REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

REX CHUA CO HO, *Petitioner,*	**CTA EB CRIM. NO. 072** *(CTA Crim. Case Nos. O-287, O-288, O-289, O-290 and O-291)*
	PRESENT:
-versus-	**DEL ROSARIO**, *P.J.*, **CASTAÑEDA, JR.**, **UY**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, and **MODESTO-SAN PEDRO**, *JJ.*
PEOPLE OF THE PHILIPPINES, *Respondent.*	**PROMULGATED:** MAY 27 2021 4:20p.m.

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DECISION

DEL ROSARIO, P.J.:

This involves the **Petition for Review of Amended Decision (Re: Amended Decision dated 21 October 2019)** filed by petitioner Rex Chua Co Ho on November 27, 2019, assailing the civil aspect of the Amended Decision dated October 21, 2019 ordering petitioner to pay the sum of ₱4,167,196,761.50, plus delinquency interest in the amount of ₱1,962,665,105.39 for his alleged failure to declare his gross income arising from sale of gold to Bangko Sentral ng Pilipinas (BSP).

The dispositive portion of the Amended Decision reads:

> "WHEREFORE, in light of the foregoing considerations, the instant Motion for Reconsideration is **PARTIALLY GRANTED**. The dispositive portion of the Decision dated January 17, 2019 is hereby **AMENDED** to read as follows:

'**WHEREFORE**, in light of the foregoing, accused Rex Chua Co Ho is hereby found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 255 of the NIRC of 1997, as amended, in **CTA Crim. Cases Nos. O-287, O-288, O-289, O-290, and O-291**. For each of the consolidated criminal cases, he is hereby sentenced to an indeterminate penalty of one (1) year, as minimum, to two (2) years as maximum term of imprisonment, and to pay a fine in the amount of ₱10,000.00, with subsidiary imprisonment pursuant to Section 280 of the NIRC of 1997, as amended, in the event that accused Co Ho has no property with which to meet the fines imposed upon him, or is unable to pay such fines.

With regard to the civil liability, Accused Rex Chua Co Ho, is hereby **ORDERED TO PAY** the total amount of **₱4,167,196,761.50**, for taxable years 2005 to 2009, inclusive of the 50% penalty imposed under Section 248 (B) of the NIRC of 1997, as amended, and twenty percent (20%) deficiency interest and delinquency interest imposed under Sections 248(A) and 249(B) and (C), of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as follows:

	Taxable Year					Total
	2005	2006	2007	2008	2009	
Gold Delivered and Sold to BSP	**₱207,945,323.17**	**₱414,228,805.17**	**₱1,240,686,746.34**	**₱1,145,350,719.77**	**₱1,932,757,566.50**	**₱4,940,969,160.95**
Less: Costs and Expenses: 50% of Gold Delivered and Sold to the BSP						
50% x ₱207,945,323.17	103,972,661.59					103,972,661.59
50% x ₱414,228,805.17		207,114,402.59				207,114,402.59
50% x ₱1,240,686,746.34			620,343,373.17			620,343,373.17
50% x ₱1,145,350,719.77				572,675,359.89		572,675,359.89
50% x ₱1,932,757,566.50					966,378,783.25	966,378,783.25
Gross Income	103,972,661.58	207,114,402.58	620,343,373.17	572,675,359.88	966,378,783.25	2,470,484,580.46
Add: Income Declared Per Return	1,591,797.32	1,895,501.46	1,819,934.40	1,869,879.11	1,217,212.01	8,394,324.30
Total	105,564,458.90	209,009,904.04	622,163,307.57	574,545,238.99	967,595,995.26	2,478,878,904.46
Less: Personal Deduction	32,000.00	32,000.00	32,000.00	41,000.00	50,000.00	187,000.00
Net Taxable Income	**105,532,458.90**	**208,977,904.04**	**622,131,307.57**	**574,504,238.99**	**967,545,995.26**	**2,478,691,904.76**
Tax Due:						
On the First 500,000.00	125,000.00	125,000.00	125,000.00	125,000.00	125,000.00	625,000.00
32% in Excess Thereof						
32% x (105,532,458.90 less 500,000.00)	33,610,386.85					33,610,386.85
32% x (208,977,904.04 less 500,000.00)		66,712,929.29				66,712,929.29
32% x (622,131,307.57 less 500,000.00)			198,922,018.42			198,922,018.42
32% x (574,504,238.99 less 500,000.00)				183,681,356.48		183,681,356.48
32% x (967,545,995.26 less 500,000.00)					309,454,718.48	309,454,718.48
Total Tax Due	33,735,386.85	66,837,929.29	199,047,018.42	183,806,356.48	309,579,718.48	793,006,409.52
Less: Tax Due Per Return	1,234.42	5,281.76	428.66	-	-	6,944.84
Basic Income Tax Due	**33,734,152.43**	**66,832,647.53**	**199,046,589.76**	**183,806,356.48**	**309,579,718.48**	**792,999,464.68**
50% Surcharge	16,867,076.22	33,416,323.77	99,523,294.88	91,903,178.24	154,789,859.24	396,499,732.34
Sub-Total	50,601,228.65	100,248,971.30	298,569,884.64	275,709,534.72	464,369,577.72	1,189,499,197.03
Add: 20% Deficiency Interest						
From April 16, 2006 to January 1, 2014	52,089,228.28					52,089,228.28

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(₱33,734,152.43 x 20% x 2818/365)						
From April 16, 2007 to January 1, 2014 (₱66,382,647.53 x 20% x 2453/365) [*sic*]		89,830,402.43				89,830,402.43
From April 16, 2008 to January 1, 2014 (₱199,046,589.76 x 20% x 2087/365)			227,622,045.37			227,622,045.37
From April 16, 2009 to January 1, 2014 (₱183,806,356.48 x 20% x 1722/365)				173,432,627.89		173,432,627.89
From April 16, 2010 to January 1, 2014 (₱309,579,718.48 x 20% x 1357/365)					230,191,604.39	230,191,604.39
Total Amount Due, January 1, 2014	**102,690,456.93**	**190,079,373.73**	**526,191,930.01**	**449,142,162.61**	**694,561,182.11**	**1,962,665,105.39**
Add: 20% Deficiency Interest From January 2, 2014 to December 31, 2017 (1,460 days)						
(₱33,734,152.43 x 20% x 1460/365)	26,987,321.96					26,987,321.96
(₱66,832,647.53 x 20% x 1460/365)		53,466,118.04				53,466,118.04
(₱199,046,589.76 x 20% x 1460/365)			159,237,271.80			159,237,271.80
(₱183,806,356.48 x 20% x 1460/365)				147,045,085.20		147,045,085.20
(₱309,579,718.48 x 20% x 1460/365)					247,663,774.80	247,663,774.80
Add: 20% Delinquency Interest From January 2, 2014 to December 31, 2017 (1,460 days)						
(₱102,690,456.93 x 20% x 1460/365)	82,152,365.56					82,152,365.56
(₱190,079,373.73 x 20% x 1460/365)		152,063,498.98				152,063,498.98
(₱526,191,930.01 x 20% x 1460/365)			420,953,544.01			420,953,544.01
(₱449,142,162.61 x 20% x 1460/365)				359,313,730.08		359,313,730.08
(₱694,561,182.11 x 20% x 1460/365)					555,648,945.68	555,648,945.68
Total Amount Due on December 31, 2017	**₱211,830,144.45**	**₱395,608,990.75**	**₱1,106,382,745.82**	**₱955,500,977.89**	**₱1,497,873,902.59**	**₱4,167,196,761.50**

In addition, accused Rex Chua Co Ho is ORDERED TO PAY the delinquency interest at the rate of twelve percent (12%), on the total unpaid amount as of January 1, 2014 in the amount of **₱1,962,665,105.39**, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the Tax Code, as amended by RA No. 10963 and implemented by RR No. 21-2018.

SO ORDERED.'

SO ORDERED."

THE FACTS

Petitioner Rex Chua Co Ho was charged for violations of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as

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amended, in the consolidated criminal cases, CTA Crim. Case Nos. O-287, O-288, O-289, O-290, and O-291, details of which are as follows:

CTA Crim. Case No. O-287 Information dated May 31, 2012	That on or about April 16, 2006, in Sta. Cruz, City of Manila, and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino citizen, proprietor of Rex Gift Shoppe located at No. 952, Ongpin Street, Sta. Cruz, Manila, likewise engaged in the business of selling gold and silver to the Bangko Sentral ng Pilipinas, and registered with the Bureau of Internal Revenue under Taxpayer Identification No. 901-440-301-000, with obligation under the law to file a correct and accurate Income Tax Return, did then and there, **willfully, unlawfully, and feloniously failed to supply correct and accurate information in his Income Tax Return for taxable year 2005** filed before Revenue District No. 31, Sta. Cruz, Manila, by making it appear under oath that his income for the said taxable year in the amount of ₱1,591,797.32 was derived mainly from his gift shop business when records reveal that, for the same taxable year, he also derived income in the amount of ₱207,945,323.17 from his gold and silver transactions with the Bangko Sentral ng Pilipinas, and which amount **he failed to supply or declare in his aforesaid tax return**, to the damage and prejudice of the Government in the estimated amount of ₱169,216,519.39, inclusive of interests, penalties and surcharges.[1] *(Boldfacing supplied)*
CTA Criminal Case No. O-288 Information dated May 31, 2012	That on or about April 16, 2007, in Sta. Cruz, City of Manila, and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino citizen, proprietor of Rex Gift Shoppe located at No. 952, Ongpin Street, Sta. Cruz, Manila, likewise engaged in the business of selling gold and silver to the Bangko Sentral ng Pilipinas, and registered with the Bureau of Internal Revenue under Taxpayer Identification No. 901-440-301-000, with obligation under the law to file a correct and accurate Income Tax Return, did then and there, **willfully, unlawfully, and feloniously failed to supply correct and accurate information in his Income Tax Return for taxable year 2006** filed before Revenue District No. 31, Sta. Cruz, Manila, by making it appear under oath that his income for the said taxable year in the amount of ₱1,895,501.46 was derived mainly from his gift shop business when records reveal that, for the same taxable year, he also derived income in the amount of ₱414,228,805.17 from his gold and silver transactions with the Bangko Sentral ng Pilipinas, and which amount **he failed to supply or declare in his aforesaid tax return**, to the damage and prejudice of the Government in the estimated

[1] Docket — Vol. 1 (CTA Crim. Case No. O-287), pp. 1 to 2.

	amount of ₱309,541,194.28, inclusive of interests, penalties and surcharges.[2] (*Boldfacing supplied)*
CTA Criminal Case No. O-289 Information dated May 31, 2012	That on or about April 16, 2008, in Sta. Cruz, City of Manila, and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino citizen, proprietor of Rex Gift Shoppe located at No. 952, Ongpin Street, Sta. Cruz, Manila, likewise engaged in the business of selling gold and silver to the Bangko Sentral ng Pilipinas, and registered with the Bureau of Internal Revenue under Taxpayer Identification No. 901-440-301-000, with obligation under the law to file a correct and accurate Income Tax Return, did then and there, **willfully, unlawfully, and feloniously failed to supply correct and accurate information in his Income Tax Return for taxable year 2007** filed before Revenue District No. 31, Sta. Cruz, Manila, by making it appear under oath that his income for the said taxable year in the amount of ₱1,819,934.40 was derived mainly from his gift shop business when records reveal that, for the same taxable year, he also derived income in the amount of ₱1,240,686,746.34 from his gold and silver transactions with the Bangko Sentral ng Pilipinas, and which amount **he failed to supply or declare in his aforesaid tax return**, to the damage and prejudice of the Government in the estimated amount of ₱844,971,280.49, inclusive of interests, penalties and surcharges.[3] (*Boldfacing supplied)*
CTA Criminal Case No. O-290 Information dated May 31, 2012	That on or about April 16, 2009, in Sta. Cruz, City of Manila, and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino citizen, proprietor of Rex Gift Shoppe located at No. 952, Ongpin Street, Sta. Cruz, Manila, likewise engaged in the business of selling gold and silver to the Bangko Sentral ng Pilipinas, and registered with the Bureau of Internal Revenue under Taxpayer Identification No. 901-440-301-000, with obligation under the law to file a correct and accurate Income Tax Return, did then and there, **willfully, unlawfully, and feloniously failed to supply correct and accurate information in his Income Tax Return for taxable year 2008** filed before Revenue District No. 31, Sta. Cruz, Manila, by making it appear under oath that his income for the said taxable year in the amount of ₱1,869,879.11 was derived mainly from his gift shop business when records reveal that, for the same taxable year, he also derived income in the amount of ₱1,145,350,719.77 from his gold and silver transactions with the Bangko Sentral ng Pilipinas, and which **amount he failed to supply or declare in his aforesaid tax return**, to the damage and prejudice of the Government in the estimated amount of P706,744,239.34, inclusive of interests, penalties and surcharges.[4] (*Boldfacing supplied)*

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[2] Docket — Vol. 1 (CTA Crim. Case No. O-288), pp. 4 to 5.

[3] Docket — Vol. 1 (CTA Crim. Case No. O-289), pp. 1 to 2.
[4] Docket — Vol. 1 (CTA Crim. Case No. O-290), pp. 1 to 2.

CTA Criminal Case No. O-291 Information dated May 31, 2012	That on or about April 16, 2010, in Sta. Cruz, City of Manila, and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino citizen, proprietor of Rex Gift Shoppe located at No. 952, Ongpin Street, Sta. Cruz, Manila, likewise engaged in the business of selling gold and silver to the Bangko Sentral ng Pilipinas, and registered with the Bureau of Internal Revenue under Taxpayer Identification No. 901-440-301-000, with obligation under the law to file a correct and accurate Income Tax Return, did then and there, **willfully, unlawfully, and feloniously failed to supply correct and accurate information in his Income Tax Return for taxable year 2009** filed before Revenue District No. 31, Sta. Cruz, Manila, by making it appear under oath that his income for the said taxable year in the amount of ₱1,217,212.01 was derived mainly from his gift shop business when records reveal that, for the same taxable year, he also derived income in the amount of ₱1,932,757,566.50 from his gold and silver transactions with the Bangko Sentral ng Pilipinas, and which amount **he failed to supply or declare in his aforesaid tax return**, to the damage and prejudice of the Government in the estimated amount of ₱1,067,713,631.10, inclusive of interests, penalties and surcharges.[5] (*Boldfacing supplied)*

On August 14, 2012, petitioner voluntarily surrendered and submitted himself to the jurisdiction of the Court of Tax Appeals (CTA) and posted the required bail bond for his provisional liberty in CTA. Crim. Case Nos. O-287, O-288, O-289, O-290 and O-291.[6] The subject cases were consolidated before the CTA Third Division as the case bearing the lowest docket number, CTA Crim. Case No. O-287, was pending therein.[7]

During his arraignment, petitioner, assisted by counsel de parte, Attys. Juan Victor Valdez and Edlyn Margaret Santiago, entered a plea of "Not Guilty" to all charges, and admitted that he is the same Rex Chua Co Ho being charged in the respective Informations in CTA Crim. Case Nos. O-287, O-288, O-289, O-290, and O-291. 29.[8]

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[5] Docket — Vol. 1 (CTA Crim. Case No. O-291), pp. 4 to 5.
[6] Docket — Vol. 3 (CTA Crim. Case No. O-287), p. 1465; Docket — Vol. 3 (CTA Crim. Case No. O-290), p. 1463; Docket — Vol. 3 (CTA Crim. Case No. O-289), pp. 1465 to 1466; Docket — Vol. 3 (CTA Crim. Case No. O-290), p. 1463; Docket — Vol. 3 (CTA Crim. Case No. O-291), p. 1472.
[7] Docket — Vol. 3 (CTA Crim. Case No. O-287), pp. 1490 to 1493.
[8] Docket — Vol. 3 (CTA Crim. Case No. O-287), pp. 1498 to 1500; Docket — Vol. 3 (CTA Crim. Case No. O-288), pp. 1485 to 1486; Docket — Vol. 3 (CTA Crim. Case No. O-289), pp. 1475 to 1476; Docket — Vol. 3 (CTA Crim. Case No. O-290), pp. 1468 to 1469; and Docket — Vol. 3 (CTA Crim. Case No. O-291), pp. 1477 to 1478.

The parties stipulated on the following facts and issues as embodied in the Pre-Trial Order dated May 26, 2014,[9] *viz.*:

"**A. FACTS:**

1. The instant consolidated cases filed by the State against the Accused are within the jurisdiction of this Honorable Court of Tax Appeals.

2. Identity of Accused Rex Chua Co Ho ("Accused Co Ho") as the same person being charged with five (5) Informations subject of the instant consolidated case.

3. Accused Rex Chua Co Ho ("Accused Co Ho") is a Filipino citizen with Taxpayer Identification Number (TIN) 901-440-301-000.

4. Accused Co Ho is doing business as sole proprietor of Rex Gift Shoppe located at No. 952 Ongpin Street, St. Cruz, Manila.

5. Accused Co Ho admits that, during taxable years 2005 to 2009, he sold gold and silver to the Bangko Sentral ng Pilipinas under its Mint and Refinery Operations Department.

6. Accused Co Ho filed his Income Tax Return (ITR) for the year 2005 at BIR Revenue District No. 31, Sta. Cruz, Manila. In the said ITR, he declared his income in the amount of One Million Five Hundred Ninety One Thousand Seven Hundred Ninety Seven and 32/100 Pesos (Php1,591,797.32).

7. Accused Co Ho filed his Income Tax Return (ITR) for the year 2006 at the BIR Revenue District No. 31, Sta. Cruz, Manila. In the said ITR, he declared his income in the amount of One Million Eight Hundred Ninety Five Thousand Five Hundred One and 46/100 Pesos (Php1,895,501.46).

8. Accused Co Ho filed his Income Tax Return (ITR) for the year 2007 at the BIR Revenue District No. 31, Sta. Cruz, Manila. In the said ITR, he declared his income in the amount of One Million Eight Hundred Nineteen Thousand Nine Hundred Thirty Four and 40/100 Pesos (Php1,819,934,40).

9. Accused Co Ho filed his Income Tax Return (ITR) for the year 2008 at the BIR Revenue District No. 31, Sta. Cruz, Manila. In the said ITR, he declared his income in the amount of One Million Eight Hundred Sixty Nine Thousand Eight Hundred Seventy Nine and 11/100 Pesos (Php1,869,879.11).

10. Accused Co Ho filed his Income Tax Return (ITR) for the year 2009 at the BIR Revenue District No. 31, Sta. Cruz, Manila.

[9] Docket — Vol. 5 (CTA Crim. Case No. O-287), pp. 2738 to 2757.

In the said ITR, he declared his income in the amount of One Million Two Hundred Seventeen Thousand Two Hundred Twelve and 1/100 Pesos (Php1,217,212.01).

11. The amounts of Two Hundred Seven Million Nine Hundred Forty Five Thousand Three Hundred Twenty Three and 17/100 Pesos (Php207,945,323.17), Four Hundred Fourteen Million Two Hundred Twenty Eight Thousand Eight Hundred Five and 17/100 Pesos (Php414,228,805.17), One Billion Two Hundred Forty Million Six Hundred Eighty Six Thousand Seven Hundred Forty Six and 34/100 Pesos (Php1,240,686,746.34), One Billion One Hundred Forty Five Million Three Hundred Fifty Thousand Seven Hundred Nineteen and 77/100 Pesos (Php1,145,350,719.77), and One Billion Nine Hundred Thirty Two Million Seven Hundred Fifty Seven Thousand Five Hundred Sixty Six and 50/100 Pesos (Php1,932,757,566.50) for the years 2005, 2006, 2007, 2008, and 2009, respectively, reflected in the Independent Certified Public Accountant's (ICPA) report are the same figures in the Certified List of Gold Transactions prepared by the Bangko Sentral ng Pilipinas (BSP) marked as Exhibits "P-3" to "P-3-e" for the prosecution.

12. The Bureau of Internal Revenue (BIR), through Revenue Officers Marites Arias, Nilda Se, and Josephine Madera conducted an investigation on Accused Co Ho.

13. The genuineness, due execution, and admissibility of Letters of Delivery and Sales from BSP marked as **Exhibits "P-4" to "P-1380"** for the prosecution and marked as **Exhibits "A-1" to "A-1378"** for the defense.

14. Accused Co Ho represents and warrants that he is the owner of the gold and silver sold to BSP as shown by the warranty in Paragraph 2 of the Letters of Delivery and Sales from BSP marked as Exhibits "P-4-a" to "P-1380-a" for the prosecution.

15. The name and signature of Accused Co Ho in the Letters of Delivery and Sale from BSP marked as **Exhibits "P-4-b" to "P-1380-b"** for the prosecution and marked as **Exhibits "A-1D" to "A-1378D"** for the defense.

16. The genuineness, due execution, and admissibility of the BSP certification of the total annual gold sales of Accused Co Ho for the years 2005 to 2009 in the amounts of Two Hundred Seven Million Nine Hundred Forty Five Thousand Three Hundred Twenty Three and 17/100 Pesos (Php207,945,323.17), Four Hundred Fourteen Million Two Hundred Twenty Eight Thousand Eight Hundred Five and 17/100 Pesos (Php414,228,805.17), One Billion Two Hundred Forty Million Six Hundred Eighty Six Thousand Seven Hundred Forty Six and 34/100 Pesos (Php1,240,686,746.34), One Billion One Hundred Forty Five Million Three Hundred Fifty Thousand Seven Hundred Nineteen and 77/100 Pesos (Php1,145,350,719.77), and One Billion Nine Hundred Thirty Two

Million Seven Hundred Fifty Seven Thousand Five Hundred Sixty Six and 50/100 Pesos (Php1,932,757,566.50) for the years 2005, 2006, 2007, 2008, and 2009, respectively, issued by BSP Deputy Director Simeona G. Llanes and supported with a Summary of Gold Sales to BSP by Mr. Rex Co Ho, which was prepared by the BSP's Financial Services and Data Management Group and marked as **Exhibits "A-2162" to "A-2162-E"** for the defense.

17. The genuineness, due execution, and admissibility of Accused Co Ho's Income Tax Returns (ITR's) for taxable years 2005, 2006, 2007, 2008, and 2009 marked as Exhibits "P-1386," "P-1388" to "P-1388-a," " P-1390" to "P-1390-C," "P-1391," respectively, for the prosecution.

B. ISSUES

1. <u>FACTUAL ISSUES</u>

a. Whether the Bureau of Internal Revenue correctly computed accused's net income derived from gold transactions with the Bangko Sentral ng Pilipinas.

b. Whether accused has tax deficiencies.

2. <u>LEGAL ISSUE</u>

Whether accused is guilty as charged."

Trial ensued wherein the parties presented their respective witnesses.

To establish the guilt of petitioner, respondent presented four (4) witnesses, namely: (1) Revenue Officer (RO) Josephine D. Madera; (2) RO Nilda T. Se; (3) RO Marites P. Arias; and (4) Marites F. Encina, Acting Manager, Budget and Disbursement Division, Financial Services and Data Management Group, of the BSP.

ROs Madera, Se and Arias testified on the manner by which their audit and investigation of petitioner's tax liabilities was conducted, including the service of assessment notices to petitioner, the execution of their Complaint Affidavit and the filing of the criminal charges against petitioner before the Department of Justice.[10] Ms. Encina testified anent her participation in the issuance of the Certification dated December 10, 2012, certifying the total annual gold sales of petitioner

[10] Decision dated January 17, 2019, *En Banc* Docket, pp. 172 to 183.

to BSP for the years 2005 to 2009, which Certification was signed by then BSP Deputy Director Simeona G. Llanes.[11]

On the other hand, to counter the evidence of respondent, petitioner himself was presented as witness, together with four (4) other witnesses, namely: 1) Atty. Clifford E. Chua, an expert witness; 2) Ms. Marietta Akol, Bank Officer II, Office of the General Counsel, BSP; 3) Ms. Marites F. Encina, Deputy Director of the Financial Services Group. BSP; and, 5) Mr. Enrico T. Pizarro, Court-commissioned Independent Certified Public Accountant (ICPA).

Petitioner, in *esse*, testified that the BSP advised him that his transaction with the latter falls within the zero-rated transaction and it is exempted from the 12% VAT; that he relied in good faith on BSP's assurance that his sales of gold to BSP were tax exempt; that he is aware that all income are subject to tax; and, he hired an accountant to prepare his income tax returns (ITRs) and financial statements, albeit when he signs his ITRs and financial statements, his accountant does not explain the things that are indicated in the said documents.[12]

Meanwhile, Atty. Chua testified that on May 2013, he was engaged by petitioner to verify, compile and reconstruct the latter's accounting records and books of accounts, relating to his gold transactions with the BSP. There was a need to reconstruct the accounting records because there were sales to BSP that petitioner did not report or include in his ITR, and he needed to reconstruct the corresponding costs of the transactions. Based on his report, the petitioner suffered from continuous net losses for the years 2005 to 2009. The said income losses were not reflected in the ITRs of the petitioner.[13]

Ms. Akol testified that it is part of her duty as Acting Assistant Manager to certify documents that are part of the records of BSP but she was not involved in the preparation thereof.[14] Ms. Encina testified that as far as the Financial Services Group of BSP was concerned, there was no instruction to implement any change anent the on-going processing of gold payments, despite the issuance of the Memorandum dated July 9, 2007.[15]

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[11] Judicial Affidavit of Marites F. Encina dated February 24, 2015, Exhibit "P-1413," Docket — Vol. 9 (CTA Crim. Case No. O-287), pp. 4753 to 4758.
[12] Decision dated January 17, 2019, *En Banc* Docket, pp. 183 to 185.
[13] Decision dated January 17, 2019, *En Banc* Docket, pp. 185 to 188.
[14] Decision dated January 17, 2019, *En Banc* Docket, p. 188.
[15] *Id.*

The Court-commissioned ICPA, Mr. Pizarro, confirmed that petitioner received income from the BSP through the letter of deliveries, but petitioner did not include this in his annual ITRs for taxable years 2005, 2006, 2007, 2008, and 2009. The transactions with BSP were not included in the annual declaration of revenue and cost in petitioner's ITRs.[16]

After trial on the merits, the CTA Third Division rendered its Decision on January 17, 2019 finding petitioner guilty in CTA Crim. Case Nos. O-287, O-288, O-289, O-290 and O-291. Petitioner was sentenced to an indeterminate penalty of one (1) year, as minimum, to two (2) years as maximum term of imprisonment, and to pay a fine in the amount of ₱10,000.00, with subsidiary imprisonment pursuant to Section 280 of the NIRC of 1997, as amended, in the event that petitioner has no property with which to meet the fines imposed upon him, or is unable to pay such fines. With regard to his civil liability, petitioner was ordered to pay the total amount of **₱8,320, 758, 893.88** for taxable years 2005 to 2009, inclusive of 50% penalty, 20% deficiency interest and delinquency interest computed until December 31, 2017. Petitioner was also ordered to pay delinquency interest at the rate of 12% on the total unpaid amount as of January 1, 2014 in the amount of **₱3,918,816.41**, computed from January 1, 2018 until full payment.[17]

On February 1, 2019, petitioner filed an Application to Admit Accused under Probation with Motion for Partial Reconsideration of the Civil Aspect of the Decision dated 17 January 2019. On June 20, 2019, the CTA Third Division issued an Order admitting petitioner to probation.[18]

As aforementioned, the CTA Third Division rendered the assailed Amended Decision on October 21, 2019, partially granting petitioner's Motion for Reconsideration on the civil aspect of the January 17, 2019 Decision, thereby ordering petitioner to pay the **reduced** total amount of **₱4,167,196,761.50** for taxable years 2005 to 2009, inclusive of 50% penalty, 20% deficiency interest and delinquency interest computed until December 31, 2017. Petitioner was also ordered to pay delinquency interest at the rate of 12% on the total unpaid amount as of January 1, 2014 in the **reduced** amount of

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[16] Decision dated January 17, 2019, *En Banc* Docket, pp. 188 to 190.
[17] Decision dated January 17, 2019, *En Banc* Docket, pp. 211 to 212.
[18] *En Banc* Docket, pp. 270 to 272.

₱1,962,665,105.39, computed from January 1, 2018 until full payment.[19]

Undaunted, petitioner filed the present Petition for Review.

THE ISSUES

Petitioner raises the following issues for the CTA *En Banc*'s consideration:

1. Whether or not petitioner received a Formal Assessment Notice (FAN)/ Formal Letter of Demand (FLD) issued by the Bureau of Internal Revenue (BIR);

2. Whether or not petitioner had prior knowledge that sale of gold to BSP is subject to tax;

3. Whether or not petitioner has sufficiently proven the reported expenses incurred when he was selling gold to BSP;

4. Whether or not the BIR's computation for the alleged unpaid taxes is sufficiently supported by adequate and competent documents and records; and,

5. Whether or not the provisions of Republic Act (RA) No. 11256 should be applied retroactively to petitioner.[20]

THE PARTIES' ARGUMENTS

Petitioner puts forth the following arguments in support of his Petition:

1. The BIR did not sufficiently prove that petitioner actually received a FAN/FLD;

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[19] Amended Decision dated October 21, 2019, *En Banc* Docket, pp. 252 to 253.
[20] *En Banc* Docket, p. 124.

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2. Petitioner relied in good faith upon the representation of BSP Director Nestor Solano and other officials of BSP that sale of gold to BSP is not subject to any tax;

3. The CTA Third Division should have considered the testimonies of the Court-commissioned ICPA, Mr. Pizarro, and the expert witness, Atty. Chua, as to the costs incurred by petitioner in his gold trade business;

4. The CTA Third Division erred in relying on BIR's computation of petitioner's alleged deficiency tax liability based on BSP Certification since the same only represents the alleged annual gold sales of petitioner and not his taxable income. Thus, the assessment is based purely on the mathematical computation of petitioner's supposed tax liability. The civil liability of petitioner was not duly established; and,

5. The CTA Third Division erred in not applying RA No. 11256 retroactively considering that Section 255 of the NIRC of 1997, as amended, is a penal provision and the provisions of RA No. 11256 is favorable to petitioner.

In its Comment filed on January 20, 2020,[21] respondent insists on the following:

1. There is sufficient proof that the FAN/FLD, which were served on October 30, 2013, were received by Ms. Elma B. Abaja, who represented herself as petitioner's authorized representative. As a consequence, petitioner filed a request for reinvestigation on January 2, 2014;

2. While petitioner claims that he relied on the representation of BSP Director Solano and other BSP officials that sale of gold to BSP is not subject to tax, petitioner also admitted that he is aware that BSP is not the taxing authority. Considering that petitioner has been in retail business since 1997, he could not have mistaken that VAT zero-rating means exemption from income tax as well;

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[21] *En Banc* Docket, pp. 277 to 284.

3. Petitioner admitted that he continuously failed to submit proper documents to support his deductible business expenses; and,

4. The CTA Third Division did not err in not applying RA No. 11256 retroactively.

THE CTA *EN BANC*'S RULING

Jurisdiction over the present Petition for Review

As aforestated, the present Petition for Review involves an appeal from the civil aspect of the assailed Amended Decision. Petitioner directly appealed the Amended Decision before the CTA *En Banc*, without a prior Motion for Reconsideration of the assailed Amended Decision being filed before the CTA Third Division.

Thus, it is proper to initially settle the issue on whether the Petition for Review should be dismissed for petitioner's failure to file a motion for reconsideration of the assailed Amended Decision.

This case calls for a proper application of the doctrine laid down by the Supreme Court in *Asiatrust Development Bank, Inc. vs. Commissioner of Internal Revenue/Commissioner of Internal Revenue vs. Asiatrust Development Bank, Inc.*[22] *(Asiatrust),* where it declared:

> "In this case, the CIR's failure to move for a reconsideration of the Amended Decision of the CTA Division is a ground for the dismissal of its Petition for Review before the CTA *En Banc.*"

The CTA *En Banc* finds that the foregoing pronouncement should be confined in its application to cases involving the same or similar factual mileu. Where facts of a particular case are different from those obtaining in *Asiatrust*, the doctrinal pronouncement as aforequoted may not apply.

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[22] G.R. No. 201530 & 201680-81, April 19, 2017.

In the language of *Ferdinand "Bongbong" R. Marcos, Jr. vs. Maria Leonor "Leni Daang Matuwid" G. Robredo*: [23]

> "Each case has its own unique set of facts and circumstances. Some cases may appear to be similar but have different outcomes."

A careful perusal of *Asiatrust* reveals its unique factual backdrop. The following are noteworthy:

(i) Asiatrust filed a Petition for Review with the CTA Division assailing BIR tax assessments for fiscal years ending June 30, 1996, 1997 and 1998;

(ii) CTA Division rendered a Decision:

- Declaring void the tax assessments for fiscal year 1996 due to prescription;
- Cancelling assessments for deficiency income tax, certain documentary stamp taxes (DST) and fringe benefits tax for fiscal years 1997 and 1998; and,
- Affirming assessments of other DST for 1997 and 1998 and final withholding tax (FWT) for 1998 in the total amount of Php142,777.785.91.

(iii) Asiatrust filed a Motion for Reconsideration, attaching documents purportedly showing its availment of the Tax Amnesty Program.

(iv) The Commissioner of Internal Revenue (CIR) also filed a Motion for Partial Reconsideration assailing the cancellation of the tax assessments, *supra*.

(v) CTA Division issued a Resolution:

- Denying CIR's Motion for Partial Reconsideration; and,
- Partially granting Asiatrust's Motion for Reconsideration and setting its availment of Tax Amnesty Program for hearing.

(vi) CTA Division eventually rendered an Amended Decision:

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[23] PET Case No. 005, November 17, 2020.

- Declaring that Asiatrust is entitled to avail of the benefits of the Tax Amnesty Law but not the Tax Abatement Program;
- Declaring Asiatrust's liability for DST closed and terminated; and,
- Affirming Asiatrust's deficiency FWT assessment for fiscal year1998.

(vii) Asiatrust filed a Motion for Reconsideration of the Amended Decision. CIR did not file a Motion for Reconsideration of the Amended Decision.

(viii) CTA Division denied Asiatrust's motion.

(ix) Both parties appealed the Amended Decision to the CTA *En Banc.*

At once glaring are the facts that the Amended Decision in *Asiatrust* resolved an entirely new issue, that is - - whether or not Asiatrust was entitled to avail of the Tax Abatement Program. Moreover, it declared Asiatrust's liability for DST closed and terminated.

In other words, the Amended Decision was "adverse" to Asiatrust in so far as the issue on Tax Abatement was concerned. Thus - - the need for Asiatrust to file a Motion for Reconsideration of the Amended Decision prior to appeal to the CTA *En Banc.*

On the other hand, the Amended Decision was **"adverse" to the CIR** in the sense that it considered Asiatrust's tax liability for DST closed and terminated. **A motion for reconsideration was indeed necessary before the CIR could appeal to the CTA *En Banc*, failing which, the appeal was dismissed.**

In contrast, the present case involves an original Decision of the CTA Third Division finding petitioner guilty of violating Section 255 of the NIRC of 1997, as amended, and declaring him civilly liable for tax deficiencies in the total amount of ₱8,320,758,893.88.

As the original Decision is adverse to petitioner, he rightfully filed a Motion for Reconsideration, insisting that he is entitled to the cancellation of the tax assessments -- submitting <u>all</u> arguments in support thereof.

The CTA Third Division eventually issued an Amended Decision **reducing** the civil liability imposed upon petitioner from ₱8,320,758,893.88 to ₱4,167,196,781.50. Petitioner could not have filed another motion for reconsideration of the Amended Decision **just to reiterate** what was submitted and already passed upon by the CTA Third Division. To do so would constitute a second motion for reconsideration which is prohibited under existing rules.

Dichotomy of Asiatrust

Asiatrust cites *CE Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue*[24] *(CE Luzon case).*

In that cited case, CE Luzon filed a Motion for Reconsideration of the original Decision granting it a tax refund in the amount of **Php14.8 Million** (though its claim for refund was Php20.5 Million). CE Luzon presented all grounds in its Motion for Reconsideration to increase the allowed refund. The CTA Division eventually issued an Amended Decision increasing the allowable refund to **Php17.2 Million**.

The facts of the case (which are similar to the present case) reveal that *CE Luzon* **directly appealed** the Amended Decision to the CTA *En Banc.*

Truth to tell, the Supreme Court, despite *CE Luzon's* non-filing of a motion for reconsideration of the CTA Division's Amended Decision before appealing to the CTA *En Banc*, proceeded to rule on *CE Luzon's* petition before it. On the other hand, the Supreme Court noted that the amended decision was <u>unfavorable</u> to the CIR as it increased *CE Luzon's* entitlement to a refund or tax credit certificate, thus, was a proper subject of a motion for reconsideration **<u>by the CIR</u>**. Said the Supreme Court:

> "X x x. Notably, **its amended decision modified and increased CE Luzon's entitlement to a refund or tax credit certificate** in the amount of [₱]17,277,938.47. Essentially, it was therefore a **different decision** and, hence, the proper subject of a motion for reconsideration anew **<u>on the part of the CIR</u>**." *(Boldfacing and underscoring supplied)*

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[24] G.R. Nos. 200841-42, August 26, 2015.

From the foregoing, it is clear that the pronouncement in *Asiatrust* should not be construed in a way where the rule against the filing of a second motion for reconsideration in appropriate instances is totally nullified.

Section 3, Rule 14 of the Revised Rules of the Court of Tax Appeals ("RRCTA") merely specifies the proper 'denomination' of the Court's action modifying or reversing a previously issued Decision. Thus, the provision reads:

> "SEC. 3. Amended Decision. — Any action modifying or reversing a decision of the Court en banc or in Division shall be denominated as Amended Decision." *(Boldfacing supplied)*

The fact that an "amended decision" is eventually issued does not necessarily alter its nature as a resolution of a motion for reconsideration. If the amended decision results from a party's motion for reconsideration setting forth arguments which were rejected in the original decision but which were eventually considered as meritorious in the amended decision, a second motion for reconsideration by the party whose pleaded relief was granted in whole or in part in the amended decision is unwarranted.

To allow a second motion for reconsideration raising the <u>same ground</u> which the amended decision already considered would render the proscription against a second Motion for Reconsideration meaningless even as it would result to unnecessary delay in the disposition of cases. Section 7, Rule 15 of the RRCTA is clear on this aspect, *viz.:*

> "SEC. 7. No second motion for reconsideration or new trial. — No party shall be allowed to file a second motion for reconsideration or for new trial of a decision, final resolution or order."

It would be anathema to the concept of speedy determination of controversies to allow -- much more -- require a party litigant to rehash, amplify or recycle in a second Motion for Reconsideration matters and arguments, which it had already presented in a first motion for reconsideration and which, necessarily have been considered in the amended decision. After all, the movant should have embodied in the first motion for reconsideration all supporting arguments relative to the assailed original decision pursuant to Section 3, Rule 15 of the RRCTA.

Summation

Records disclose the following:

• January 17, 2019 — CTA Third Division promulgated a Decision finding **petitioner guilty beyond reasonable doubt of the offenses charged**, with corresponding imposition of civil liability in the amount of **₱8,320,758,893.88**, plus delinquency interest.

• February 1, 2019 — petitioner filed his Motion for Reconsideration on the Civil Aspect of the case (incorporated in his application to be admitted under probation).

• October 21, 2019 — CTA Third Division promulgated the Amended Decision partially **granting** petitioner's Motion for Reconsideration, and ordering it to pay the **reduced amount of ₱4,167,196,761.50**, plus delinquency interest.

• November 27, 2019 — petitioner filed his Petition for Review before the CTA *En Banc* assailing the Amended Decision of the CTA Third Division.

Petitioner correctly invoked the jurisdiction of the CTA *En Banc* by filing the present Petition for Review. Petitioner clearly observed the condition precedent required under Sec. 1, Rule 8 of the RRCTA when he timely filed a Motion for Reconsideration of the original Decision. The Amended Decision constitutes a resolution of petitioner's Motion for Reconsideration, which Amended Decision upheld petitioner's civil liability, *albeit* **reducing the amount to be paid by petitioner from ₱8,320,758,893.88 to ₱4,167,196,761.50.**

Petitioner may not file another Motion for Reconsideration to assail the Amended Decision which already passed upon his arguments. A motion for reconsideration of the CTA Third Division's Amended Decision -- by insisting again of his innocence and the deletion of his civil liability -- would be in the nature of a second motion for reconsideration, the filing of which is prohibited under Section 7, Rule 15 of the RRCTA.

In fine, the assailed Amended Decision has not attained finality, thus, the same could be the proper subject of petitioner's Petition for Review. Accordingly, the CTA *En Banc* should properly assume jurisdiction over petitioner's Petition for Review.

Criminal proceedings may not be converted into an Assessment Proceeding under the NIRC

After a careful evaluation of the case's factual circumstances *vis-a-vis* the applicable laws and jurisprudence, the CTA *En Banc* finds that no civil liability consisting of the deficiency taxes contained in the disputed FLD dated October 30, 2013, plus interests and penalties, may be adjudged against petitioner in the subject **criminal cases**.

Prescinding from *Macario Lim Gaw, Jr. vs. Commissioner of Internal Revenue,*[25] the following pronouncements have become doctrinal:

1. While the **taxpayer's obligation to pay tax** is an obligation that is created by law and does not arise from the offense of tax evasion, it is **not deemed instituted in the criminal case**;

2. The Government cannot seek satisfaction of the taxpayer's tax liability in a criminal proceeding; otherwise stated, since the civil liability is not deemed included in the criminal action, acquittal of the taxpayer in the criminal proceeding does not necessarily entail exoneration from his liability to pay the taxes (citing *Republic of the Philippines v. Patanao*[26]);

3. The duty to pay tax is imposed by statute prior to and independently of any attempts by the taxpayer to evade payment. **The obligation is neither a consequence of the felonious acts charged nor a mere civil liability arising from crime** that could be wiped out by the judicial declaration of non-existence of the criminal acts charged (*Id.*);

4. While the institution of the criminal action automatically carries with it the institution of the civil action for the recovery of civil liability, the case for the **collection** of unpaid customs duties and taxes **cannot be simultaneously instituted and determined in the same criminal proceedings** (citing *Proton Pilipinas Corp. v. Republic of the Phils.*[27]).

5. Under Sections 254 and 255 of the NIRC of 1997, as amended, **the crime of tax evasion is committed by the mere fact that the taxpayer knowingly and willfully filed a fraudulent return with intent to evade and defeat a part or all of the tax.**

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[25] G.R. No. 222837, July 23, 2018.
[26] 127 Phil. 105 (1967).
[27] 535 Phil. 521 (2006).

6. While the tax evasion case is pending, the BIR is not precluded from issuing an FDDA. In order to prevent the assessment from becoming final, executory and demandable, the taxpayer may file with the CTA a Petition for Review within 30 days from receipt of the decision or the inaction of the CIR. **The remedy of the taxpayer to appeal the disputed assessment is not deemed instituted with the criminal case. To rule otherwise would be to render nugatory the procedure in assailing the tax deficiency assessment.**

Patanao, supra, is explicit anent the incongruity of the factual premises and foundation principles of criminal cases under the Penal Code *vis-à-vis* criminal cases under the NIRC, *viz.*:

> "In applying the principle underlying the civil liability of an offender under the Penal Code to a case involving the collection of taxes, the court *a quo* fell into error. The two cases are circumscribed by factual premises which are **diametrically opposed** to each other, and are founded on entirely different philosophies. Under the Penal Code, the civil liability is incurred by reason of the offender's criminal act. Stated differently, **the criminal liability gives birth to the civil obligation such that generally, if one is not criminally liable under the Penal Code, he cannot become civilly liable thereunder**. **The situation under the income tax law is the exact opposite**. **Civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him. The criminal liability arises upon failure of the debtor to satisfy his civil obligation. The incongruity of the factual premises and foundation principles of the two cases is one of the reasons for not imposing civil indemnity on the criminal infractor of the income tax law**." *(Boldfacing and underscoring supplied)*

With the pronouncements in *Lim Gaw,* the collateral issue to be addressed is: *what is the civil liability arising from crime in a criminal tax case for violation of Section 254 or Section 255 of the NIRC of 1997, as amended, that is deemed instituted in the criminal case?*

The CTA *En Banc* is of the view that there is only one instance when collection of tax may be allowed in a criminal case, that is -- when the criminal indictment alleges failure to pay tax deficiencies incorporated in a final and executory assessment. Since Section 205 of the NIRC of 1997, as amended, provides that a civil or criminal action may be availed as modes of collection, it presupposes that there is a final and executory assessment upon which the collection is based.

If the Information does not pertain to an accused's failure to pay a **final and executory assessment** -- the **government cannot convert a criminal proceeding into an assessment proceeding under the NIRC**.

The procedural due process in the issuance of a tax assessment is outlined in Section 228 of the NIRC of 1997, as amended, wherein the taxpayer is given the opportunity to reply to a Preliminary Assessment Notice (PAN), protest a Final Assessment Notice (FAN), appeal to the CIR a decision on the protest by the latter's representative, and ultimately, appeal to the CTA. **There are specified periods within which each stage of the assessment process may be taken. This entire process should not be ignored lest a taxpayer's right to due process is violated.**

Reasonably construed, when Section 222(a) of the NIRC of 1997, as amended, provides that no assessment is required in criminal actions, it simply rationalizes the object of a criminal case, that is -- to penalize the accused-taxpayer - - not to hold him liable for deficiency taxes as such civil liabilities arise from law, not from crime. It is worthy to emphasize that the prescriptive period to assess a taxpayer is generally limited to <u>three (3) years</u>. Due process is required in every stage of the assessment. As oft-repeated, to allow collection of deficiency taxes in a criminal case (which prescribes after <u>five (5) years</u> from the day of the commission of the violation of the law, and if the same be not known at the time, from discovery thereof and the institution of judicial proceedings for its investigation and punishment[28]) tramples upon the right to refute an assessment of deficiency taxes under Section 228 of the NIRC of 1997, as amended. In a sense, Section 228, *supra*, can totally be ignored and its provisions become useless. **Worse, the failure to assess a taxpayer within the prescriptive period is unreasonably "cured" by the mere filing of a criminal case.**

Incidentally, the provision of Section 205 of the NIRC of 1997, as amended, stating that upon conviction, tax liability should be imposed, must be read in conjunction with the provision on collection *via* criminal action. Indeed, where the criminal action is instituted for **failure to pay tax** based on a final and executory FAN, the tax deficiency mentioned therein must be imposed. **After all, the taxpayer's right to due process anent the determination of the corresponding civil**

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[28] Section 281 of the NIRC of 1997, as amended.

liability underwent the administrative procedure on tax assessment.

Stated differently, under Section 205 of the NIRC of 1997, as amended, a delinquent tax may be **collected** by criminal action in Court. When a criminal case under Section 254 or Section 255 of the NIRC of 1997, as amended, is instituted for the purpose of collecting a deficiency tax assessment that has **become final, executory and demandable, the civil liability arising from crime is the deficiency tax liability contained in the final and executory deficiency tax assessment**. This is the **only** instance when civil liability (tax liability) is a consequence of the taxpayer's felonious acts charged in the criminal proceeding (that is evading the payment of, or refusing to pay, **a final and executory** deficiency tax assessment).

In all other instances, no civil liability arising from crime (in the form of deficiency taxes) is deemed instituted. What is deemed instituted with the criminal action is only the recovery of the penalties imposed under Section 254 or Section 255 and Section 256 (Penal Liability of Corporations) of the NIRC of 1997, as amended.

To be sure, the civil liability that may be imposed in the criminal case depends upon the nature of the accusation, not on whether accused is guilty or innocent of the offense charged.

In the present cases, petitioner was charged for violation of Section 255 of the NIRC of 1997, as amended, **for failure to supply correct and accurate information** in his ITRs. Notably, there is nothing in the Informations filed against petitioner that alleged that there were final assessment notices issued against him that have become final and executory. Thus, the conviction of the accused by the CTA Third Division does not have for its consequence the assessment and collection in such criminal cases of the deficiency taxes; to do so, as **repeatedly expounded**, would deprive petitioner of the remedy to appeal the disputed assessments, thus, rendering nugatory the procedure in assailing a tax deficiency assessment under Section 228 of the NIRC of 1997, as amended. **Indeed, institution of a criminal case is not the proper remedy to assess and collect the tax liability of a taxpayer.**

Astronomical amount of deficiency tax liability does not justify courts to ignore settled jurisprudence

The astronomical amount of tax deficiencies sought to be collected through the subject criminal cases is notable. This alone calls for a thorough revisit of the remedies government should take in each and every situation taking into account the indispensability of observing due process in the course of the assessment.

The foregoing having been stated, *Lim Gaw* should only be applied to this case. Unless and until modified by the Supreme Court *En Banc*, the doctrine laid down in aforestated case cannot be ignored irrespective of any contrary opinion on the matter. *Carmelo F. Lazatin, et al. vs. Hon. Aniano A. Desierto as Ombudsman, et al.*[29] is instructive:

> "The doctrine of *stare decisis et non quieta movere* (to adhere to precedents and not to unsettle things which are established) is embodied in Article 8 of the Civil Code of the Philippines xxx.
>
> It was further explained in *Fermin v. People* as follows:
>
>> 'The doctrine of stare decisis enjoins adherence to judicial precedents. **It requires courts in a country to follow the rule established in a decision of the Supreme Court thereof.** That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of stare decisis is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.'
>
> In *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation*, the Court expounded on the importance of the foregoing doctrine, stating that:
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>> 'The doctrine of *stare decisis* is one of policy grounded on the necessity for securing certainty and stability of judicial decisions, thus:
>>
>>> Time and again, the court has held that **it is a very desirable and necessary judicial practice** that when a court has laid down a principle of law as applicable to a certain state

[29] G.R. No. 147097, June 5, 2009.

> of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. *Stare decisis et non quieta movere*. Stand by the decisions and disturb not what is settled. *Stare decisis* simply means that **for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same**, even though the parties may be different. Xxx'"

To stress, it is the better practice that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases where the facts are substantially the same.[30]

By tradition and in our system of judicial administration, the Supreme Court has the last word on what the law is. Any pronouncement made by the Supreme Court in its judicial decisions become part of the law of the land. Adherence to the principle of *stare decisis et non quieta movere* is mandated for all lower courts which necessarily includes this Court.

There is only one Supreme Court from whose decisions all other courts - including this Court - should take its bearings.

Affirmative votes of five (5) members of the CTA En Banc was not obtained; hence, the assailed Amended Decision shall stand affirmed

Section 2 of RA No. 1125, as amended, provides:

> "SEC. 2. *Sitting En Banc or Division; Quorum; Proceedings*. — The CTA may sit *en banc* or in three (3) Divisions, each Division consisting of three (3) Justices.
>
> Five (5) Justices shall constitute a quorum for sessions *en banc* and two (2) Justices for sessions of a Division: Provided, That when the required quorum cannot be constituted due to any vacancy, disqualification, inhibition, disability, or any other lawful cause, the

[30] *Sherwin T. Gatchalian vs. Office of the Ombudsman, et al.*, G.R. No. 229288, August 1, 2018.

> Presiding Justice shall designate any Justice of other Divisions of the Court to sit temporarily.
>
> The affirmative votes of five (5) members of the Court *en banc* shall be necessary to reverse a decision of a Division but a simple majority of the Justices present necessary to promulgate a resolution or decision in all other cases or two (2) members of a Division, as the case may be, shall be necessary for the rendition of a decision or resolution in the Division level."

Relatedly, Section 3, Rule 2 of the RRCTA reads:

> "SEC. 3. *Court en banc; quorum and voting.* — The presiding justice or, if absent, the most senior justice in attendance shall preside over the sessions of the Court *en banc*. The attendance of five (5) justices of the Court shall constitute a quorum for its session *en banc*. The presence at the deliberation and the affirmative vote of five (5) members of the Court *en banc* shall be necessary to reverse a decision of a Division but only a simple majority of the justices present to promulgate a resolution or decision in all other cases. Where the necessary majority vote cannot be had, the petition shall be dismissed; in appealed cases, the judgment or order appealed from shall stand affirmed; and all incidental matters, the petition or motion shall be denied."

The affirmative votes of the five (5) members of the CTA *En Banc* are necessary to reverse a decision rendered by the CTA Third Division. Where such votes are not attained, the subject petition shall be dismissed; and in appealed cases, the judgment or order appealed from shall stand affirmed.

During the deliberation of the present Petition for Review, two (2) members of the CTA *En Banc*, namely, Associate Justices Juanito C. Castañeda, Jr. and Catherine T. Manahan, voted and concurred with the *ponencia* of Associate Justice Jean Marie A. Bacorro-Villena which holds that the Petition for Review must be dismissed for lack of jurisdiction for petitioner's failure to file a Motion for Reconsideration of the assailed Amended Decision in violation of the doctrine laid down in *Asiatrust*; and that the assailed Amended Decision must be affirmed as the CTA Third Division committed no reversible error as to warrant the reversal thereof.

Presiding Justice Roman G. Del Rosario issued a Dissenting Opinion, elucidating on the proper application of the doctrine laid down in *Asiatrust,* finding that the CTA *En Banc* may take cognizance of the

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Petition for Review, and voting to grant the Petition for Review on the ground that the CTA Third Division is without jurisdiction to impose civil liability against the accused. Associate Justices Erlinda P. Uy, Ma. Belen M. Ringpis-Liban and Maria Rowena Modesto-San Pedro concurred with the Dissenting Opinion of Presiding Justice Del Rosario. Since the majority of the members of CTA *En Banc* adopted the view espoused by Presiding Justice Del Rosario in his Dissenting Opinion, the case was assigned to Presiding Justice Del Rosario on February 22, 2021 for the writing of the majority opinion.

Considering that the required affirmative votes of five (5) members of the CTA *En Banc* were not obtained to reverse the assailed Amended Decision rendered by the CTA Third Division in *CTA Crim. Case Nos. O-287, O-288, O-289, O-290 and O-291*, the Petition for Review filed by Rex Chua Co Ho in CTA EB No. 072 must perforce be dismissed.

WHEREFORE, considering that the required affirmative votes of five (5) members of the CTA *En Banc* was not obtained to reverse the Amended Decision dated October 21, 2019 in *CTA Crim. Case Nos. O-287, O-288, O-289, O-290 and O-291*, pursuant to Section 2 of Republic Act No. 1125, as amended, in relation to Section 3 of Rule 2 of the Revised Rules of the Court of Tax Appeals, the present Petition for Review of Amended Decision (Re: Amended Decision dated 21 October 2019) filed by Rex Chua Co Ho is hereby **DISMISSED**.

The assailed Amended Decision dated October 21, 2019 rendered by the CTA Third Division in *CTA Crim. Case Nos. O-287, O-288, O-289, O-290 and O-291* is **AFFIRMED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

(I join Justice Jean Marie A. Bacorro-Villena's opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(I join Justice Jean Marie A. Bacorro-Villena's opinion)
CATHERINE T. MANAHAN
Associate Justice

(See Concurring and Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

REX CHUA CO HO,
Petitioner,

CTA EB CRIM. NO. 072
(CTA Crim. Case Nos. O-287, O-288, O-289, O-290 & O-291)

- versus -

Present:

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

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:
MAY 27 2021 4:20 p.m.

x - x

CONCURRING AND DISSENTING OPINION

BACORRO-VILLENA, J.:

I respectfully dissent from the majority's view as articulated in the *ponencia* of our esteemed Presiding Justice, Hon. Roman G. Del Rosario.

The *ponencia* emphasizes two (2) main reasons why the previous draft decision did not obtain the required number of votes for it to be carried as the Court *En Banc*'s decision in herein case. Firstly, the application of *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*[1] (**Asiatrust**) insofar as the requirement of a motion for reconsideration (**MR**) is concerned. Secondly, whether the civil aspect of herein criminal case should be awarded following the accused's conviction. In this particular,

[1] G.R. No. 201530, 19 April 2017.

x - x

respect, the case of *Macario Lim Gaw, Jr. v. Commissioner of Internal Revenue*[2] (**Gaw**) was cited and discussed. The *ponencia* tells:

> ...
>
> Prescinding from *Macario Lim Gaw, Jr. vs. Commissioner of Internal Revenue*, the following pronouncements have become doctrinal:
>
> 1. While the **taxpayer's obligation to pay tax** is an obligation that is created by law and does not arise from the offense of tax evasion, it is **not deemed instituted in the criminal case;**
>
> 2. The Government cannot seek satisfaction of the taxpayer's tax liability in a criminal proceeding; otherwise stated, since the civil liability is not deemed included in the criminal action, acquittal of the taxpayer in the criminal proceeding does not necessarily entail exoneration from his liability to pay the taxes (citing *Republic of the Philippines v. Patanao*);
>
> 3. The duty to pay tax is imposed by statute prior to and independently of any attempts by the taxpayer to evade payment. **The obligation is neither a consequence of the felonious acts charged nor a mere civil liability arising from crime** that could be wiped out by the judicial declaration of non-existence of the criminal acts charged (*Id.*);
>
> 4. While the institution of the criminal action automatically carries with it the institution of the civil action for the recovery of civil liability, the case for the collection of unpaid customs duties and taxes cannot be simultaneously instituted and determined in the same criminal proceedings (citing *Proton Pilipinas Corp. v. Republic of the Phils.*).
>
> 5. Under Sections 254 and 255 of the NIRC of 1997, as amended, **the crime of tax evasion is committed by the mere fact that the taxpayer knowingly and willfully filed a fraudulent return with intent to evade and defeat a part or all of the tax.**
>
> 6. While the tax evasion case is pending, the BIR is not precluded from issuing an FDDA. In order to prevent the assessment from becoming final, executory and demandable, the taxpayer may file with the CTA a Petition for Review within 30 days from receipt of the decision or the inaction of the CIR. **The remedy of the taxpayer to appeal the disputed assessment is not deemed instituted with the criminal case. To rule otherwise would be to render nugatory the procedure in assailing the tax deficiency assessment.**
>
> ...

With due respect, I maintain my position that this Court has no jurisdiction over the present petition for petitioner's failure to file an MR or a motion for new trial with the Court in Division prior to filing the present petition.

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[2] G.R. No. 222837, 23 July 2018; Citations omitted; Emphasis and italics in the original text.

The doctrine laid down in *Asiatrust* is unequivocal of the necessity of filing an MR to an amended decision reached by a Division of this Court as a condition precedent for elevating its case to the Court *En Banc*. There, the Supreme Court held:

> ...
>
> Thus, in order for the CTA En Banc to take cognizance of an appeal via a petition for review, a timely motion for reconsideration or new trial must first be filed with the CTA Division that issued the assailed decision or resolution. Failure to do so is a ground for the dismissal of the appeal as the word "must" indicates that the filing of a prior motion is mandatory, and not merely directory.
>
> The same is true in the case of an amended decision. Section 3, Rule 14 of the same rules defines an amended decision as "[a]ny action modifying or reversing a decision of the Court en banc or in Division." As explained in CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue, an amended decision is a different decision, and thus, is a· proper subject of a motion for reconsideration.
>
> In this case, the CIR's failure to move for a reconsideration of the Amended Decision of the CTA Division is a ground for the dismissal of its Petition for Review before the CTA En Banc. Thus, the CTA En Banc did not err in denying the CIR's appeal on procedural grounds.
>
> Due to this procedural lapse, the Amended Decision has attained finality insofar as the CIR is concerned. The CIR, therefore, may no longer question the merits of the case before this Court...
>
> ...

Applying the foregoing principle to the case at bar, it becomes clear that petitioner's failure to file an MR against the Third Division's Amended Decision is fatal to the present action. However, this principle appears to have been rendered ineffective *pro hac vice* due to the *ponencia*'s appreciation of the Supreme Court's ruling in *CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue*[3] (**CE Luzon**). According to the *ponencia*, in *CE Luzon* which was cited in *Asiatrust,* the taxpayer was able to directly file an appeal to the Court of Tax Appeals (**CTA**) when its MR was partially granted in the amended decision of the CTA while only the CIR was left to file a reconsideration of the same given that the amended decision was adverse to the latter. The *ponencia* also stated that an MR by petitioner to the Amended Decision would be tantamount to the filing of a second MR which is a prohibited pleading under Our rules, to wit:

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[3] G.R. No. 200841-42, 26 August 2015.

> ...
>
> Petitioner may not file another Motion for Reconsideration to assail the Amended Decision which already passed upon his arguments. A motion for reconsideration of the CTA Third Division's Amended Decision – by insisting again of his innocence and the deletion of his civil liability – would be in the nature of a second motion for reconsideration, the filing of which is prohibited under Section 7, Rule 15 of the RRCTA.
>
> ...

For one, *Asiatrust* and *CE Luzon* deal with different issues.

A careful reading of *CE Luzon* reveals that the taxpayer's failure to file an MR to the amended decision was not in issue. Rather, the issue there was whether the CIR's filing of an MR against the amended decision is considered a second MR. The Supreme Court answered this in the negative.

It is worthy to note that, in *Asiatrust*, the taxpayer, whose MR was partially granted in the amended decision, moved for a partial reconsideration thereof prior to elevating its case before the Court *En Banc*. If we follow the *ponencia*'s proposition, the taxpayer in *Asiatrust* should have been admonished for filing a second MR. However, as we know, such was not the case. What is of utmost consideration in the case of *Asiatrust* is that, unlike in *CE Luzon*, the very issue in *Asiatrust* was the necessity of filing an MR against an amended decision which makes *Asiatrust*'s applicability to the case at bar all the more glaring.

Moreover, petitioner already filed an application for probation (together with his MR) of the Third Division's original decision. With its filing, petitioner willingly accepted his conviction and no longer "insisted on his innocence", as suggested in the *ponencia*.

In his MR to the original decision, petitioner limited the scope of his claim to the amount of civil liability attached to the crime of tax evasion of which he was already convicted.

Lastly, a reading of *Asiatrust* reveals that the doctrine therein was applied regardless of the fact that the CIR was being forced to raise the same arguments and re-argue its case.

It will be recalled that, in *Asiatrust*, the Court in Division already denied the CIR's MR through an amended decision. Instead of filing an MR thereto, the CIR opted to file an appeal directly with the Court *En Banc* which the latter correctly dismissed for the CIR's failure to file an MR prior to an appeal. Herein petitioner has committed the same procedural lapse.

Furthermore, the filing of an MR against an amended decision should not be equated to the filing of a second MR which is prohibited under Section 7, Rule 15 of the Revised Rules of the Court of Tax Appeals (**RRCTA**), *viz*:

> ...
> **SEC. 7.** *No second motion for reconsideration or for new trial.* - No party shall be allowed to file a second motion for reconsideration of a decision, final resolution or order; or for new trial.
> ...

As distinguished from a "decision" referred to in Section 7 above, an "amended decision" is defined under Section 3, Rule 14 of the RRCTA as:

> ...
> **SEC. 3.** *Amended decision.* - Any action modifying or reversing a decision of the Court en banc or in Division shall be denominated as Amended Decision.
> ...

While it may be true that Section 7, Rule 15 of the RRCTA explicitly forbids a party litigant from filing a second MR relative to a decision rendered by the Court, the same contemplates a situation wherein the same party assails the same judgment, or final resolution or order of the Court.[4] Clearly, a second MR prohibited under existing rules is one aimed at the same decision where a previous MR has already been denied and thus, resulting in the original decision's affirmance.

An "amended decision", however, arises when the resolution of an MR results in the reversal or alteration of a previous decision. As explained in *Asiatrust*, **"an amended decision is a different decision, and thus, is a proper subject of a motion for reconsideration."**

On this note, it must be stressed that the principle in *Asiatrust* is not a judicial innovation as it simply enforces Section 2 (a), Rule 4 and Section 1, Rule 8 of the RRCTA, to wit:

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[4] *Barba v. Licea De Cagayan University*, G.R. No. 193857, 28 November 2012.

> ...
>
> RULE 4
> JURISDICTION OF THE COURT
>
> SEC. 2. Cases within the jurisdiction of the Court en banc. – The Court en banc shall exercise **exclusive appellate jurisdiction to review by appeal the following**:
>
> (a) **Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions** in the exercise of its exclusive appellate jurisdiction over:
>
> ...
>
> RULE 8
> PROCEDURE IN CIVIL CASES
>
> SECTION 1. Review of cases in the Court en banc. – In cases falling under the exclusive appellate jurisdiction of the Court en banc, **the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.**
>
> ...

With the above, with due respect, I humbly disagree with the *ponencia*'s interpretation of *Asiatrust* which effectively exempts petitioner from the above rule requiring the filing of a timely MR against a decision of the Court in Division prior to filing an appeal before the Court *En Banc*. Notably, the above rule does not make a distinction between an "original decision" and an "amended decision". As such, petitioner should have filed an MR before elevating its case to the Court *En Banc* and, having failed to do so, he should be precluded from invoking the jurisdiction of the Court *En Banc* over the present petition.

On another point, the *ponencia* discusses that it is erroneous to impose a civil liability on the accused in this case. The *ponencia* reasons in this wise:

> ...
> To be sure, the civil liability that may be imposed in the criminal case depends upon the nature of the accusation, not on whether accused is guilty of the offense.
> ...

I respectfully disagree. In the original draft of the decision (which did not obtain the majority vote of the members of the Court *En Banc*), it has been stated that, assuming the Court *En Banc* were to take jurisdiction of accused-appellant's appeal on the civil aspect of the case, the assailed

Decision of the Third Division granting the same should be affirmed or upheld.

Thus, contrary to the disquisition of the *ponencia* as to the inapplicability of the award of civil damages *ex delicto*, I wish to stress that petitioner has already been convicted of the crime of tax evasion; the criminal aspect of which he no longer appealed. The civil aspect of the crime or civil liability *ex delicto* is a necessary consequence when damage arising out of the criminal act is established.

In the case at bar, petitioner was charged and convicted of failing to file a correct or accurate return which he admitted in open court, to wit:

> ...
>
> ATTY. VALDEZ
>
> Q. Mr. Witness, what action did you take after your gold sales transactions with BSP in relation to your income tax return?
>
> MR. REX CHUA CO HO
>
> A. I annually filed my income tax return whenever I have income. I need to file the same as an obligation to my country. I did not include the gold sales because of the representation and assurance of the BSP that it is a tax exempt transaction.[5]
>
> ...

To escape civil liability, petitioner raised certain irregularities in the service of the Preliminary Assessment Notice (**PAN**) and Final Assessment Notice (**FAN**) issued against him. However, as discussed in *Gaw*, the civil liability arising from a tax assessment is different from the civil liability *ex delicto* arising out of the conviction of the crime of tax evasion. Therefore, such a defense (that should be properly raised in a disputed assessment case) does not necessarily benefit the accused in a criminal action for tax evasion. In *Gaw*, the Supreme Court explains thus:

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

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5 TSN dated 22 July 2015, pp. 24-25.

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

...

...**[W]hat is deemed instituted with the criminal action is only the government's recovery of the taxes and penalties relative to the criminal case. The remedy of the taxpayer to appeal the disputed assessment is not deemed instituted with the criminal case. To rule otherwise would be to render nugatory the procedure in assailing the tax deficiency assessment.**[6]

...

Citing its decision in *Republic of the Philippines v. Patanao*[7] (**Patanao**), the Supreme Court stated in *Gaw* that:

...

...**Civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him.** The criminal liability arises upon failure of the debtor to satisfy his civil obligation. The incongruity of the factual premises and foundation principles of the two cases is one of the reasons for not imposing civil indemnity on the criminal infractor of the income tax law...

...

The Supreme Court quotes further its decision in *Proton Pilipinas Corporation v. Republic of the Philippines, represented by the Bureau of Customs*[8] (**Proton**), to wit:

...

...The payment of taxes is a duty which the law requires to be paid. Said obligation is not a consequence of the felonious acts charged in the criminal proceeding nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of non-existence of the criminal acts charged. Hence, the payment and collection of customs duties and taxes in itself creates civil liability on the part of the taxpayer. Such civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him.

...

In the original draft decision, it was therefore held that it would be incorrect to adjudge the lack of petitioner's civil liability based on the irregularity in either the PAN or the FAN's service since, as the Supreme

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[6] Id.; Citations omitted and emphasis supplied.
[7] G.R. No. L-22356, 21 July 1967; Emphasis supplied.
[8] G.R. No. 165027, 16 October 2006; Citations omitted and emphasis supplied.

Court decided repeatedly and consistently in the cited cases, the civil liability arising from a crime and the civil liability arising from law are distinct from one another; the existence of either is *not* a prerequisite in order that the other action survives.

For emphasis, I echo and reiterate the Supreme Court's declaration that –

> ...
>
> ...**[W]hat is deemed instituted with the criminal action is only the government's recovery of the taxes and penalties <u>relative to the criminal case</u>. The remedy of the taxpayer to appeal the disputed assessment is not deemed instituted with the criminal case. To rule otherwise would be to render nugatory the procedure in assailing the tax deficiency assessment.**[9]
>
> ...

The *ponencia* declares that there is only one instance when collection of tax can be allowed in a criminal proceeding for tax evasion — when failure to pay tax deficiencies contained in a final and executory assessment is alleged. The *ponencia* further states that:

> ...
> If the information does not pertain to an accused's failure to pay a final and executory assessment – the government cannot convert a criminal proceeding into an assessment proceeding under the NIRC.
> ...
>
> In all other instances, no civil liability arising from crime is deemed instituted. What is deemed instituted with the criminal action is only the recovery of penalties imposed under Section 254 or Section 255 and Section 256... of the NIRC as amended.
> ...

In support thereof, the *ponencia* cites Section 205 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, which states:

> ...
> SEC. 205. ***Remedies for the Collection of Delinquent Taxes.*** - The civil remedies for the collection of internal revenue taxes, fees or charges, and any increment thereto resulting from delinquency shall be:
> ...
>
> The judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case as finally decided by the Commissioner.

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9 Supra at note 36; Emphasis and underscoring supplied.

...

Considering the foregoing statements, the *ponencia* appears to suggest the following:

1. When failure to pay a final and executory assessment is alleged, the government can convert a criminal proceeding into an assessment proceeding under the NIRC of 1997, as amended; and,

2. No civil liability *ex delicto* is instituted with the criminal action until the finality of the CIR's assessment.

First, no distinction is made in *Gaw* to warrant a difference in the treatment of tax evasion cases on the basis of the allegations in the complaint. Section 11, Rule 9 of the RRCTA does not even make such a distinction, to wit:

...

RULE 9
PROCEDURE IN CRIMINAL CASES

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

...

Second, to rule that a case of tax evasion can be converted into an assessment proceeding under specific circumstances would be in complete disregard of the procedures set forth for disputing a tax assessment.

Third, though Section 205 of the NIRC of 1997, as amended, mandates the inclusion of an order for payment of tax deficiencies finally decided by the Commissioner of Internal Revenue (**CIR**) along with the imposition of the criminal penalty, the same should not in any way be considered a bar on the Court's ability to impose civil liability *ex delicto* in cases where no final tax assessments are present since, as repeatedly stated in *Gaw*, such civil liability is separate and distinct from that arising out of a tax assessment.

Perhaps it is best to construe Section 205 of the NIRC of 1997, as amended, in a manner that fixes the civil liability *ex delicto* of the accused in the amount found by the CIR if the assessment is already final. On the other hand, if there is no formal assessment instituted by the CIR, as the same is unnecessary for a conviction for the crime of tax evasion, the civil liability *ex delicto* resulting from the crime may still be properly fixed by the Court despite the amount of deficiency taxes alleged by the CIR.

With the above, it is my opinion that it is dangerous for this Court to state that it has no jurisdiction to impose civil liability *ex delicto* in cases of tax evasion where the finality of the tax assessment is not alleged. If this were the case, this would not only allow convicted tax evaders to further shirk from their responsibility to pay their taxes; it may even legitimize the same by successfully disputing their tax assessments. Therefore, an errant taxpayer may find himself guilty beyond reasonable doubt of tax evasion, on one hand, and, at the same time, be not liable to pay his taxes by preponderance of evidence, on the other. This would surely be an odd situation to say the least.

It is also interesting that, even taking the *ponencia*'s ratiocinations into account (that civil liability *ex delicto* in this case can only be issued upon the finality of the assessment), the records and allegations of the parties reveal that the Bureau of Internal Revenue (**BIR**) formally assessed and sent assessment notices to the petitioner. The plaintiff's witnesses specifically testified to their conduct of an audit investigation against petitioner and to the receipt of the PAN and the FAN by petitioner's authorized representative. Further proof of petitioner's receipt thereof is that petitioner, through his lawyers, was able to file a motion for reinvestigation[10] of the BIR's Formal Letter of Demand (**FLD**) on 02 January 2014. Several years have passed since then and there is nothing in the case's records to suggest that petitioner elevated its case for disputed assessment before this Court. It would therefore not be so foreign to assume that the assessment of petitioner had long lapsed into finality. In fact, the sole argument raised by petitioner to limit his civil liability during the proceedings in the Third Division was the fact that he incurred expenses in the course of his business of selling gold to the *Bangko Sentral ng Pilipinas* (**BSP**), making the BIR's initial computation of his liabilities patently erroneous. Despite petitioner's failure to substantiate its claims, the Third Division took the same into consideration, thereby mitigating petitioner's civil liability in the amended decision. It is noteworthy that it is only in this present petition that petitioner raises certain irregularities in the conduct of the assessment in a last-ditch attempt to discredit the BIR's assessment.

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[10] Judicial Affidavit of Nilda T. Se dated 30 July 2014, Exhibit "P-1411," Division Docket – Vol. 9, pp. 4700-4718.

All told, despite my dissent with certain disquisitions in the *ponencia*, I ultimately concur with the *ponencia* insofar as it AFFIRMS petitioner's civil liability in the Amended Decision reached by the Court's Third Division in CTA Crim. Case Nos. O-287, O-288, O-289, O-290, and O-291, entitled *People of the Philippines v. Rex Chua Co Ho*, for failing to achieve the necessary five (5) affirmative votes to effect a reversal of the same.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice