June 2024, respectively.[38]

During the 19 June 2024 hearing[39], accused Jose, Henry and Lorna were arraigned, with the assistance of Atty. Roger Terence P. Camua (**Atty. Camua**), who appeared as counsel *de parte* for accused Lorna and was appointed as counsel *de officio* for accused Jose and Li. All three (3) accused entered a plea of not guilty to the offense charged. The Court also granted accused Jose and Henry a period of 15 days, or until 04 July 2024, within which to retain a counsel *de parte*, and directed Atty. Camua to file a manifestation not later than 05 July 2024 to confirm whether accused Jose and Henry were able to retain their own counsel *de parte*. Finally, the Court set the presentation of witnesses on 14 August 2024 for the testimonies of ROs Gonzaga, De Ramos and Guevarra, and on 16 October 20204 for the testimonies of accused Jose, Henry and Lorna.

In a Minute Resolution dated 12 July 2024[40], the Court noted Atty. Camua's Manifestation, stating that accused Henry will continue to retain him as his counsel, while accused Jose has not contacted him.

On 30 July 2024, the Court issued the Pre-Trial Order[41], with conformity of counsels for plaintiff and accused.

Earlier, on 11 July 2024, counsel for accused Jose, Atty. Celso C. Miquiabas, Jr. (**Atty. Miquiabas**), filed an "Entry of Appearance with Manifestation and Motion"[42], requesting that his appearance be duly

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36 See Resolution dated 27 March 2024, id., pp. 250-252.
37 Id., p. 258.
38 See Resolution dated 22 May 2024, id., pp. 467-468.
39 See Minutes of the Hearing and Order, both dated 19 June 2024, id., Volume II, pp. 549-552 and 553-556, respectively.
40 Id., p. 575.
41 Id., pp. 600-616.
42 Id., pp. 583-587, with Annex "A".

noted and that accused Jose be granted an additional extension of 15 days from 15 July 2024, or until 30 July 2024, within which to file and submit his Judicial Affidavit and any other appropriate pleadings, as may be deemed necessary. The Court noted and granted the same in a Minute Resolution dated 14 August 2024.[43]

Before the Court had noted the appearance of his counsel, on 09 August 2024, accused Jose filed a "Motion to Dismiss"[44] (**MTD**), praying for the dismissal of the subject Information on the ground of *litis pendentia, i.e.,* the pendency of another case involving the same offense and the same parties, docketed as Criminal Case No. 21-2701-SRCL (NPS Docket No. XVI-INV-19F-00210), filed before the Regional Trial Court (**RTC**), Branch 102, Santa Rosa City, Laguna.

During the 14 August 2024 hearing for plaintiff's presentation of evidence, the Court noted accused Jose's MTD but nonetheless denied it for lack of merit. The Court reasoned that the offense charged in the case pending before the RTC, Branch 102, Santa Rosa City, Laguna, docketed as Criminal Case No. 21-2701-SRCL, involves accused Jose's failure to pay deficiency improperly accumulated earnings tax (**IAET**) in the amount of ₱180,666.27, exclusive of surcharge and interest, for the taxable year (**TY**) 2010. This is distinct from the offense charged in the present case, which pertains to the failure to pay deficiency income tax (**IT**) in the amount of ₱23,974,549.82, exclusive of surcharge and interest, for the same TY. In the same hearing, the Court likewise denied Atty. Miquiabas' oral MR for lack of merit.[45]

EVIDENCE FOR THE PLAINTIFF

On 14 August 2024, plaintiff presented as its first witness, Chief RO Gonzaga, who testified through her Judicial Affidavit.[46] There, she declared the following: (1) she holds the position of Chief RO assigned to the Assessment Division of Revenue Region (**RevReg**) No. 9A-Cavite-Batangas-Mindoro-Romblon (**CaBaMiRo**); (2) prior to her then assignment, she served as RO (Assessment Section) at RDO No. 057-Biñan, Laguna, from 2010 to 2016; (3) in that role, she was tasked with

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[43] Id., pp. 666-667.
[44] Id., pp. 632-665, with annexes.
[45] See Minutes of the Hearing and Order, both dated 14 August 2024, id., pp. 669-670 and 671-673, respectively.
[46] Dated 10 June 2024; Exhibit "P-22", id., Volume I, pp. 505-516.

auditing the books of accounts and other accounting records of taxpayers within RDO No. 057-Biñan, Laguna's jurisdiction; (4) she was also part of the team that conducted an investigation into accused TSSI's tax compliance and liabilities; (5) on 06 September 2011, Officer-in-Charge Regional Director Marina C. De Guzman (**OIC-RD De Guzman**) issued Letter of Authority (**LOA**) SN:eLA201000002422/LOA-057-2011-00000271[47], authorizing her and Group Supervisor (**GS**) Malaguit to examine and investigate all internal revenue taxes of accused TSSI for TY 2010; (6) she and her team personally served a copy of the LOA at accused TSSI's regular place of business at Filsyn Compound, Brgy. Don Jose, Sta. Rosa, Laguna, where it was received by accused TSSI's Corporate Secretary, accused Henry, on 08 September 2011; (7) after serving the LOA, her team verified accused TSSI's status in the BIR Integrated Tax System (**BIR-ITS**)[48]; (8) a "First Request for Presentation of Records" dated 07 September 2011[49] was also personally served on 08 September 2011, again through accused Henry; (9) a second request (inadvertently titled as "First Request for Presentation of Records" but dated 20 September 2011[50]) was issued and personally served through accused Henry on 28 September 2011; (10) upon discovering the error in the title, her team issued a corrected "Second and Final Request for Presentation of Records" dated 10 October 2011[51], which was served on accused TSSI's President; (11) when accused TSSI still failed to submit the requested documents, a Notice of Informal Conference (**NIC**) dated 09 July 2012[52], with Details of Discrepancies[53], was personally served on 16 July 2012 to accused TSSI's authorized representative, a certain Sheila L. Muaña (**Muaña**); (12) subsequently, her team recommended the issuance of a Preliminary Assessment Notice (**PAN**); and (13) sometime in 2019, the Legal Division of BIR RevReg No. 9-B informed her that a criminal case for violation of Section 255[54] of the NIRC of 1997, as amended, was recommended to be filed against accused TSSI; and (14) as one of the ROs assigned to the case, she was tasked and authorized by the CIR to represent the BIR in initiating the criminal action before the Department of Justice (**DOJ**), as evidenced by Commissioner Dulay's Referral Letter.

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47 Exhibit "P-3", id., p. 273.
48 See Exhibit "P-1", id., p. 262.
49 Exhibit "P-4", id., p. 274.
50 Exhibit "P-4-A", id., p. 275.
51 Exhibit "P-5", id., p. 276.
52 Exhibit "P-6", id., p. 277.
53 Exhibit "P-6-A", id., pp. 278-279.
54 Supra at note 2.

On cross-examination by Atty. Camua, Chief RO Gonzaga confirmed that the LOA authorized only her and GS Malaguit to conduct the audit. She further admitted that she did not request any proof of authority or a Secretary's Certificate to verify that accused Henry was an authorized representative of the company. Instead, she merely relied on accused Henry's representation that he was acting on the company's behalf. With respect to Muaña, Chief RO Gonzaga likewise acknowledged that she did not ask for any documentation to confirm whether Muaña was a duly authorized representative or employee of the company. In fact, she admitted that she could not recall if Muaña was even wearing a company ID at the time.[55]

When asked whether accused submitted their books of accounts and other accounting records, Chief RO Gonzaga responded in the negative. She explained, however, that she did not request the issuance of a subpoena *duces tecum* because she was able to proceed with the audit based on the financial statements and other records previously filed with the BIR and accessible through the BIR's internal database.[56]

On cross-examination by Atty. Miquiabas, Chief RO Gonzaga confirmed that she prepared both the First and Second Requests for Presentation of Records, which accused Henry both received. She stated that accused Henry was typically the person who communicated with her during her visits to accused TSSI's office. She further testified that she issued the NIC and noted that such notices were generally addressed to the President, rather than to other corporate officers.[57]

On redirect examination, Chief RO Gonzaga reiterated that accused Henry received the LOA that she served at accused TSSI's office, although she could no longer recall his face. She explained that she was certain of his receipt because he signed the document. When asked to clarify her role in the audit, she stated that she was assigned to the case, after which the LOA was issued. She then served the LOA, conducted the audit, prepared the NIC, and subsequently forwarded the case to the Assessment Division for the preparation of the PAN. She clarified that preparing the PAN was not part of her responsibilities.[58]

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55 TSN dated 14 August 2024, pp. 16-28.
56 Id., pp. 28-30.
57 Id., pp. 31-33.
58 Id., pp. 35-41.

During Atty. Camua's re-cross examination, Chief RO Gonzaga explained that accused Henry, the corporate secretary, may be served with notices as he is an "officer-in-charge" and among the "employees responsible" mentioned in Section 253(d)[59] of the NIRC of 1997, as amended.[60]

Atty. Miquiabas, on the other hand, manifested that he is adopting Atty. Camua's questions and examination.[61]

Next, RO De Ramos testified through her Judicial Affidavit[62], stating the following: (1) she holds the position of RO IV (Assessment Section) assigned at RDO No. 054-A-East Cavite, Trece Martires City, RevReg No. 9A-CaBaMiRo; (2) she previously served as an RO with the Assessment Division of RevReg No. 9-San Pablo City for nearly three (3) years, from 16 April 2012 to April 2015; (3) in that capacity, she was responsible for reviewing all investigation reports submitted by District Assessment Offices, including both assessed and paid cases, evaluating them at the Regional Office level, and, upon proper assessment, preparing the PAN/FLD for approved assessments, as well as letters responding to taxpayer requests for reinvestigation and replies to PANs and Formal Letters of Demand (**FLDs**); (4) sometime in September 2013, she received an assessment report and its case docket involving accused TSSI, requesting the issuance of a PAN; (5) a PAN dated 17 September 2013[63], with Details of Discrepancies[64], was issued and subsequently transmitted to the Tax Billing Division for service; (6) upon the lapse of the period to respond, an FLD[65] with Assessment Notices[66] (**FLD/FANs**) dated 07 November 2013, with Details of Discrepancies[67], was issued and sent *via* registered mail on even date; (7) on 28 November 2013, accused TSSI, through its Managing Director, accused Lorna, filed a Protest dated 25 November 2013[68] (**First Protest**) against the FLD/FANs; (8) on 12 December 2013, the BIR, through then Regional Director Jose N. Tan (**RD Tan**), issued and sent *via* registered mail a Reply[69] (**First Reply**) denying the purported request for 'reinvestigation' on accused TSSI's

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59 Supra at note 3.
60 TSN dated 14 August 2024, pp. 42-43.
61 Id., p. 44.
62 Dated 14 June 2024; Exhibit "P-23", Division Docket, Volume I, pp. 520-528.
63 Exhibit "P-7", id., pp. 280-282.
64 Exhibit "P-7-A", id., pp. 283-285.
65 Exhibit "P-8", id., pp. 286-288.
66 Exhibits "P-9" to "P-9-D", id., pp. 292-296.
67 Exhibit "P-8-A", id., pp. 289-291.
68 Exhibit "P-11", id., p. 298.
69 Exhibit "P-12", id., p. 299.

2010 tax liabilities; (**9**) on 05 February 2014, accused TSSI, again through accused Lorna, filed another Protest dated 04 February 2014[70] (**Second Protest**) against the FLD/FANs, expressly requesting a reinvestigation on its 2010 tax liabilities; (**10**) on 20 February 2014, the BIR, again through then RD Tan, issued and sent *via* registered mail a Reply[71] (**Second Reply**), which likewise denied the request for reinvestigation; and (**11**) in April 2015, she was reassigned to RDO No. 058-Batangas City, where she remained until August 2020.

On cross-examination by Atty. Camua, RO De Ramos confirmed that she prepared the PAN and clarified that she was authorized only to review the findings against accused TSSI, not to conduct the audit investigation herself.[72]

On cross-examination by Atty. Miquiabas, RO De Ramos admitted that the printed PAN was undated. However, when asked to acknowledge that the date "9/27" was handwritten on the date portion of the PAN, she maintained that the date was stamped, not handwritten. She further testified that she prepared the PAN for the RD's signature and, after it was signed by the RD, the entire docket, including the PAN, was forwarded to the Tax Billing Section, which is responsible for mailing the PAN. She explained that it is the Tax Billing Officer who is tasked with stamping the date on the PAN. She confirmed that when she submitted the PAN to the RD's office, and even when it was transmitted to the Tax Billing Section, it remained undated, as it is the Tax Billing Section that affixes the date stamp.[73]

On redirect examination, RO De Ramos testified that the original copy of the PAN bears a stamped date.[74]

On re-cross examination by Atty. Camua, RO De Ramos clarified that since the Tax Billing Section is responsible for safekeeping the docket and handling its mailing, the docket is returned to her only after the lapse of the 15-day period to file a protest, for the purpose of issuing the FLD.[75]

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70 Exhibit "P-13", id., p. 301.
71 Exhibit "P-14", id., p. 302.
72 TSN dated 14 August 2024, pp. 51-52.
73 Id., pp. 53-64.
74 Id., pp. 65-67.
75 Id., pp. 68-72.

Since RO Guevarra, whose testimony plaintiff intended to present alongside Chief RO Gonzaga and RO De Ramos, was unavailable due to his wife's impending childbirth, the Court reset the presentation of his testimony to 16 October 2024, subject to the submission of a medical certificate confirming the scheduled delivery of the witness' wife and the payment of a fine in the amount of ₱1,000.00. Consequently, the Court also reset the accused's initial presentation of evidence to 15 January 2025.[76]

After the Court allowed two (2) resettings[77], the testimony of RO Guevarra proceeded on 26 November 2024.[78]

On the witness stand, RO Guevarra testified through his Judicial Affidavit[79] that: (1) he holds the position of RO IV (Collection Section) assigned at RDO No. 057-Biñan, Laguna; (2) his responsibilities include executing and enforcing summary remedies for the collection of delinquent accounts, submitting reports, and recommending and initiating civil and/or criminal complaints for violations of the NIRC of 1997, as amended; (3) he is one of the complainants who filed a JCA before the DOJ against accused; (4) the case docket was assigned to him for enforcement of summary remedies and collection of delinquent accounts; (5) based on accused TSSI's 2016 GIS[80], accused Jose, Henry and Lorna were listed as President, Secretary and Treasurer, respectively; (6) upon evaluating the case records, he found that a Preliminary Collection Letter (**PCL**) dated 23 February 2016[81] was served *via* registered mail against accused TSSI, demanding payment of tax liabilities within ten (10) days from receipt to avoid accumulation of delinquency interest; (7) he also found that a Final Notice Before Seizure (**FNBS**) dated 28 March 2016[82] was issued and served against accused TSSI, granting a final opportunity to settle its tax liabilities within 10 days from receipt; (8) the subject assessment against accused TSSI became delinquent after the tax due from the BIR audit became final and executory due to failure to appeal the Final Decision on Disputed Assessment (**FDDA**) dated 27 April 2015[83] to the Court of Tax Appeals

76 See Order dated 14 August 2024, supra at note 45.
77 See Notices of Resetting dated 14 October 2024 and 04 November 2024, Division Docket, Volume II, pp. 700-701 and 717-718.
78 See Order dated 26 November 2024, id., pp. 725-726.
79 Dated 14 June 2024; Exhibit "P-24", id., Volume I, pp. 532-542.
80 Exhibit "P-2", supra at note 6, p. 267.
81 Exhibit "P-17", Division Docket, Volume I, p. 308.
82 Exhibit "P-18", id., p. 309.
83 Exhibit "P-15", id., pp. 304-306.

(**CTA**) within the 30-day reglementary period; (**9**) accused Lorna filed a Letter-Request dated 01 July 2016[84], seeking reconsideration of accused TSSI's 2010 tax liabilities under the FDDA; (**10**) after verifying that both the PCL and FNBS had been issued, he proceeded to enforce the summary remedies, specifically the service of the Warrant of Distraint and/or Levy (**WDL**) dated 24 June 2016[85]; and (**11**) on 24 June 2016, he went to accused TSSI's registered address at Filsyn Compound, Brgy. Don Jose, Sta. Rosa, Laguna, where accused Lorna personally received the WDL.

On cross-examination by Atty. Miquiabas, RO Guevarra confirmed that he did not participate in the audit process that resulted in the assessment of tax liabilities against accused TSSI for TY 2010, as his role was limited to the collection of tax liabilities. He also affirmed that accused Lorna's Letter-Request dated 01 July 2016 formed part of the records forwarded to him for evaluation. Finally, he testified that, in his capacity as Seizure Agent, he prepared the PCL although it was not him who signed the same but the Chief of the Collection Division.[86]

On cross-examination by Atty. Camua, RO Guevarra reiterated that he was not involved in the audit process and that his role was limited to the collection process. Although the offer of testimony indicated that he was part of the investigating team, this apparent inconsistency was disregarded, as such statement was not contained in RO Guevarra's Judicial Affidavit.[87]

On redirect examination, RO Guevarra clarified that the Chief of the Collection Division assigned the case docket to him for collection, following its referral from the Assessment Division to the Collection Division, and subsequently to him as the designated Seizure Agent.[88]

In response to the Court's clarificatory questions, RO Guevarra stated that he has served as an RO for approximately 10 years. However, despite his tenure, he was unable to confirm whether the institution of the subject criminal case had already prescribed. He affirmed that the case involves the collection of a tax assessment that became final and

84 Exhibit "P-16", id., p. 307.
85 Exhibit "P-19", id., p. 310.
86 TSN dated 26 November 2024, pp. 8-12.
87 Id., pp. 12-15.
88 Id., pp. 15-16.

executory following the failure to appeal the FDDA dated 27 April 2015 before the CTA—a decision that was also the subject of a Letter-Request for reconsideration filed by accused Lorna. He further testified that the date of the cause of action stated in the Information was 28 March 2016, corresponding to the issuance of the FNBS. However, he was uncertain as to when the five (5)-year prescriptive period for instituting the criminal case should commence.[89]

Upon the completion of RO Guevarra's testimony, plaintiff made an oral formal offer of evidence (**FOE**), consisting of Exhibits "P-1" to "P-24", inclusive of sub-markings. The Court admitted the exhibits in open court. Furthermore, considering the manifestation of both counsels for the accused, Attys. Miquiabas and Camua, that instead of filing a demurrer to evidence they would proceed with the presentation of their respective witnesses, the Court set the testimony of accused Jose and Lorna on 15 January 2025.[90]

<u>EVIDENCE FOR THE ACCUSED</u>

As scheduled, on 15 January 2025, accused presented the testimonies of accused Jose and Lorna.[91]

Accused Lorna was the first to testify. She identified her Judicial Affidavit[92] wherein she stated that: (1) she was accused TSSI's Treasurer of record;(2) she initiated the preparation of a Protest against the FLD/FANs in February 2014; (3) she could not recall who informed her of the issuance of the FLD/FANs and/or who received them; (4) on 28 June 2016, the Manager of Chinabank informed her that a "freeze order" from the Court had been issued against accused TSSI, and that withdrawals from the corporate account were no longer permitted; (5) in November 2021, Henry's live-in partner informed her that the RTC of Santa Rosa City issued a WOA against her for the same offense charged in the present case; (6) she later voluntarily surrendered to the National Bureau of Investigation (**NBI**) and subsequently posted bail; and (7) the criminal complaint filed before the RTC of Santa Rosa City was based on the same audit assessment and alleged tax deficiencies

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89 Id., pp. 16-23.
90 See Order dated 26 November 2024, supra at note 78.
91 See Minutes of the Hearing and Order, both dated 15 January 2025, Division Docket, Volume II, pp. 734-735 and 736-738, respectively.
92 Dated 28 June 2024; Exhibit "A-3", id., pp. 565-570.

covered by the same FLD/FANs and FDDA that are the subject of the present case.

On cross-examination, accused Lorna stated that she is being impleaded in this case in her capacity as Treasurer of accused TSSI, and that her primary responsibility was to collect and deposit with the bank the income received from the company's shuttle services. In contesting her supposed criminal complicity, she explained that it was not her responsibility but the bookkeeper's duty to report the income to the BIR and remit the corresponding taxes. She also testified that her brother and co-accused, Henry, who served as the company's administrative officer, informed her of accused TSSI's tax deficiency.[93]

Accused Lorna admitted that she prepared the Protest against the FLD/FANs to request a reinvestigation of accused TSSI's 2010 tax liabilities. However, despite this admission, she answered in the negative when asked if she prepared the protest in her capacity as one of accused TSSI's responsible officers by virtue of her role as Treasurer. She maintained that such responsibility rested with the President. She also stated that she could not recall whether accused TSSI's deficiency taxes had been paid as it was the bookkeeper that handled this matter.[94]

On redirect examination, accused Lorna confirmed that, despite her designation as Treasurer, she was not necessarily aware of the company's financial matters or the documents filed or purportedly filed with the BIR, as these were handled by the bookkeeper.[95]

Plaintiff did not conduct any re-cross examination.[96]

In response to the Court's questions, accused Lorna clarified that there were only two (2) individuals in the office who could have handed the FLD/FANs to her, either her brother, accused Henry, or the clerk, Muaña, whom she claimed was not authorized to receive official correspondences. She explained that no person or representative in the office had been formally authorized to receive such documents. In fact, she stated that she was the only person authorized to receive

93 TSN dated 15 January 2025, pp. 14-18.
94 Id., pp. 18-21.
95 Id., pp. 21-22.
96 Id., p. 22.

correspondences, although no written memorandum to that effect existed. She further testified that upon being made aware of the FLD/FANs, she filed the necessary protest, prompted by the concern she felt upon seeing those documents.[97]

Regarding a supposed freeze order against the company's bank account, accused Lorna stated that she only learned about it when she went to the bank to withdraw funds for the company's payroll. After being contacted by the Manager of China Bank concerning the freeze order on 28 June 2016, she did not receive any correspondence from BIR until the issuance of the WOA against her. She explained that there were no further communications because the company ceased operations on the same day.[98]

However, when confronted with a Letter-Request dated 01 July 2016, which she acknowledged to be bearing her signature, she stated that she could not recall drafting or sending the letter to BIR. Upon admitting that she is a college graduate with a degree in Accountancy, the Court remarked that it would be unlikely for her to sign a document she did not understand. As a final point of clarification, she stated that she and her husband, accused Jose, separated around 2018 or 2019, and that he was no longer involved in the company's operations from that point onward.[99]

Accused Jose was the last to testify. He identified his Judicial Affidavit[100] wherein he stated the following: (1) he only learned he was one of the accused in the present case when law enforcement officers arrested him on 20 April 2024; (2) prior to that, he had not received any form of communication—written, digital, verbal, or otherwise—including notices, subpoenas, summonses, correspondence, or any other form of information regarding the tax liability of accused TSSI or the institution and existence of the instant criminal case, much less that he was one of the accused; (3) the law enforcement officers who arrested him identified themselves as operatives of the Criminal Investigation and Detection Group (**CIDG**) from the Cabuyao City Station; (4) at the time of his arrest, he was assisting his employer, who was playing golf with a potential client at the Canlubang Golf Course; (5) he felt

97 Id., pp. 22-28.
98 Id., pp. 29-36.
99 Id., pp. 36-41.
100 Dated 30 July 2024Exhibit "A-4", Division Docket, Volume II, pp. 618-626.

humiliated and feared losing his job, as the arrest took place in front of his employer, the potential client, and several others; (6) accused Lorna is his legal wife, from whom he is separated in fact, and that accused Henry is his wife's brother, making him his brother-in-law; (7) he was the former President of accused TSSI, which he co-founded with accused Lorna and accused Henry as a family business corporation; (8) he served as President until his marital relationship with accused Lorna turned sour, leading to their separation, at which point he stepped down and relinquished his position; (9) since their separation, accused Lorna has managed the corporation and he has sought employment elsewhere; (10) he is unfamiliar with plaintiff's documents; (11) during his time as President, an external accountant handled accused TSSI's tax matters; (12) after relinquishing his position, he no longer had any involvement in accused TSSI's affairs; and (13) he has not prepared nor submitted any verbal or written communication with the BIR regarding accused TSSI's tax liabilities.

On cross-examination, accused Jose stated that is employed as a stay-in family driver of a certain Justine Jasper, his employer. He finished high school and, at present, his only source of income is his current employment. He admitted to having served as President of accused TSSI from 2005 until 2016, during which his primary responsibilities included operations, marketing, and management of the shop. When asked about when he was separated his wife, he responded that it occurred before the pandemic, around 2018. Although he initially stated that accused TSSI had ceased operations in 2016, he clarified that he did not resign as President and even confirmed that he continued to hold the position from 2011 to 2019.[101]

When asked whether tax matters fell within his usual functions as President, he answered in the negative and claimed to have no knowledge of such matters. According to accused Jose, he entrusted those functions to his wife and brother-in-law, as it was a family-run business. Narrating further, he claimed to have "appointed" himself as President and that he, along with his wife and brother-in-law, were the responsible officers of accused TSSI. Asked of the tax assessment notices, he denied knowledge of these notices that the BIR purportedly issued. Later in his testimony, he confirmed that accused Henry, the Corporate Secretary who received the LOA, failed to inform him of its receipt. Despite the BIR notices being received by employees and

101 TSN dated 15 January 2025, pp. 50-55.

corporate officers of accused TSSI, he maintained that he neither saw nor received copies of these documents.[102]

The counsel for accused Jose, Atty. Miquiabas, did not conduct any redirect examination.[103]

In response to the Court's clarificatory questions, accused Jose disclosed that his shuttle service company owned sixty (60) buses and reiterated that it ceased operations in 2016 (after starting the business in 2004 or 2005). According to him, he, initially, had only three (3) to five (5) units before eventually expanding to 60 buses. He also stated that the company employed around seventy (70) personnel. Although he could not recall the exact number of employees in 2014, he confirmed there were definitely more than three (3) employees at the time, and at least five (5) including the corporate officers. When asked why he appeared to be very conversant in English despite only completing high school, he explained that it was because his employer is a foreign national.[104]

When asked why he was unaware of the BIR correspondences, accused Jose claimed that his company had no issues with the BIR prior to its closure in 2016. As regards the closure of TSSI, he admitted that he did not seek any legal or professional advice to properly wind up the company's affairs. The business effectively ended when they lost their clients, and the remaining bus units were simply left at a junkshop.[105]

Accused Jose was also asked to narrate how he started his business in 2005. He informed the Court that after graduating from high school in 1984, he initially worked as a security guard and later as a driver for Jam Transport. In 1993, he became the Operations Manager of a company called French Shuttle Service. When the Court inquired about the source of his funding for the acquisition of three (3) buses to start his own business, he explained that he received compensation (also referred to by him as a "prize") amounting to ₱7 million from the owner of French Shuttle Service upon its closure.[106]

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102 Id., pp. 55-58.
103 Id., p. 58.
104 Id., pp. 58-63.
105 Id., pp. 64-68.
106 Id., pp. 68-75.

When asked to explain why, despite still being the President of accused TSSI during TY 2010, he was unaware of the BIR investigation, accused Jose simply responded that he was never notified of such investigation. This, notwithstanding the fact that there had been no change in accused TSSI's office location or in its personnel since the business began. He reiterated that he had entrusted all BIR-related matters to his wife and brother-in-law. In this regard, he acknowledged that their actions were binding upon him, as he had authorized them to act on his behalf on such matters.[107]

Lastly, in response to the Court's further questioning, accused Jose maintained that he only became aware of the BIR's audit investigation upon his arrest. He also clarified that the business operated an average of forty (40) buses from 2007 until its closure in 2016. These buses were reconditioned units imported from Japan and purchased in Subic.[108]

Upon the completion of accused Jose's testimony, the counsel for the accused, Atty. Camua, made an oral FOE, consisting of Exhibits "A-1" to "A-4-1", inclusive of sub-markings. Over the objection of plaintiff's lead counsel, Atty. Merrissa Cagampan-Talatala, who opposed the admission of Exhibits "A-1" and "A-2"[109] on the ground of irrelevance, the Court admitted the exhibits in open court and deemed accused to have formally rested their case.[110]

In the same hearing held on 15 January 2025, the Court granted the parties' counsels a period of five (5) days, or until 20 January 2025, within which to file their respective memoranda. The filing must be done both *via* electronic mail and by personal filing of a hard copy to the Court, in accordance with *En Banc* Resolution No. 8-2024.[111] The Court likewise set the promulgation of judgment on 07 May 2025 and

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107 Id., pp. 75-80.

108 Id., pp. 80-84.

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Exhibit No.	Description
"A-1"	Information dated 15 January 2020 filed before the Regional Trial Court (**RTC**) of Santa Rosa City, Laguna.
"A-2"	Transcript of Stenographic Notes (**TSN**) dated 14 March 2023 from the RTC, Branch 102, Santa Rosa City, Laguna.

110 See Minutes of the Hearing and Order, both dated 15 January 2025, supra at note 91.

111 Guidelines on Submission of Electronic Copies of Pleadings and Other Court Submissions Before the Court of Tax Appeals Pursuant to A.M. No. 10-3-7-SC and A.M. No. 11-9-4-SC.

directed counsels for the accused to ensure the presence of all accused during said promulgation.[112]

In compliance with the Court's directive, accused Jose filed his Memorandum[113] *via* LBC (an accredited courier) on 17 January 2025, while accused Lorna and Henry jointly filed their Memorandum[114] *via* email on 20 January 2025 and personally on 24 January 2025. Plaintiff filed its Memorandum[115] personally on 20 January 2025. In a Minute Resolution dated 06 February 2025[116], the Court noted these submissions, deemed the case submitted for decision, and reiterated the scheduled promulgation of judgment on 07 May 2025.

ISSUES

In the Pre-Trial Order[117], the following issues have been submitted for this Court's resolution —

I.

WHETHER ACCUSED TRANSTECH SHUTTLE SERVICE, INC. AND ITS RESPONSIBLE OFFICERS, JOSE NAPLIS MAGCALAYO (JOSE), HENRY V. LI (HENRY) AND LORNA LI MAGCALAYO (LORNA), IN THEIR CAPACITIES AS PRESIDENT, SECRETARY AND TREASURER, RESPECTIVELY, ARE GUILTY BEYOND REASONABLE DOUBT OF VIOLATING SECTION 255 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED, AS CHARGED IN THE INFORMATION; AND

II.

WHETHER ALL ACCUSED ARE CIVILLY LIABLE IN THE AMOUNT OF ₱23,974,549.82, EXCLUSIVE OF SURCHARGE AND INTEREST, REPRESENTING DEFICIENCY INCOME TAX (IT) FOR THE TAXABLE YEAR (TY) 2010.

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112 See Minutes of the Hearing and Order, both dated 15 January 2025, supra at note 91.
113 Division Docket, Volume II, pp. 746-752.
114 Id., pp. 787-794.
115 Id., pp. 768-782.
116 Id., p. 795.
117 Supra at note 41, p. 607.

ARGUMENTS FOR THE PLAINTIFF

Plaintiff argues that it has established all three (3) elements of Willful Failure to Pay Tax under Section 255[118] of the NIRC of 1997, as amended. *First*, accused TSSI was required to pay deficiency IT for TY 2010 amounting to ₱23,974,549.82, as a result of an audit investigation and assessment. *Second*, an FDDA was issued to accused TSSI, as the assessment against it has become final, executory and demandable. *Third*, accused TSSI willfully and deliberately failed to pay the deficiency IT due for TY 2010 despite repeated demand.

Plaintiff notes that, despite the denials made by accused TSSI's responsible corporate officers, the records show that they were afforded ample opportunity to contest the BIR's assessment. Moreover, accused TSSI, through its Treasurer, accused Lorna, demonstrated a clear understanding of the basis of the assessment, as reflected in her Letter-Request dated 01 July 2016, where she specifically argued against the disallowance of certain expenses.

As regards receipt of the assessment notices, plaintiff points out that, during clarificatory questioning, accused Lorna admitted that accused TSSI's administrative staff, including its corporate officers, consisted of only five (5) individuals. She even identified Muaña as one of them. Given this, plaintiff argues that it would be illogical to believe that the assessment notices did not reach the responsible corporate officers.

With respect to the element of willful failure to pay, plaintiff argues that it is beyond dispute that accused TSSI's responsible corporate officers were not unaware of the BIR's tax investigations. They admitted in open court that they had knowledge and experience in running the business, particularly accused Lorna, who holds a degree in Accountancy, and accused Jose, who has over twenty (20) years of experience in the shuttle transportation industry.

Plaintiff thus contends that, in this case, despite having knowledge of the issuance of the LOA and assessment notices, accused TSSI's responsible corporate officers chose not to cooperate with BIR.

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118 Supra at note 2.

Instead, they feigned ignorance of the assessment in an apparent attempt to evade liability and avoid the consequences of their inaction.

<u>ARGUMENTS FOR THE ACCUSED</u>

Accused Jose submits that this Court must dismiss the case, as plaintiff's right to file an Information for the crime charged had already prescribed.

Arguing that the instant criminal case for violation of Section 255[119] of the NIRC of 1997, as amended, was filed beyond the five (5)-year prescriptive period under Section 281[120] of the NIRC of 1997, as amended, accused Jose points out that the Information alleges that the offense was committed on 28 March 2016, the date the FNBS was issued. However, the Information was only filed on 20 April 2023—more than seven (7) years later—rendering the action time-barred. Given the lapse of the prescriptive period, accused Jose contends that the Court lacks jurisdiction to try the case, emphasizing that jurisdiction is conferred by law, cannot be waived, and may be raised at any stage of the proceedings.

To support his argument, accused Jose cites the Supreme Court's ruling in *Imelda Sze, et al. v. Bureau of Internal Revenue*[121], which affirmed the CTA's position that the five (5)-year period for instituting criminal action begins from the date of final determination of deficiency tax—stated in the Information as 28 March 2016. Since more than five (5) years had passed before the filing of the Information, accused Jose argues that the action has prescribed and, consequently, accused TSSI and its responsible officers must be acquitted.

Accused Jose further asserts that assuming *arguendo* that prescription did not set in, there is no sufficient evidence to convict him of the offense charged. He insists on his acquittal on the ground that there is no evidence showing he had personal knowledge of the BIR's tax audit and investigation against accused TSSI, aside from the fact that he was its former President. He emphasizes that, as extant from the records, it was the company staff (or accused Henry) who received all

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119 Supra at note 2.
120 **SEC. 281**. *Prescription for Violations of any Provision of this Code.*
121 G.R. No. 210238, 06 January 2020.

communications from the BIR. On the other hand, it was accused Lorna who directly corresponded with the BIR. The plaintiff's evidence and the Judicial Affidavits of accused Jose and Lorna show that he was not involved in the audit process and that made no willful or fraudulent attempt to evade the payment of tax.

Accused Jose added that since fraudulent and willful intent cannot be presumed and must be proven beyond reasonable doubt, and plaintiff failed to do so, he insists that he must be acquitted—both because the case is already barred by prescription and, alternatively, due to plaintiff's failure to overcome the constitutional presumption of innocence.

As for accused Lorna and Henry, they also seek their acquittal in this case due to prescription of plaintiff's right to institute a criminal action as a means of collecting accused TSSI's alleged deficiency IT for TY 2010 under the FDDA. *However,* instead of reckoning the five (5)-year prescriptive period from the issuance of the FNBS on 28 March 2016, they compute the period from the issuance of the FDDA on 27 April 2015—thereby asserting that more than eight (8) years had already lapsed before the Information was filed.

In addition to the prescription of plaintiff's right to institute a criminal action, accused Lorna and Henry submit that this case should also be dismissed on the ground of forum shopping.

With respect to the issue of forum shopping, accused Lorna and Henry allege that the BIR and ASP Dacpano knowingly and unlawfully filed two (2) separate Informations, one before the RTC of Santa Rosa City, Laguna, and another before this Court. They claim that, in doing so, ASP Dacpano improperly split the causes of action by isolating the deficiency IAET of ₱180,666.27 from the rest of the assessed tax liabilities. This, they argue, was done to facilitate the filing of a criminal case before the RTC, which has jurisdiction over tax cases involving amounts below ₱1 million, while simultaneously filing a separate case before CTA for amounts falling within its jurisdictional threshold of at least ₱1 million.

RULING OF THE COURT

Before delving into the merits of the case, this Court finds it propitious to first rule on accused's contentions that (1) the filing of the instant criminal action is already barred by prescription and (2) the case is dismissible on the ground of forum shopping.

For an orderly disposition of the issues, the Court shall first address the matter of forum shopping before proceeding to the issue of prescription.

PLAINTIFF DID NOT COMMIT FORUM SHOPPING IN FILING THE SUBJECT INFORMATION.

Accused Lorna and Henry allege that forum shopping was committed when the BIR and ASP Dacpano caused the filing of two (2) separate Informations—one before the RTC, Branch 102, Santa Rosa City, docketed as Criminal Case No. 21-2701-SRCL, and the other before this Court—both supposedly arising from the same tax audit and assessment conducted against accused TSSI. They argue that the filing of multiple criminal actions involving the same accused and allegedly arising from the same set of facts amounts to a willful splitting of causes of action designed to obtain favorable judgments from different courts with differing jurisdictional thresholds.

However, this Court has already ruled that the offenses charged in the two (2) cases are not identical. The case pending before RTC, involves the failure to pay deficiency IAET in the amount of ₱180,666.27, exclusive of surcharge and interest, for TY 2010. In contrast, the present case involves the failure to pay deficiency IT in the amount of ₱23,974,549.82, exclusive of surcharge and interest, for the same TY.

While both cases originate from the same BIR audit and involve the same taxable period and accused, the nature of the taxes assessed, their respective legal bases, and the amounts involved are different and are governed by separate provisions of the NIRC of 1997, as amended. Thus, the cases do not involve the same cause of action.

The essence of forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. It exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. On the other hand, for *litis pendentia* to be a ground for the dismissal of an action, the following requisites must concur: (**a**) identity of parties, or at least such parties who represent the same interests in both actions; (**b**) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (**c**) the identity with respect to the two (2) preceding particulars in the two (2) cases is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.[122]

In this case, although the parties are the same, there is no identity of rights or relief sought. A judgment in the RTC case, whether for acquittal or conviction, would not preclude a separate judgment in the instant case, as they pertain to different tax liabilities arising from distinct causes of action.

Accordingly, the filing of separate Informations before the RTC and the CTA does not constitute forum shopping. Rather, it reflects adherence to the jurisdictional requirements under existing law.

The Court shall now resolve the issue of prescription.

THE SUBJECT INFORMATION WAS BELATEDLY FILED; HENCE, PLAINTIFF'S RIGHT TO PROSECUTE ACCUSED FOR WILLFUL FAILURE TO PAY TAX HAS ALREADY PRESCRIBED.

In resolving the issue of the prescription of the offense charged, the following factors should be considered: (1) the period of prescription for the offense charged; (2) the time when the prescriptive period starts to run; and (3) the time when the prescriptive period is interrupted.[123]

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122 *Sps. Apolinario Melo and Lilia T. Melo, et al. v. The Hon. Court of Appeals and Arsenia Coronel*, G.R. No. 123686, 16 November 1999.

123 See *Benjamin ("Kokoy") T. Romualdez v. Hon. Simeon V. Marcelo, in his official capacity as the Ombudsman, and Presidential Commission on Good Government*, G.R. Nos. 165510-33, 28 July 2006, citing *Panfilo O. Domingo v. The Sandiganbayan (Second Division) and The People of the Philippines*, G.R. No. 109376, 20 January 2000.

I. THE PRESCRIPTIVE PERIOD FOR WILLFUL FAILURE TO PAY TAX DEFICIENCY INCOME TAX (IT) UNDER SECTION 255 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED, IS FIVE (5) YEARS UNDER SECTION 281 OF THE NIRC OF 1997, AS AMENDED.

Regarding the ***first consideration***, *i.e.*, prescriptive period of the offense charged, Section 281 of the NIRC of 1997, as amended, governs the prescriptive period for criminal tax actions and provides as follows:

> ...
> SEC. 281. *Prescription for Violations of any Provision of this Code.* — **All violations of any provision of this Code shall prescribe after five (5) years.**
>
> **Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.**
>
> **The prescription shall be interrupted when proceedings are instituted against the guilty persons** and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.
>
> The term of prescription shall not run when the offender is absent from the Philippines.[124]
>
> ...

The above provision clearly states that the prescriptive period for all violations of the NIRC of 1997, as amended, including the offense charged in this case (*i.e.*, willful failure to pay tax under Section 255[125] of the NIRC of 1997, as amended), is **five (5) years**.

II. THE PRESCRIPTIVE PERIOD FOR WILLFUL FAILURE TO PAY DEFICIENCY INCOME TAX (IT) UNDER SECTION 255 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED, BEGINS TO RUN UPON THE FINALITY OF THE ASSESSMENT.

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124 Italics in the original text and emphasis supplied.
125 Supra at note 2.

With regard to the ***second consideration***, *i.e.*, the time when the prescriptive period starts to run, Section 281[126] of the NIRC of 1997, as amended, provides for two (2) reckoning points for when the prescriptive period begins to run:

1. If the day of the commission is **known**, prescription begins to run from the day of the commission of the violation of the law; or,

2. If the day of the commission is unknown, from its discovery and the institution of judicial proceedings for its investigation and punishment.

In the case of *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*[127] (**Lim, Sr.**), the Supreme Court ruled that the crime of failure to pay tax is committed only after receipt of the final notice and demand for payment, coupled with willful refusal to pay the taxes due within the allotted period, *viz*:

> ...
>
> Inasmuch as the final notice and demand for payment of the deficiency taxes was served on petitioners on July 3, 1968, it was only then that the cause of action on the part of the BIR accrued. **This is so because prior to the receipt of the letter-assessment, no violation has yet been committed by the taxpayers. The offense was committed only after receipt was coupled with the willful refusal to pay the taxes due within the allot[t]ed period. The two criminal informations, having been filed on June 23, 1970, are well-within the five-year prescriptive period and are not time-barred.**
>
> ...

The Supreme Court further applied this interpretation in *Petronila C. Tupaz v. Honorable Benedicto B. Ulep Presiding Judge of RTC Quezon City, Branch 105, and the People of the Philippines*[128] (**Tupaz**), where it held that the offense of failure to pay deficiency IT can only be deemed committed after the taxpayer has been served a notice and demand for payment of the deficiency taxes, *viz*:

[126] Supra at p. 26.
[127] G.R. Nos. L-48134-37, 18 October 1990; Emphasis and underscoring supplied.
[128] G.R. No. 127777, 01 October 1999; Citations omitted, italics in the original text and emphasis supplied.

> ...
>
> We agree with the Solicitor General that the offense has not prescribed. Petitioner was charged with **failure to pay deficiency income tax** after repeated demands by the taxing authority. In *Lim, Sr. v. Court of Appeals*, we stated that[,] **by its nature[,] the violation could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayer**. Hence, it cannot be said that the offense has been committed as early as 1980, upon filing of the income tax return. This is so because **prior to the finality of the assessment, the taxpayer has not committed any violation for nonpayment of the tax. The offense was committed only after the finality of the assessment coupled with taxpayer's willful refusal to pay the taxes within the allotted period.**
>
> ...

A plain reading of the subject Information[129] reveals that the alleged violation of Section 255[130] of the NIRC of 1997, as amended, is that accused "knowingly, unlawfully and willfully fail[ed] and refuse[d] to pay their [IT] deficiency in the amount of [₱]23,974,549.82, exclusive of surcharges and interests, for [TY] 2010 despite receipt of several notices and demands as specified under the law and regulations, the last of which are the [PAN] and [the FLD/FANs], including the [FNBS] dated March 28, 2016[.]"

Clearly, the commission of the tax offense is known. Therefore, the applicable reckoning point is the date of the commission of the violation, *i.e.*, failure to pay deficiency tax, specifically the date when the deficiency tax assessment became final.

As alleged in the JCA[131] filed by ROs Gonzaga, Malaguit, De Ramos and Guevarra, and as confirmed by the records, the FLD/FANs dated 07 November 2013[132], together with the Details of Discrepancies[133], were issued and served *via* registered mail upon accused TSSI on 07 November 2013.[134] Subsequently, accused TSSI, through accused Lorna, filed its First Protest[135] on 28 November 2013 and a Second Protest[136] on 05 February 2014, both requesting a reinvestigation

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129 Supra at note 1.
130 Supra at note 2.
131 Supra at note 23.
132 Exhibits "P-8" and "P-9" to "P-9-D", supra at notes 65 and 66, respectively.
133 Exhibit "P-8-A", supra at note 67.
134 Exhibit "P-10", Division Docket, Volume I, p. 297.
135 Exhibit "P-11", supra at note 68.
136 Exhibit "P-13", supra at note 70.

(implicitly in the First Protest, as admitted by accused Lorna, and expressly in the Second Protest). In response, the BIR, through then RD Tan, issued the First Reply[137] on 12 December 2013 and the Second Reply[138] on 20 February 2014, both denying the request for reinvestigation.

While the exact date of receipt of the FLD/FANs cannot be clearly established from the records (considering that the 15 November 2013 date indicated in the First Protest and the 23 January 2014 date indicated in the Second Protest are both unsupported by documentary evidence) or from the witnesses' testimonies, there is sufficient basis for this Court to consider, for purposes of determining the timeliness of the First Protest[139], that accused TSSI received the FLD/FANs[140] (through either accused Henry or Muaña, as testified to by accused Lorna) on **15 November 2013**. This presumption is justified by the fact that the BIR, in its First Reply[141], may be deemed to have admitted such date by its silence.[142] Counting 30 days therefrom, accused TSSI had **until 15 December 2013** to file a valid protest against the FLD/FANs.

Accordingly, accused TSSI's **First Protest**, filed on **28 November 2013**, was *timely*, while the Second Protest, filed on 05 February 2014, was already filed *out of time* and must therefore be disregarded for purposes of determining the reckoning point for the finality of the assessment.

However, a perusal of the First Protest reveals that it failed to comply with the requirements under Section 228 of the NIRC of 1997, as amended, in relation to Section 3 of Revenue Regulations (**RR**) No.

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137 Exhibit "P-12", supra at note 69.
138 Exhibit "P-14", supra at note 71.
139 Exhibit "P-11", supra at note 68.
140 Exhibits "P-8" and "P-9" to "P-9-D", supra at notes 65 and 66, respectively.
141 Exhibit "P-12", supra at note 69.
142 Section 33, Rule 130 of the Revised Rules on Evidence, as amended, provides:

> SEC. 33. *Admission by silence.* — An act or declaration made in the presence and within the hearing or observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, and when proper and possible for him to do so, may be given in evidence against him.

12-99[143], as amended by RR No. 18-2013[144] and RR No. 07-2018.[145] These provisions set forth the essential elements of a valid administrative protest.

Section 228 of the NIRC of 1997, as amended, reads, in part, 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: ...
>
> ...
>
> 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.**[146]
>
> ...

Based on the foregoing, a tax assessment issued by the BIR may be protested administratively, within 30 days from receipt thereof, by filing either a request for reconsideration or a request for reinvestigation, **in such form and manner as may be prescribed by implementing rules and regulations.**

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[143] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

[144] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

[145] Amending Certain Sections of Revenue Regulations No. 12-99, as Amended by Revenue Regulations No. 18-13, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

[146] Emphasis, italics and underscoring supplied.

Implementing Section 228 of the NIRC of 1997, as amended, particularly with respect to the form and manner of filing requests for reconsideration or reinvestigation, Section 3 of RR No. 12-99[147], as amended by RR No. 18-2013[148] and RR No. 07-2018[149], provides, in part, as follows:

> ...
>
> SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> ...
>
> 3.1.5 *Disputed Assessment.* — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
>
> (i) **Request for reconsideration** — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
>
> (ii) **Request for reinvestigation** — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.
>
> **The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, <u>otherwise, his protest shall be considered *void and without force and effect*</u>.**
>
> ...
>
> For request for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final. The term '*relevant supporting documents*' refer to those documents necessary to support the legal

[147] Supra at note 143.
[148] Supra at note 144.
[149] Supra at note 145.

> and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, the term *'the assessment shall become final'* shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.[150]
>
> ...

From the foregoing provisions, it is evident that the form and manner by which a taxpayer must file a protest should be distinctly defined. In particular, a clear distinction is drawn between the two (2) types of protest: a request for reconsideration and a request for reinvestigation. As such, these two (2) forms of protest can no longer be used interchangeably, nor can their differences be brushed aside.

Clearly, a **request for reconsideration** seeks a re-evaluation of the assessment based solely on existing records, without the need to present additional evidence. In contrast, a **request for reinvestigation** involves a re-evaluation based on newly discovered or additional evidence that the taxpayer intends to submit during the reinvestigation. It is important to emphasize that this distinction is critical, particularly for determining which type of request triggers the 60-day period within which the taxpayer must submit all relevant supporting documents. Notably, this 60-day period applies only to requests for reinvestigation.

In any case, a valid protest must clearly state: (1) the nature thereof (whether it is a request for *reconsideration* or *reinvestigation*, and in the latter case, must specify the newly discovered or additional evidence to be presented); (2) date of the assessment notice; and (3) the applicable law, rules and regulations, or jurisprudence on which the protest is based. **Failure to comply with these requirements renders the protest void and without legal effect.**

Here, accused TSSI's First Protest did not comply with Section 228 of the NIRC of 1997, as amended, in relation to the above-quoted Section 3 of RR No. 12-99, as amended by RR No. 18-2013 and RR No. 07-2018. Notably, the protest is merely *pro forma*, as it does not state its nature, *i.e.*, a request for reinvestigation (as testified to by accused Lorna), nor does it specify any newly discovered or additional evidence that accused

150 Italics in the original text and supplied, emphasis and underscoring supplied.

TSSI intends to present. In addition, the protest fails to cite the applicable law, rules and regulations, or jurisprudence on which it is based. As a result, accused TSSI's First Protest must be deemed void and without legal effect.

Pertinently, in *Commissioner of Internal Revenue v. Court of Tax Appeals-Third Division and Citysuper, Incorporated*[151] (**Citysuper**), the Supreme Court held that an administrative protest must be filed not only within the prescribed period but also in the form and manner required by the applicable implementing rules and regulations. Otherwise, the protest is void, *viz*:

> ...
>
> Section 228 of the National Internal Revenue Code is clear. **The administrative protest must be filed not only within the stated period, but also "in such form and manner as may be prescribed by implementing rules and regulations."** Respondent's April 29, 2015 letter did not comply with the three requirements of Revenue Regulations No. 18-2013.
>
> ...
>
> ...**[R]espondent's protest was void for failing to comply with the requirements of Revenue Regulations No. 18-2013, as mandated by Section 228 of the National Internal Revenue Code.** Respondent erred in claiming that the July 13, 2015 letter was petitioner's "final decision" on its protest, there being **no valid protest** to speak of. Notably, the July 13, 2015 letter did not discuss the merits of any communication sent by respondent after its April 29, 2015 letter, but merely stated that no valid protest was filed.
>
> ...

Applying the foregoing ruling in *Citysuper*, accused TSSI's First Protest, although timely filed, must nonetheless be deemed void and without legal effect for failure to comply with the requisites of a valid administrative protest.

Having established that accused TSSI failed to file a valid protest against the FLD/FANs within the 30-day period from receipt thereof, as provided under Section 228 of the NIRC of 1997, as amended, in relation to Section 3 of RR No. 12-99[152], as amended by RR No. 18-2013[153] and

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[151] G.R. No. 239464, 10 May 2021; Citation omitted and emphasis supplied.
[152] Supra at note 143.
[153] Supra at note 144.

RR No. 07-2018[154], the subject assessment for deficiency IT became final, executory and demandable on **16 December 2013** (the day after the last day for filing a protest against the FLD/FANs) and **on such date the offense is "committed" for purposes of the five (5)-year prescriptive period**.

Contrary to the contentions of accused Jose, and accused Lorna and Henry, the five (5)-year prescriptive period cannot be reckoned from the issuance of the FDDA[155] on 27 April 2015, nor from the issuance of the FNBS[156] on 28 March 2016. This is because it was the absence of a valid and timely protest—not the issuance of these BIR documents—that rendered the assessment for deficiency IT final, executory, and demandable.

III. THE PRESCRIPTIVE PERIOD FOR WILLFUL FAILURE TO PAY DEFICIENCY INCOME TAX (IT) IS INTERRUPTED BY THE FILING OF THE JOINT COMPLAINT-AFFIDAVIT (JCA) WITH THE DEPARTMENT OF JUSTICE (DOJ) FOR PURPOSES OF PRELIMINARY INVESTIGATION.

Section 281[157] of the NIRC of 1997, as amended, which governs the prescriptive period for criminal tax actions, expressly states that the prescriptive period shall be interrupted when "**proceedings are instituted against the guilty persons**." Whether the government's right to prosecute the instant case has already prescribed hinges on the interpretation of the term "**instituted**" as it appears in the said provision. Stated otherwise, a meaningful resolution of the issue requires a clear understanding of what constitutes the "**institution of proceedings**" sufficient to interrupt the running of the prescriptive period.

In its ordinary usage, the word "institute" means "to set going." Black's Law Dictionary defines "institute" as "to begin or start; commence."[158] In line with these definitions, the term "institute," as used in Section 281 of the NIRC of 1997, as amended, should be understood

[154] Supra at note 145.
[155] Exhibit "P-15", supra at note 83.
[156] Exhibit "P-18", supra at note 82.
[157] Supra at p. 26.
[158] Black's Law Dictionary, p. 2336 (8th ed., 2009).

to refer to the filing of the complaint, if applicable, before the DOJ, as such filing effectively sets the criminal justice machinery in motion.

Moreover, it is worthwhile to refer to established jurisprudence interpreting similar provisions under both the Revised Penal Code[159] (**RPC**) and Act No. 3326[160], as amended, which respectively govern the prescription of felonies and violations of special laws. This is especially relevant considering that Section 281[161] of the NIRC of 1997, as amended, substantially mirrors the prescriptive provisions found therein, particularly Section 2 of Act No. 3326, as amended, as shown below:

RPC, as amended	**Act No. 3326, as amended**
ART. 91. *Computation of prescription of offenses.* — **The period of prescription** shall commence to run from the day on which the crime is discovered by the offended party, the authorities or their agents, and **shall be interrupted by the filing of the complaint or information**, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him. The term of prescription shall not run when the offender is absent from the Philippine Archipelago. (Emphasis supplied)	SEC. 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the, discovery thereof and the institution of judicial proceedings for its investigation and punishment. **The prescription shall be interrupted when proceedings are instituted against the guilty person**, and shall begin to run again il the proceedings are dismissed for reasons not constituting jeopardy. (Emphasis supplied)

Given that the NIRC of 1997, as amended, is itself a special law, there is no justification for treating it differently from other special laws in determining the point at which the prescriptive period is deemed interrupted.

159 AN ACT REVISING THE PENAL CODE AND OTHER PENAL LAWS.
160 AN ACT TO ESTABLISH PERIODS OF PRESCRIPTION FOR VIOLATIONS PENALIZED BY SPECIAL ACTS AND MUNICIPAL ORDINANCES AND TO PROVIDE WHEN PRESCRIPTION SHALL BEGIN TO RUN.
161 Supra at p. 26.

In the 1967 case of *People of the Philippines, et al. v. Ascencion P. Olarte*[162] (**Olarte**), which was later cited in *People of the Philippines v. Mateo A. Lee, Jr.*[163] (**Lee, Jr.**) and *People of the Philippines v. Ma. Theresa Pangilinan*[164] (**Pangilinan**), the Supreme Court settled divergent views as to the **effect of filing a complaint** with the Municipal Trial Court **for purposes of preliminary investigation** on the prescriptive period of the offense. The High Court therein held that the filing of the complaint for purposes of preliminary investigation **interrupts the period of prescription of criminal responsibility**. It explained thus:

> ...
>
> Analysis of the precedents on the issue of prescription discloses that there are two lines of decisions following differing criteria in determining whether prescription of crimes has been interrupted. **One line of precedents holds that the filing of the complaint with the justice of the peace (or municipal judge) does interrupt the course of the prescriptive term**: People vs. Olarte, L-13027, June 30, 1960 and case cited therein; People vs. Uba, L-13106, October 16, 1959; People vs. Aquino, 68 Phil. 588, 590. **Another series of decisions declares that to produce interruption the complaint or information must have been filed in the proper court that has jurisdiction to try the case on its merits**: People vs. Del Rosario, L-15140, December 29, 1960; People vs. Coquia, L-15456, June 29, 1963.
>
> In view of this diversity of precedents, and **in order to provide guidance for Bench and Bar**, this Court has reexamined the question and, after mature consideration, has arrived at the conclusion that **<u>the doctrine is, and should be, the one established by the decisions holding that the filing of the complaint in the Municipal Court, even if it be merely for purposes of preliminary examination or investigation, should, and does, interrupt the period of prescription of the criminal responsibility, even if the court where the complaint or information is filed cannot try the case on its merits</u>. Several reasons buttress this conclusion: first, the text of article 91 of the Revised Penal Code, in declaring that the period of prescription "shall be interrupted by the filing of the complaint or information" without distinguishing whether the complaint is filed in the court for preliminary examination or investigation merely, or for action on the merits. Second, even if the court where the complaint or information is filed may only proceed to investigate the case, its actuations already represent the initial step of the proceedings against the offender. Third, it is unjust to deprive the injured party of the right to obtain vindication on account of delays that are not under his control.**

[162] G.R. No. L-22465, 28 February 1967.
[163] G.R. No. 234618, 16 September 2019.
[164] G.R. No. 152662, 13 June 2012.

> **All that the victim of the offense may do on his part to initiate the prosecution is to file the requisite complaint.**
>
> **And it is no argument that Article 91 also expresses that the interrupted prescription "shall commence to run again when such proceedings terminate without the accused being convicted or acquitted", thereby indicating that the court in which the complaint or information is filed must have power to acquit or convict the accused. Precisely, the trial on the merits usually terminates in conviction or acquittal, not otherwise. But it is in the court conducting a preliminary investigation where the proceedings may terminate without conviction or acquittal, if the court should discharge the accused because no *prima facie* case has been shown.**
>
> Considering the foregoing reasons, the Court hereby overrules the doctrine of the cases of People vs. Del Rosario, L-15140, December 29, 1960; and People vs. Coquia, L-15456, promulgated June 29, 1963.
>
> ...

As can be gleaned from the foregoing, the Supreme Court explicitly adopted the ordinary sense of the word "instituted," ruling that it includes the initiation of proceedings for preliminary investigation, not just the formal filing of an Information in Court.

Then, in the 2004 case of *Roberto Brillante v. Court of Appeals and the People of the Philippines*[165] (**Brillante**), citing the 1983 case of *Emiliano A. Francisco and Harry B. Bernardino v. The Honorable Court of Appeals and the People of the Philippines*[166] (**Francisco**), the Supreme Court said that the ruling in *Francisco* amplified the *Olarte* doctrine when it categorically ruled that **the filing of a complaint with the fiscal's office suspends the running of the prescriptive period of a criminal offense**, *viz*:

> ...
> [T]he Court in *Francisco v. Court of Appeals* clarified that **the filing of the complaint with the fiscal's office also suspends the running of the prescriptive period of a crime**:
>
> > As is a well-known fact, **like the proceedings in the court conducting a preliminary investigation, a**

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[165] G.R. Nos. 118757 & 121571, 19 October 2004; Citations omitted, italics in the original text and emphasis and underscoring supplied.

[166] G.R. No. L-45674, 30 May 1983.

proceeding in the Fiscal's Office may terminate without conviction or acquittal.

As Justice Claudio Teehankee has observed:

> To the writer's mind, these reasons logically call with equal force, for the express overruling also of the doctrine in People vs. Tayco, 73 Phil. 509, (1941) that the filing of a complaint or *denuncia* by the offended party with the City Fiscal's Office which is required by law to conduct the preliminary investigation does not interrupt the period of prescription. In chartered cities, criminal prosecution is generally initiated by the filing of the complaint or *denuncia* with the city fiscal for preliminary investigation. In the case of provincial fiscals, besides being empowered like municipal judges to conduct preliminary investigations, they may even reverse actions of municipal judges with respect to charges triable by Courts of First instance. ...

There is no conflict in the pronouncements of the Court in *Olarte* and *Francisco* as Brillante erroneously suggests. <u>***Olarte*** **laid down the doctrine that a complaint filed for purposes of preliminary investigation tolls the running of the prescriptive period of a criminal offense.**</u> **The criminal complaint for libel in that case was filed, for the purpose of preliminary investigation, with the Justice of the Peace Court in Pozorrubio, Pangasinan. Hence, in setting the doctrine, the Court referred to the "filing of the complaint in the Municipal Court."** <u>**The question of whether the doctrine laid down in *Olarte* also applies to criminal complaints filed with the prosecutor's office was settled in *Francisco*. Specifically, the Court in *Francisco* amplified the *Olarte* doctrine when it categorically ruled that the filing of a complaint with the fiscal's office suspends the running of the prescriptive period of a criminal offense.**</u>

...

Relevantly, in the 2008 case of *Luis Panaguiton, Jr. v. Department of Justice, et al.*[167] (**Panaguiton**), the Supreme Court had the occasion to discuss the structure of the judicial system during the enactment of Act No. 3326[168], as well as the prevailing jurisprudence at the time, which recognized that **the filing of a complaint before the justice of the peace for purposes of preliminary investigation was sufficient to toll the prescriptive period**. The Hight Court discussed as follows:

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[167] G.R. No. 167571, 25 November 2008.
[168] Supra at note 160.

...

It must be pointed out that **when Act No. 3326 was passed on 4 December 1926, preliminary investigation of criminal offenses was conducted by justices of the peace**, thus, the phraseology in the law, "institution of judicial proceedings for its investigation and punishment", and **the prevailing rule at the time was that once a complaint is filed with the justice of the peace for preliminary investigation, the prescription of the offense is halted.**

The historical perspective on the application of Act No. 3326 is illuminating. Act No. 3226 was **approved** on 4 December 1926 **at a time when the function of conducting the preliminary investigation of criminal offenses was vested in the justices of the peace**. Thus, the prevailing rule at the time, as shown in the cases of *U.S. v. Lazada* and *People v. Joson*, is that the **prescription of the offense is tolled once a complaint is filed with the justice of the peace for preliminary investigation inasmuch as the filing of the complaint signifies the institution of the criminal proceedings against the accused**. These cases were followed by our declaration in *People v. Parao and Parao* that the first step taken in the investigation or examination of offenses partakes the nature of a judicial proceeding which suspends the prescription of the offense. Subsequently, in *People v. Olarte*, we held that the filing of the complaint in the Municipal Court, even if it be merely for purposes of preliminary examination or investigation, should, and does, interrupt the period of prescription of the criminal responsibility, even if the court where the complaint or information is filed cannot try the case on the merits. In addition, even if the court where the complaint or information is filed may only proceed to investigate the case, its actuations already represent the initial step of the proceedings against the offender, and hence, the prescriptive period should be interrupted.[169]

...

Then, as emphasized in the 2012 case of *Pangilinan* and reiterated in the 2019 case of *Lee, Jr.*, the Supreme Court categorically ruled in *Panaguiton* that the **commencement of the proceedings for the prosecution of the accused before the Office of the City Prosecutor effectively interrupted the prescriptive period for the offenses charged under Batas Pambansa (BP) Blg. 22.** This followed the Supreme Court's declaration that **there is no longer any distinction between cases prosecuted under the RPC and those covered by special laws with respect to the interruption of the period of prescription**, *viz*:

[169] Supra at note 167; Citations omitted, italics in the original text and emphasis supplied.

...

Since **BP Blg. 22 is a special law** that imposes a penalty of imprisonment of not less than thirty (30) days but not more than one year or by a fine for its violation, it therefor prescribes in four (4) years in accordance with the aforecited law. **The running of the prescriptive period, however, should be tolled upon the institution of proceedings against the guilty person.**

In the old but oft-cited case of *People v. Olarte*, this Court ruled that **the filing of the complaint in the Municipal Court even if it be merely for purposes of preliminary examination or investigation, should, and thus, interrupt the period of prescription of the criminal responsibility, even if the court where the complaint or information is filed cannot try the case on the merits.** This ruling was broadened by the Court in the case of *Francisco, et al. v. Court of Appeals, et al.* when it held that **the filing of the complaint with the Fiscal's Office also suspends the running of the prescriptive period of a criminal offense.**

Respondent's contention that a different rule should be applied to cases involving special laws is bereft of merit. **There is no more distinction between cases under the RPC and those covered by special laws with respect to the interruption of the period of prescription.** The ruling in *Zaldivia v. Reyes, Jr.* is not controlling in special laws. In *Llenes v. Dicdican, Ingco, et al. v. Sandiganbayan, Brillante v. CA, and Sanrio Company Limited v. Lim*, cases involving special laws, this Court held that the institution of proceedings for preliminary investigation against the accused interrupts the period of prescription. In *Securities and Exchange Commission v. Interport Resources Corporation, et al.*, the Court even ruled that investigations conducted by the Securities and Exchange Commission for violations of the Revised Securities Act and the Securities Regulation Code effectively interrupts the prescription period because it is equivalent to the preliminary investigation conducted by the DOJ in criminal cases.

In fact, in the case of *Panaguiton, Jr. v. Department of Justice*, which is in all fours with the instant case, this Court categorically ruled that commencement of the proceedings for the prosecution of the accused before the Office of the City Prosecutor effectively interrupted the prescriptive period for the offenses they had been charged under BP Blg. 22. Aggrieved parties, especially those who do not sleep on their rights and actively pursue their causes, should not be allowed to suffer unnecessarily further simply because of circumstances beyond their control, like the accused's delaying tactics or the delay and inefficiency of the investigating agencies.[170]

...

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170 Supra at note 164; Citations omitted, italics in the original text and emphasis supplied.

From the foregoing declarations, it can be inferred that the phrase "when proceedings are instituted against the guilty person," as used in the law, was understood—even then—to include the filing of a complaint for purposes of preliminary investigation, and not merely the filing of an Information before the Court. As such, it is evident that the law intends for the prescriptive period to be interrupted at the very first formal investigative step, as preliminary investigation is deemed to partake of the nature of a judicial proceeding that suspends the running of prescription.

Furthermore, in *Securities and Exchange Commission v. Interport Resources Corporation, et al.*[171] (**Interport**), the Supreme Court explained that it is a well-settled doctrine that the conduct of a preliminary investigation—which serves as a procedural safeguard to determine whether a crime has been committed and whether there is probable cause to charge the accused—interrupts the running of the prescriptive period:

> ...
>
> It is an established doctrine that a preliminary investigation interrupts the prescription period. A preliminary investigation is essentially a determination whether an offense has been committed, and whether there is probable cause for the accused to have committed an offense:
>
> > A preliminary investigation is merely inquisitorial, and it is often the only means of discovering the persons who may be reasonably charged with a crime, to enable the fiscal to prepare the complaint or information. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed or whether there is probable cause to believe that the accused is guilty thereof.
>
> ...
>
> While the SEC investigation serves the same purpose and entails substantially similar duties as the preliminary investigation conducted by the DOJ, this process cannot simply be disregarded. In *Baviera v. Paglinawan*, this Court enunciated that a criminal complaint is first filed with the SEC, which determines the existence of **probable cause**, before a preliminary investigation can be commenced by the DOJ. In the aforecited case, the complaint filed directly with the DOJ was dismissed on the ground that it should have been filed first with the SEC. Similarly, the offense was a violation of the Securities

[171] G.R. No. 135808, 06 October 2008; Citations omitted, italics in the original text, emphasis in the original text and supplied, and underscoring supplied.

> Regulation Code, wherein the procedure for criminal prosecution was reproduced from Section 45 of the Revised Securities Act. This Court affirmed the dismissal...
>
> ...
>
> **Indubitably, the prescription period is interrupted by commencing the proceedings for the prosecution of the accused. In criminal cases, this is accomplished by initiating the preliminary investigation.** The prosecution of offenses punishable under the Revised Securities Act and the Securities Regulation Code is initiated by the filing of a complaint with the SEC or by an investigation conducted by the SEC *motu proprio*. Only after a finding of probable cause is made by the SEC can the DOJ instigate a preliminary investigation. **Thus, the investigation that was commenced by the SEC in 1995, soon after it discovered the questionable acts of the respondents, effectively interrupted the prescription period. Given the nature and purpose of the investigation conducted by the SEC, which is equivalent to the preliminary investigation conducted by the DOJ in criminal cases, such investigation would surely interrupt the prescription period.**
>
> ...

It is also worth noting that, in his Concurring Opinion in *Interport*, then Supreme Court Associate Justice Dante O. Tiñga (Ret.) emphasized that any form of investigation instituted against the guilty person which may ultimately lead to prosecution, as provided by law, is sufficient to toll the running of the prescriptive period.

Clearly, from the foregoing, **in all criminal cases—whether prosecuted under the RPC or special laws—the prescriptive period is interrupted upon the commencement of proceedings for the prosecution of the accused, which is effectively accomplished through the initiation of a preliminary investigation, the first formal investigative step that marks the institution of criminal proceedings against the accused.**

It bears noting that the usual argument that the NIRC of 1997, as amended, should be treated differently simply because it is a special law is unpersuasive. As evident from the aforequoted disquisitions, the Supreme Court has consistently held in criminal cases involving violations of special laws that the prescriptive period is interrupted by the institution of proceedings for preliminary investigation against the accused.

Specifically, in the aforequoted ruling in *Pangilinan*, the Supreme Court emphasized that the cases of *Domingo Ingco, et al. v. Sandiganbayan*[172] (involving Republic Act [**RA**] No. 3019 or the Anti-Graft and Corrupt Practices Act), *Sanrio Company Limited v. Edgar C. Lim, doing business as Orignamura Trading*[173] (involving RA 8293 or the Intellectual Property Code), and *Interport* (involving the Revised Securities Act and the Securities Regulation Code) all concerned violations of special laws. Yet, in each of these cases, the Supreme Court consistently ruled that the institution of proceedings for preliminary investigation against the accused interrupts the running of the prescriptive period.

This Court is well aware of its stance in prior cases regarding the prescription of criminal tax actions, *i.e.*, that the ruling in *Lim, Sr.*—that tax cases are practically imprescriptible so long as the period from discovery *__and__* initiation of judicial proceedings **__up to__ the filing of the information in court** does not exceed five (5) years—appears to align with Section 2, Rule 9 of the RRCTA, which provides:

> ...
>
> SEC. 2. *Institution of Criminal Actions.* — **All criminal actions before the Court in Division** in the exercise of its original jurisdiction **shall be instituted by the filing of an information in the name of the People of the Philippines**. In criminal actions involving violations of the National Internal Revenue Code and other laws enforced by the Bureau of Internal Revenue, the Commissioner of Internal Revenue must approve their filing. In criminal actions involving violations of the Tariff and Customs Code and other laws enforced by the Bureau of Customs, the Commissioner of Customs must approve their filing. *(Rules of Court, Rule 110, Sec. 2a; n)*
>
> **The institution of the criminal action shall interrupt the running of the period of prescription.** *(Rules of Court, Rule 110, Sec. 1, par. 2a)*[174]
>
> ...

The second paragraph of Section 2, Rule 9 of the RRCTA—which states that "[t]he institution of the criminal action shall interrupt the running of the period of prescription"—has been construed in relation to the first paragraph. Specifically, the phrase "institution of the criminal

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[172] G.R. No. 112584, 23 May 1997.
[173] G.R. No. 168662, 19 February 2008.
[174] Emphasis supplied and italics in the original text.

action" has been interpreted to mean the filing of the Information before the Court in Division, since the first paragraph explicitly provides that criminal actions within the Court's original jurisdiction are to be instituted by such filing. This interpretation links the interruption of the prescriptive period to a judicial act, rather than to earlier procedural steps such as the filing of a complaint for preliminary investigation. Thus, based on the structure and language of the provision, the commencement of prescription is tied to the moment the Court formally acquires jurisdiction over the criminal case through the filing of the Information.

However, the foregoing interpretation is inconsistent with the Supreme Court's established doctrine that the prescriptive period is interrupted by the institution of proceedings for preliminary investigation against the accused.

On this point, it bears noting that there is an alternative interpretation of the second paragraph of Section 2, Rule 9 of the RRCTA that would render it consistent with the established doctrine cited above. Rather than construing it solely in relation to the first paragraph, it may instead be read in conjunction with Section 1, Rule 110 of the Revised Rules of Criminal Procedure (**RRCP**), which provides:

> ...
>
> **SEC.** 1. *Institution of Criminal Actions.* — Criminal actions shall be instituted as follows:
>
> (a) **For offenses where a preliminary investigation is required pursuant to section 1 of Rule 112, by filing the complaint with the proper officer for the purpose of conducting the requisite preliminary investigation.**
>
> (b) For all other offenses, by filing the complaint or information directly with the Municipal Trial Courts and Municipal Circuit Trial Courts, or the complaint with the office of the prosecutor. In Manila and other chartered cities, the complaint shall be filed with the office of the prosecutor unless otherwise provided in their charters.
>
> The institution of the criminal action shall interrupt the running of the period of prescription of the offense charged unless otherwise provided in special laws.[175]
>
> ...

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[175] Emphasis supplied and italics in the original text.

While it is true that the provisions of the RRCP apply only suppletorily to the RRCTA, it is nonetheless important to emphasize that the second paragraph of Section 2, Rule 9 of the RRCTA (specifically the italicized portion at the end) explicitly references the highlighted paragraph of Section 1, Rule 110 of the RRCP above. That provision clearly states that, for offenses requiring preliminary investigation, a criminal action is deemed instituted upon the filing of a complaint with the proper officer for the purpose of conducting the required preliminary investigation.

On the other hand, the first paragraph of Section 2, Rule 9 of the RRCTA may be construed as referring exclusively to the institution of proceedings before the Court in Division, which is effected solely through the filing of an Information. This must be distinguished from the institution of proceedings against guilty persons—which, under Section 281[176] of the NIRC of 1997, as amended, interrupts the running of the prescriptive period—as already settled by the Supreme Court to refer to the filing of a complaint for purposes of preliminary investigation.

Moreover, in *Tupaz*, which involved the offense of willful failure to pay deficiency IT, the Supreme Court held that the offense had not prescribed because the filing of the complaint for preliminary investigation with the DOJ constituted the institution of the criminal action within the five (5)-year prescriptive period. This conclusion was reached despite the earlier ruling in *Lim, Sr.*, which held that the prescriptive period continues to run until the filing of the Information in Court.

In fact, on 04 April 2025, in a press release issued prior to the publication of the full text of the decision in *People of the Philippines v. Ulysses Palconet Consebido*[177] (**Consebido**), the Supreme Court declared that the time limit or prescriptive period for prosecuting crimes stops running once a complaint is filed with the DOJ—not when the case reaches the court.[178] **The High Court specifically clarified that under Section 281[179] of the NIRC of 1997, as amended, the prescriptive period for criminal tax offenses that are not**

176 Supra at p. 26.
177 G.R. No. 258563, 02 April 2025.
178 Available at <https://sc.judiciary.gov.ph/sc-filing-of-complaint-before-doj-stops-prescriptive-period-for-crimes/> (Last accessed on 02 May 2025).
179 Supra at p. 26.

immediately known starts from the time the violation is discovered and is interrupted once a preliminary investigation begins.[180] This interpretation ensures that the intent of the law—to set a clear time limit for prosecuting tax violations—is properly applied.[181]

It should be noted that, as stated in the *Consebido* press release, the Supreme Court recognized that while criminal cases should ideally be resolved promptly, delays are sometimes unavoidable. Therefore, the State, as the offended party, should not be disadvantaged by delays in the DOJ's preliminary investigations. **The Supreme Court also reiterated its ruling in *Olarte*, emphasizing that "it is unjust to deprive the injured party of the right to obtain vindication on account of delays that are not under [their] control. All that the victim of the offense may do on [their] part to initiate the prosecution is to file the requisite complaint."**

With this recent categorical pronouncement of the Supreme Court, this Court is now bound to abandon the previous position of applying *Lim, Sr.* to hold that, in criminal tax cases, the prescriptive period is tolled only upon the filing of the Information in Court. The five (5)-year prescriptive period is, instead, interrupted by the filing of a complaint with the DOJ for purposes of preliminary investigation, not by the filing of the Information with the Court.

Accordingly, in this case, the five (5)-year prescriptive period began to run from the day of the commission of respondent's violation of Section 255[182] of the NIRC of 1997, as amended, or willful failure to pay deficiency IT for TY 2010. Counting from the finality of the assessment—the day after the last day for filing a judicial appeal, which was **16 December 2013**—the JCA[183] of the concerned ROs should have been referred to the DOJ within five (5) years therefrom, or **until 16 December 2018**. Clearly, when the JCA was filed with the DOJ on **06 June 2019**, *almost six (6) months* had already passed since the government's right to institute a criminal action prescribed.

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180 Id.
181 Id.
182 Supra at note 2.
183 Supra at note 23.

Again, given that the JCA was filed with the DOJ on **06 June 2019** beyond the five (5)-year prescriptive period under Section 281[184] of the NIRC of 1997, as amended, that ended on **16 December 2018**, plaintiff's right to initiate this case against the accused had already expired by the time of filing. Consequently, this justifies the dismissal of the case on the ground of prescription.

Jurisprudence has it that the waiver or loss of the right to prosecute the offender is automatic and by operation of law.[185] **Evidently, in this case, prescription has automatically set in when the JCA was not filed with the DOJ within the five (5)-year prescriptive period provided under Section 281 of the NIRC of 1997, as amended.**

It is also the rule that in the interpretation of the law on prescription of crimes, that which is more favorable to the accused is to be adopted.[186] Here, the circumstances show that the crime has prescribed resulting in the extinguishment of accused's criminal liability, pursuant to Article 89(5) of the RPC, which reads, in part, as follows:

> ...
> **ART. 89.** *How Criminal Liability is Totally Extinguished.* — Criminal liability is totally extinguished:
>
> ...
>
> 5. By prescription of the crime.
>
> ...

Considering the extinguishment or absence of criminal liability due to prescription, no civil liability *ex delicto* may arise from an offense that is no longer legally existent.

With the foregoing, the Court finds no needful purpose or use to resolve the other issues raised by the parties.

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184 Supra at p. 26.
185 *Rafael Yapdiangco v. The Hon. Concepcion B. Buencamino and Hon. Justiniano Cortez*, G.R. No. L-28841, 24 June 1983.
186 *People of the Philippines v. Arturo F. Pacificador*, G.R. No. 139405, 13 March 2001.

WHEREFORE, in light of the foregoing considerations, CTA Crim. Case No. O-1047, filed against accused Transtech Shuttle Service, Inc. and its responsible officers, Jose Naplis Magcalayo, Henry V. Li and Lorna Li Magcalayo, is hereby **DISMISSED** on the ground of prescription.

Accordingly, the cash bail bonds posted by accused Jose Naplis Magcalayo, Henry V. Li and Lorna Li Magcalayo are hereby **DISCHARGED** and are to be **RELEASED** to them upon presentation of proper documents, in accordance with usual accounting rules and regulations.

No pronouncement as to civil liability *ex delicto*.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LANEE S. CUI-DAVID
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