REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Second Division

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIM CASE NOS. O-792 & O-793** For: Violation of Section 255 of the NIRC of 1997, as amended
	Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
RIZALDY GOLORAN CHUA, (Purok Gumamela, Sta. Cruz, Rosario, Agusan Del Sur) Accused.	Promulgated: NOV 30 2023

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J. N a.m.

DECISION

RINGPIS-LIBAN, J.:

The Case

Accused Rizaldy Goloran Chua is charged before this Court for violation of Section 255 of the National Internal Revenue Code ("NIRC") of 1997, as amended, for willful failure to supply correct and accurate information in his income tax return for taxable years 2009 and 2010, under the respective Informations in CTA Crim. Case Nos. O-792 and O-793, the accusatory portions of which read:

CTA Crim. Case No. O-792
(Information dated July 05, 2019)

> "That sometime in April 2010 and thereafter, in Bayugan City, Rosario, Agusan Del Sur, and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino citizen and

> engaged in gold trading, with obligation under the law to supply correct and accurate information in the Income Tax Return, did then and there, wilfully, unlawfully, and feloniously fail to supply correct and accurate information in the Income Tax Return for taxable year **2009**, by then and there declaring gross income of [Php]190,532.00 only whereas the correct gross income received from Bangko Sentral ng Pilipinas (BSP) amounted to [Php]87,910,434.73. Thus, there was under declaration by 46,039%, resulting in deficiency income tax of Twenty Eight Million One Hundred Eleven Thousand Two Hundred Sixty Five and 38/100 pesos only **(Php28,111,265.38)**, exclusive of surcharges and interest, to the damage and prejudice of the government.
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> CONTRARY TO LAW."[1]

CTA Crim. Case No. O-793
(Information dated July 05, 2019)

> "That sometime in April 2011 and thereafter, in Bayugan City, Rosario, Agusan Del Sur, and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino citizen and engaged in gold trading, with obligation under the law to supply correct and accurate information in the Income Tax Return, did then and there, wilfully, unlawfully, and feloniously fail to supply correct and accurate information in the Income Tax Return for taxable year **2010**, by then and there declaring gross income of [Php]204,061.75 only whereas the correct gross income received from Bangko Sentral ng Pilipinas (BSP) amounted to [Php]8,120,045.04. Thus, there was under declaration by 3,879%, resulting in deficiency income tax of Two Million Five Hundred Eighty Seven Thousand Seven Hundred Fifty Three and 22/100 pesos only **(Php2,587,753.22)**, exclusive of surcharges and interest, to the damage and prejudice of the government.
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> Contrary to law."[2]

Upon the filing of the respective Informations in the instant consolidated criminal cases, this Court made the following findings with respect to the existence of probable cause for the issuance of warrants of arrest against accused, to wit:

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[1] Docket (CTA Crim Case Nos. O-792 & O-793), pp. 5-6.
[2] Docket (CTA Crim Case No. O-793), pp. 5-6.

CTA Crim. Case No. O-792

In CTA Crim. Case No. O-792, this Court found the existence of probable cause for the issuance of a warrant of arrest against the accused on October 16, 2019,[3] and issued a Warrant of Arrest on October 23, 2019.[4] On December 09, 2019, accused voluntarily appeared before this Court and posted the required bail bond for his provisional liberty in CTA Crim. Case No. O-792.[5]

Thereafter, plaintiff filed an Ex Parte Motion for Consolidation[6] on December 06, 2019, praying for the consolidation of CTA Crim. Case No. O-792 with CTA Crim. Case No. O-793, which was granted by the Court in the Resolution[7] dated January 07, 2020. CTA Crim. Case No. O-793 was then consolidated with CTA Crim. Case No. O-792, the latter case bearing the lower docket number.

CTA Crim. Case No. O-793

Prior to its consolidation with CTA Crim. Case No. O-792, the Court in CTA Crim. Case No. O-793 found the existence of probable cause for the issuance of a warrant of arrest against the accused in the Resolution dated October 11, 2019.[8] Thus, a Warrant of Arrest was issued on October 14, 2019.[9]

On November 29, 2019, the Court noted in a Resolution[10] the transmittal letter of Atty. Katrina Farrah P. Suarez-Vicente, Clerk of Court VI of Regional Trial Court Branch 7 of Bayugan City, Agusan del Sur, of the bail documents of accused. The Court also noted in the same Resolution the Order issued by Hon. Fernando R. Fudalan, Jr., acting Presiding Judge of Regional Trial Court Branch 7 of Bayugan City, Agusan del Sur approving the cash bail bond posted by the accused in the amount of Php60,000.00, for his provisional liberty.

During the arraignment on December 09, 2019, accused, with the assistance of his counsel *de parte*, entered a plea of "Not Guilty" to the crime charged.[11]

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[3] Docket (CTA Crim Case Nos. O-792 & O-793), pp. 72-74.
[4] *Id.*, p. 75.
[5] *Id.*, p. 77.
[6] *Id.*, pp. 86-89.
[7] *Id.*, pp. 91-92.
[8] Docket (CTA Crim Case No. O-793), pp. 72-73.
[9] *Id.*, p. 74.
[10] *Id.*, p. 97.
[11] *Id.*, p. 109.

Consolidated cases

On January 22, 2020, accused was arraigned in CTA Crim. Case No. O-792 and with the assistance of his counsel *de parte*, entered a plea of "Not Guilty" to the crime charged.[12]

The Preliminary Conference was held on January 22, 2020.[13] On the same day, plaintiff filed its Pre-Trial Brief[14].

The Pre-trial Conference[15] was then held on January 27, 2020,

In the Pre-Trial Order[16] dated February 14, 2020, the parties stipulated on the following facts, to wit:

"A. Stipulated Facts

1. That this Honorable Court has jurisdiction over the offenses committed by accused Rizaldy Goloran Chua, as alleged in the Informations subject of the consolidated cases;

2. That accused is being charged for violation of Section 255 of the National Internal Revenue Code of 1997, as amended (1997 NIRC);

3. That accused is the same person named and charged in the Informations subject of the consolidated cases;

4. That accused is a Filipino citizen registered with the BIR Revenue District Office No. 104 – Bayugan, Agusan Del Sur (RDO 104) with Tax Identification Number (TIN) 110-710-702-000;

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[12] Docket (CTA Crim Case Nos. O-792 & O-793), p. 93.
[13] *Id.*, pp. 98-104.
[14] *Id.*, pp. 105-109.
[15] *Id.*, p. 176.
[16] *Id.*, pp. 198-205.

5. That accused is doing business as a sole proprietor and operates a store engaged in retail sales of goods, including liquefied petroleum gas, which is located in Sta. Cruz, Rosario, Agusan del Sur;

6. That the BIR, through Revenue Officers Roberto P. Rara, Jr. and Rosemary F. Caballes conducted an investigation on accused."

Meanwhile on January 28, 2020, plaintiff filed a Request for Issuance of Subpoena *Duces Tecum* and *Ad Testificandum*[17] requiring the Director of the Bangko Sentral ng Pilipinas ("BSP") Davao Regional Office or her duly authorized representative to testify, and to produce/present/bring the original and/or certified true copies of the BSP documents listed by plaintiff as part of its documentary evidence. The same was granted in a Resolution[18] dated February 18, 2020.

Trial ensued and, to prove its case, plaintiff presented three (3) witnesses, namely: Roberto P. Rara, Jr., Rosemary F. Caballes, and Roberto B. Plana. They testified as follows:

1) Roberto P. Rara, Jr. testified[19] that he is currently the OIC-Chief of Tax Fraud Investigation Section of the Bureau of Internal Revenue ("BIR") Revenue Region No. 17 – Butuan City and has been the OIC-Chief since March 2017. He has been employed with the BIR since February 1990 or for almost thirty (30) years. Before being the OIC-Chief of Tax Fraud Investigation Section, he was assigned at the Special Investigation Division (SID) of Revenue Region No. 17 as Special Investigator II between 2010 and 2016. Prior to that, he was a Revenue Officer for twelve (12) years at Revenue District Office ("RDO") No. 106 – Tandag City, Surigao del Sur and RDO No. 103 – Butuan City, Agusan del Norte. As a Special Investigator II, his duties and functions include conducting audit or investigation and/or recommending reinvestigation of tax fraud cases and conducts surveillance of taxpayers, recommending the prosecution for criminal violations of the provisions of the Tax Code, and performing other duties and functions that may be assigned by his superiors from time to time pursuant to law.

Both he and Rosemary F. Caballes, Assistant Chief of Regional Investigation Division ("RID") of Revenue Region No. 17 conducted the

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[17] *Id.*, pp. 178-180.
[18] *Id.*, pp. 208-211.
[19] *Id.*, Judicial Affidavit of Roberto P. Rara, Jr., Exhibit "P-11" and Order of hearing dated February 26, 2020, pp. 112-122 and 214-215.

investigation on the tax compliance of accused. Their investigation was prompted by the Request-Letter[20] dated September 06, 2011 signed by then BIR Commissioner Kim S. Jacinto-Henares to the BSP Governor, requesting a list of gold traders within CARAGA Region who have sold their gold production in BSP for the years 2008 to 2010.

The BSP Regional Office Davao City then issued a list of gold traders within CARAGA Region who sold gold to BSP for the period 2008 to 2010.[21] They discovered that accused is included in the said list. Consequently, they conducted a profiling of the accused by checking the centralized database of the BIR or otherwise known as the Integrated Tax System ("BIR-ITS").

Based on the BIR-ITS, they found out that accused is a registered taxpayer of RDO No. 104 – Bayugan, Agusan del Sur with Tax Identification Number (TIN) 110-710-702-00 and operates a store engaged in retail sale of goods, which is located in Sta. Cruz, Agusan del Sur under the primary industry type "Retail in Liquefied Petroleum Gas".[22] Accused was not registered under any other line of industry. They also secured documents from the BIR which are relevant to their investigation on the possible tax liabilities of the accused, such as the Annual Income Tax Return ("ITR") of accused for taxable years 2009[23] and 2010[24].

Through comparison of the documents from the BIR and BSP, they were able to uncover that the sale of gold by accused to BSP amounted to Php87,910,434.73 in 2009 and Php8,120,045.04 in 2010. However, accused declared in his Annual ITRs that his income amounted only to Php190,532.00 in 2009 and Php204,061.75 in 2005. Said finding disclosed that accused grossly underdeclared his income for taxable years 2009 and 2010, and the same was willful for three (3) reasons. First, the underdeclaration was substantial, the undeclared income exceeding thirty percent (30%) of the income declared. Second, the accused committed the same for two (2) consecutive years. Lastly, accused, during these two (2) years, did not update his tax registration details to include "gold trading" as his line of industry.

After they came out with a *prima facie* finding of fraud, they made a recommendation for the issuance of a Letter of Authority ("LOA") against accused. On September 11, 2013, then BIR Commissioner Henares issued Letter of Authority (LOA) No. 211-2013-00000166[25] authorizing them to examine the books of account and other accounting records for all internal revenue taxes of

[20] *Id.*, Exhibit "P-1-a", p. 305.
[21] *Id.*, Exhibit "P-1", p. 253.
[22] *Id.*, Exhibits "P-2" to "P-2-a", pp. 306-307.
[23] *Id.*, Exhibit "P-3", pp. 308-312.
[24] *Id.*, Exhibit "P-4", pp. 313-317.
[25] *Id.*, Exhibit "P-5", p. 318.

accused for taxable years 2009 and 2010. On September 27, 2013, Mr. Rara, Jr. served the LOA together with the First Notice[26] which details the list of documents required to be submitted to BIR, at the registered address of accused. The same was received by the authorized representative of accused, Lenne B. Chua.

Nonetheless, accused failed to submit to them the required documents. Consequently, Second[27] and Third Notices[28] were issued and served to accused on October 14, 2013 and November 05, 2013.

After the issuance of the LOA, they sent a letter to the BSP, requesting for information as to the accused's monthly gold sales for 2009 and 2010. In response, the BSP supplied them with the requested details[29] of monthly sales of gold made by accused for 2009 and 2010 which further confirmed his gold sale transactions for years 2009 and 2010.

Thereafter, they recommended the filing of a criminal complaint with the Department of Justice ("DOJ") against the accused for violation of Sections 254 and 255 of the Tax Code for willful attempt to evade tax and willful failure to supply correct and accurate tax returns. Then BIR Commissioner Henares, through a referral letter[30], authorized the filing of complaint against accused with the DOJ. And so, they executed a Joint Complaint-Affidavit[31].

They then continued with their formal investigation and assessment of the deficiency income taxes of accused. Since accused failed to submit any documents that would support in the change in the computation of his income tax deficiencies, they recommended the issuance of the Preliminary Assessment Notice ("PAN") against accused.

A PAN[32] dated January 19, 2016 and a revised PAN[33] dated March 16, 2016 were issued to accused, which they serve to accused's registered address.

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[26] *Id.*, Exhibit "P-5-a", p. 319.
[27] *Id.*, Exhibit "P-5-b", p. 320.
[28] *Id.*, Exhibit "P-5-c", p. 321.
[29] *Id.*, BSP Letter dated November 12, 2013 signed by BSP Davao Regional Office Director Demetrio E. Casipong with attached documents denominated as "Amount of Gold Sales Per Month for Taxable Year 2009" and "Amount of Gold Sales Per Month for Taxable Year 2010", Exhibit "P-6" to "P-6-b", pp. 254-256.
[30] *Id.*, Letter of then BIR Commissioner Kim S. Jacinto-Henares dated November 6, 2017 to the Department of Justice authorizing the filing and institution of the criminal complaint against accused, Exhibit "P-7", pp. 37-38.
[31] *Id.*, Joint Complaint-Affidavit of Revenue Officers Roberto P. Rara, Jr. and Rosemary F. Cabales dated November 06, 2014, Exhibit "P-8", pp. 39-43.
[32] *Id.*, Exhibit "P-9", pp. 322-326.
[33] *Id.*, Exhibit "P-9-a", pp. 327-332.

After receiving separate replies from accused to the PAN and revised PAN on February 22, 2016 and April 22, 2016, they caused the personal service of the Formal Letter of Demand with Final Assessment Notices[34] ("FLD/FAN") to accused at his registered address on May 18, 2016. After the issuance and service of the FLD/FAN, accused sent a protest to the FLD/FAN on July 12, 2016.

On cross examination[35], Mr. Rara, Jr. testified that the finding of fraud on the part of the accused was based merely on the documents provided by the BSP and the ITR of the accused with the BIR. No other document was given by the BSP aside from the List of Gold Traders within CARAGA Region for period 2008 to 2010 and BSP Letter dated November 12, 2013 with attached documents denominated as "Amount of Gold Sales Per Month for Taxable Year 2009" and "Amount of Gold Sales Per Month for Taxable Year 2010". He also testified that the accused was not allowed any deduction, in the computation of his tax due, because he did not submit any receipts or invoices with respect to his expenses. Nor did he present any proof of tax withheld by BSP on the sale of gold.

2) Rosemary F. Caballes testified[36] that she is currently the Assistant Chief of RID of BIR Revenue Region No. 17 – Butuan City and has been the Assistant Chief since March 2016. Her primary duties and functions are to conduct audit or investigation of books of accounts and other accounting records of taxpayes for internal revenue tax purposes, submit corresponding reports on audit or investigation, recommend the prosecution for criminal violations of the provisions of the Tax Code, and to perform such duties and functions that may be assigned to her by her superiors from time to time pursuant to law. Together with Mr. Rara, Jr., she investigated the tax compliance of the accused and filed a Joint Complaint-Affidavit[37] before the DOJ.

Their investigation of the tax compliance of the accused was prompted by the list[38] obtained by the BIR from the BSP enumerating the gold traders within CARAGA Region who have sold their gold production to BSP covering taxable years 2008-2010. The said list included accused as among the individuals who sold gold to BSP, earning him payments from the BSP amounting to millions of pesos.

Thereafter, they began profiling the accused and learned about his tax registration with RDO No. 104 – Bayugan, Agusan del Sur. They discovered that

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[34] *Id.*, Exhibit "P-10", pp. 333-342.
[35] *Id.*, Order of hearing dated March 03, 2021, pp. 356-357.
[36] *Id.*, Judicial Affidavit of Rosemary F. Caballes, Exhibit "P-12" and Order of hearing dated February 26, 2020, pp. 169-174 and 214-215.
[37] *Id.*, Joint Complaint-Affidavit of Revenue Officers Roberto P. Rara, Jr. and Rosemary F. Cabales dated November 06, 2014, Exhibit "P-8", pp. 39-43.
[38] *Id.*, Exhibit "P-1", p. 253.

he is also registered under the primary industry type "Retail in Liquefied Petroleum Gas".

Then, they requested from the BSP the monthly gold sales of accused for years 2009 and 2010. In reply, the BSP furnished them the monthly breakdown of accused's gold sales for 2009 and 2010.

After evaluating and analyzing all the other data and information they have gathered, they found out that the tax registration of accused was not reflective of his venture into gold trading. They were able to confirm from the BSP's list of gold transactions that the sale made by accused earned him net payments amounting to millions of pesos in 2009 and 2010 but these incomes were not reported in his ITR for the said years. As a result, there was gross underdeclaration of 46,039% and 3,879% in 2009 and 2010, and the underdeclaration was substantial in that the undeclared income for tax years 2009 and 2010 exceeded thirty percent (30%) of the sales/receipts declared per return, which under Section 248 of the Tax Code is *prima facie* evidence of fraudulent return.

The finding of fraud rested upon their determination that accused deliberately and calculatedly dismissed the resultant tax consequence of his gold sales to BSP. By making this conscious decision, accused could not have been unaware of the tax consequence of the resultant transactions and should have reported the same in his pertinent tax returns, which he failed to do. Also, he committed this underdeclaration for two (2) consecutive years. He did not update his tax registration details to include "gold trading" to his registered activities as additional line of industry, causing him to freely declare and acknowledge only the income derived from his retail store.

After this determination of fraud, they recommended the issuance of an LOA and filed a criminal complaint with the DOJ against the accused for willful attempt to evade payment of taxes under Section 254 and willful failure to file correct and accurate tax returns under Section 255 of the Tax Code.

On cross examination[39], she testified that the justification for the issuance of the LOA and PAN against the accused was Revenue Regulation No. 6-2012[40]. She also testified that the mere fact that accused did not report the large sum he received from the BSP constitutes fraud. Moreover, the basis for the complaint against the accused came only from the list coming from the BSP enumerating

[39] *Id.*, Order of hearing dated March 03, 2021, pp. 356-357.

[40] Taxation on the Sale of Gold and Other Metallic Minerals to Bangko Sentral ng Pilipinas and Other Persons or Entities, Amending Revenue Regulations No. 7-2008, and Further Amending Section 2.57.2 (T) of Revenue Regulations No. 2-98, as Amended, April 02, 2012.

all the gold traders and the allegedly amount or volume they traded from the BSP. The criminal case was filed against the accused because he did not show any proof as to the payment/remittance by the BSP of the five percent (5%) creditable withholding tax.

On re-direct examination, she testified that accused was assessed because he failed to present any document to support the claim that he was withheld of the creditable withholding tax.

3) Roberto B. Plana testified[41] that he is currently the Head of the Financial Services Section of the Davao BSP Regional Office, and has been the head thereof since 2014. He was employed with the BSP from the year 1999. Before he became the Head of the Financial Services Section of the Davao BSP Regional Office, he was the Senior Executive Assistant of then BSP Regional Director Demetrio Casipong from 2009 up to 2013. As the Senior Executive Assistant, his primary responsibility is to organize the schedule of the director, set his meetings, check all the paper works to secure his signature and review all the documents the Regional Office Director gives to him for study and consideration. In compliance with the subpoena *duces tecum* and *ad testificandum* issued by the Court, he brought certified true copies of documents and identified them, the same bearing the signature of Director Casipong, as follows: (1) the list[42] from BSP Regional Office Davao City of gold traders within CARAGA Region who sold gold to BSP for the period 2008 to 2010, which provides the consolidated data of the transaction that were conducted by the individuals during 2008 to 2010, (2) BSP Letter[43] dated November 12, 2013 composed of three (3) pages, with attached documents denominated as "Amount of Gold Sales Per Month for Taxable Year 2009" and "Amount of Gold Sales Per Month for Taxable Year 2010", and (3) Letters[44] of Delivery and Sale relative to the gold transactions of accused with the BSP, which is attached to the BSP Letter dated November 12, 2013.

On cross examination, he testified that he is not one of the signatories who issued the the list of gold traders from BSP Regional Office Davao City. He also does not know personally the accused.

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41 Docket (CTA Crim Case Nos. O-792 & O-793), Order of hearing dated September 09, 2020 and Order of hearing dated March 03, 2021, pp. 240-241; Transcript of Stenographic Notes of the testimony of Roberto P. Plana on direct-examination during the hearing on September 09, 2020 and March 03, 2021.

42 *Id.*, Exhibit "P-1", p. 253.

43 *Id.*, Exhibit "P-6" to "P-6-b", pp. 254-256.

44 *Id.*, Exhibit "P-13", pp. 257-281.

The plaintiff filed its Formal Offer of Evidence[45] on January 05, 2021. In the Resolution[46] dated November 17, 2021, this Court admitted all the evidence for the plaintiff.

Meanwhile, accused filed his Motion for Leave of Court to File Demurrer to Evidence[47] on November 04, 2021. Since the plaintiff did not interpose any objection thereon, the motion was granted.[48]

On December 07, 2021, accused filed *via* registered mail his Demurrer to Evidence[49] to which plaintiff filed its Comment/Opposition (*to the Demurrer to Evidence dated December 3, 2021*)[50] on December 16, 2021. In the Resolution[51] dated February 17, 2022, this Court denied the Demurrer to Evidence for lack of merit.

After several resettings, the initial presentation of evidence for the accused was set to September 28, 2022 at 1:30 p.m. Also, pursuant to CTA Administrative Circular No. 01-2022, dated June 21, 2022, the case was transferred to the Third Division of this Court.[52]

The defense presented three (3) witnesses, namely: Lenne B. Chua, accused Rizaldy G. Chua and Mr. Roberto B. Plana.

1) Lenne B. Chua testified[53] that the accused is her husband. She and her husband used to co-manage their variety and LPG retail store but retired their business in 2014. Her participation in the management of their business includes record-keeping, coordination with suppliers, and processing of their business permits and payables. She also testified that at one time during 2009 and 2010, they engaged in the trading of gold as many others do in their area. They buy gold from small-scale miners in their province and sell it to BSP in the buying station in Davao City. Majority of the gold traders in their area illegally sold their gold to the black market, but she and her husband chose to sell the gold to BSP because to her knowledge, there is a law that required the selling of gold to the BSP. It was their bookkeeper who prepared the ITR of the accused for the years

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45 *Id.*, pp. 298-304.
46 *Id.*, pp. 375-376.
47 *Id.*, pp. 378-380.
48 *Id.*, Order of hearing dated November 24, 2021, p. 377.
49 *Id.*, pp. 406-419.
50 *Id.*, pp. 395-405.
51 *Id.*, pp. 421-432.
52 *Id.*, Notice of Resetting dated March 01, 2022, Order of hearing dated April 20, 2022 and June 1, 2022, Order dated June 29, 2022, Resolution dated July 12, 2022 and Order of hearing dated September 28, 2022. pp. 433, 434, 437, 440, 443 and 460.
53 *Id.*, Order of hearing dated February 01, 2023 and Amended Judicial Affidavit (of witness Lenne B. Chua), pp. 658 and 1039-1044.

2009 and 2010 since she and her husband do not know anything about accounting or reporting. They gave all the documents to their bookkeeper and entrusted to the latter the preparation of the ITRs. She strongly believes that the BSP is the one obliged by law to withhold whatever taxes due on the sale of gold and to remit the same together with all proper documents to the BIR. It was their honest belief that there is no need to declare the sale of gold in the ITR of his husband considering that the two percent (2%) excise tax and five percent (5%) creditable withholding tax being final taxes had already been deducted and/or collected by the BSP. When they sold the gold to BSP, they were led to believe that the two percent (2%) excise tax and five percent (5%) creditable withholding tax were the only taxes due to the government for the transaction and it was the BSP who had the obligation to collect the same. Thus, they slept soundly knowing fully well that everything was in order, including any tax due. As proof that those taxes were paid to the BIR, the BSP wrote a letter[54] dated June 10, 2011 adressed to then BIR Commissioner Kim S. Jacinto-Henares regarding the settlement and payment of excise tax for gold purchases by the BSP for taxable years 2001 to 2010. The BIR also issued a Certificate of Approval[55] certifying that BSP had availed of the provisions of Section 2.4 of Revenue Regulation No. 13-2001 and its application for the abatement/cancellation of fifty percent (50%) basic tax, surcharges and interests in the total amount of Php6,639,211,269.43 of the deficiency excise taxes for the years 2001 to 2010 has been accepted and approved. Moreover, the BSP Davao Regional Office issued a Certification[56] dated July 31, 2012 certifying to the effect that they are collecting two percent (2%) excise tax and five percent (5%) creditable withholding tax on gold purchases. It was only in 2016 when she and accused were informed that they had a deficiency tax for their gold transaction with the BSP. They were shocked and in disbelief for if they knew that selling to BSP would put them into trouble, they have opted to sell their gold in the black market, free from hassles and worries of any tax implication, or worst, criminal prosecution. But in those years, they were loaded with good intentions, that selling their gold to BSP was the right thing to do. She insisted that his husband is not a tax evader, having no intention to evade payment of the tax. They had faith on the assumption that the BSP deducted all taxes due for the sale of gold, and that what they received as proceeds thereof is already net of all taxes.

On cross examination, she testified that upon inquiry with the BSP Davao Regional Office, they were not required to register the gold trading with the BIR. BSP only required them to present a cedula and two valid identification cards. BSP also told them that there are no taxes to be paid for the gold transaction, and if there are taxes due the BSP will be the one to pay the BIR. The payment by the BSP for the years 2001 to 2010 as stated in the Certificate of Approval[57]

[54] *Id.*, Exhibit "A-2", p. 1045.
[55] *Id.*, Exhibit "A-3", p. 1046.
[56] *Id.*, Exhibit "A-3", p. 1047.
[57] *Id.*, Exhibit "A-3", p. 1046.

includes the taxes due for every transaction of the BSP with a gold trader which includes her husband. She is also dismayed with the BSP because of its false assurance regarding the taxes due for the gold transactions. Because of the sale of gold to the BSP, a case was filed against them, and both she and her husband got sick. In particular, she became depressed due to the events that happened. She also regretted selling gold to the BSP.

On re-direct, she testified that she and her husband did not pay any tax on the sale of gold in view of the fact of the assurance from the BSP that it will be the one to pay any tax due from the transaction.

On re-cross examination, she testified that it is stated in the Certificate of Approval[58] that BSP already paid the taxes to BIR on their sale of gold to BSP.

On clarificatory questions from the Court, she testified that during their inquiry in the buying station of the BSP, they were answered that no taxes are due from them from the sale of gold. However, no document was given to them to show that they need not pay taxes anymore.

2) Accused Rizaldy G. Chua testified[59] that he is the accused in the instant cases and he used to have some business but is already retired as of date. He used to have a retail store and at one time in the past, he engaged as a small scale miner in their area. He sold the gold to BSP in its buying station in Davao City. Many of the small scale miners in their province sell their gold in the black market because there is no tax if they sell there. And yet he opted to sell the gold to BSP because it is the agency of the government mandated by law to buy gold. Moreover, he was informed by BSP that they will not withhold tax in the gold transactions because they were tax exempt. When he sold gold to BSP, he was only required by BSP to submit a cedula and two valid identification cards. Again, BSP informed him that he has nothing to pay, that it was tax exempt and they have a policy of "no questions asked" in the selling of gold to the BSP. It was also their bookkeeper who prepared his ITR for the years 2009 and 2010 and the gold trading transactions were not reflected in them because the bookkeeper told them that there is no need to, in view of the tax exemption of the gold transactions with the BSP.That is why he was disheartened when the BIR filed a case against him in selling gold to BSP. He trusted BSP that the gold transactions were tax exempt and he only wished to help the economy grow. Aside from him, tax evasion cases were also filed against Mr. Ferdinand A. Jose and Mr. Rashdi Camlian Sakaluran. The case of Mr. Ferdinand A. Jose was dismissed by the fiscal because he has no intention to evade the payment of taxes while the case of Mr.

58 *Id.*, Exhibit "A-3", p. 1046.
59 *Id.*, Order of hearing dated March 01, 2023 and Judicial Affidavit (of accused RIZALDY G. CHUA), pp. 822 and 1048-1055.

Rashdi Camlian Sakaluran was dismissed by the Second Division[60] of this Court for the same reason. He prays that his case would be also dismissed for he had no fault.

On cross-examination, he testified that he declared with the BIR his sari-sari store as his source of income at the time of registration. He had income from the sari-sari store and he paid the corresponding taxes for this income. Before retiring the said business, he ensured that all the taxes were paid. When he sold gold in 2009 and 2010, he did not report this endeavour to the BIR even though income was earned because gold transaction with the BSP is exempt. This was mentioned to him by the BSP in the buying station in Davao City though he cannot remember the name of the person who told him.

On re-direct, he testified that he was confident to sell gold to BSP because it was the government agency tasked to buy gold, and that the said transaction with the BSP is tax exempt.

On re-cross examination, he testified that he also told the BIR that his gold transactions with the BSP is tax exempt, though he cannot remember the date he did so.

On clarificatory questions from the Court, he testified that BSP in Davao City told him that the gold transactions were exempt, though he cannot remember the name of the person from the BSP. He also testified that the name of the bookkeeper who told him that the gold transactions were tax exempt was Estella Bermudes.

3) Roberto B. Plana was again subpoenaed and called to the witness stand to testify for the accused.[61] On direct examination, he testified that he is sixty (60) years old, a resident of Davao City and has been working with the BSP for twenty-four (24) years and a month. Currently, he is the manager of the Administrative Division (*i.e.,* the Operation Support Division). He started with the BSP Davao Regional Office as a loans and credit officer. In 2009, he was assigned to the Directors Office as the Senior Executive Assistant. In 2014, he became the Head of the Accounting Unit of the BSP Davao Regional Office and in 2022 he became the Head of the Administrative Division. The Regional Director of BSP in Davao at the time he was Senior Executive Assistant was Atty. Demetrio E. Casipong. In compliance with the subpoena *duces tecum* and *ad testificandum* issued by the Court, he brought certified true copies of documents

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[60] *Id.,* Decision of Court of Tax Appeals in People of the Philippines v. Rashdi Salakuran, CTA Crim Case Nos. 0-411 to O-414, Exhibit "A-6", pp. 1118-1173.

[61] *Id.,* Order of hearing dated May 10, 2023, p. 873.

and identified them – the Certificate of Approval[62] from BIR dated April 16, 2021 which contains the approval by the BIR for the settlement of tax deficiency from the BSP, and Certification[63] issued on dated July 31, 2012 by by BSP Davao Director Casipong, stating that BSP Davao only started to collect the two percent (2%) excise tax and the withholding of the five percent (5%) creditable withholding tax on gold purchases on July 11, 2011. Before July 11, 2011 which includes the years 2009 and 2010, the buying station of BSP in Davao did not deduct any withholding tax from the gold it bought from traders or small scale miners. During that time, the policy was no questions asked, no withholding of taxes.

He then narrated the buying program of the BSP of gold. First, sellers of gold would go to BSP Davao Regional Office. They would then fill-up a letter of delivery and sale and then send it through the gold buying station. Then, the gold buying station personnel together with the head of the gold buying station would check on the genuineness of the gold. If it was determined as the gold, it would be accepted and the gold buying station will issue a reception note, the latter being issued in chronological order. The gold will then be weighed in front of the seller, and then will be forwarded for assaying. Assaying is how BSP determines the purity of the gold. After determination, based on the assay of the gold, payment would then be processed and there would be released to the seller of ninety-nine percent (99%) of the total value of the gold. No reduction of taxes takes place, except for the withholding of the one percent (1%) of the total value of the gold, which would be returned to the seller/traders upon final assay of the BSP Mint and Refinery Operations Department ("MROD") Quezon City Office. On occasion, he has been assigned as the assayer when the designated assayer is absent.

He confirmed that the BSP Davao Regional Office did not withhold any tax from the gold transactions with traders and small scale miners. This was an internal policy which they confirmed with the other gold buying stations of the BSP. This was only changed in July 2011 because of the Memorandum of Agreement between the BSP and the BIR as mentioned by Regional Director Casipong in his Certification dated July 31, 2012. The gold sellers were informed that there would be no questions asked and there would be no withholding of taxes. Gold sellers were required to present their government-issued identification card and their Tax Identification Number (TIN), but the BSP did not require the seller to issue receipts to the BSP. This policy of no questions asked, no withholding of taxes applies to all gold traders and sellers of gold to the BSP.

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[62] *Id.*, Exhibit "A-3", p. 1046.
[63] *Id.*, Exhibit "A-4", p. 1047.

On cross-examination, he testified that as Senior Executive Assistant to the Regional Director, he oversaw the scheduling of the appointments with the Regional Director as well as reviewing all the documents he would then sign. There were also occasions when he would be assigned as an assayer in the absence of the assay officer or Head of the Accounting Department in the absence of the Head. On rare occasions, he was also assigned as the Head on the Administrative Office. Being assigned in the Accounting Department, he had firsthand knowledge with the withholding of taxes by the BSP to the BIR. However, the said withholding was only done for certain transactions and excludes gold during 2009 and 2010. To generate as many gold reserves for the country in the year 2009 and 2010, there will be no questions asked and no withholding of taxes. He was able to verbally confirm this policy from the heads of the other gold buying stations of the BSP, thus making the same uniform for all BSP buying stations. The requirement that BSP asks from the sellers of gold are their government-issued identification card which includes their Tax Identification Number (TIN) or driver's license. Additionally, if they represent another person, the BSP will ask for a Special Power of Attorney (SPA) or a secretary's certification in case of a corporation. The purpose for the requirement is to ensure that the seller will be the one receiving the payment from the BSP. They do neither ask the sellers for a certain certification, nor they check whether their business is legitimate or whether they have any criminal record with the government.

On clarificatory questions from the Court, he testified that the gold sellers were verbally informed of the BSP's internal policy of no questions asked and non-withholding of taxes by Mr. Efren Samson, the Head of the gold buying station in BSP Davao Regional Office, or during his absence his alternate or assistant manager. This policy was adopted from the BSP MROD, the department which established the gold buying stations of the BSP, and this was confirmed with the other buying stations in Naga, Baguio and Zamboanga. The BSP Gold Buying Program Guidelines, which mentions the deduction for excise tax and withholding tax and which can be currently accessed in the internet was not yet in effect in 2009 and 2010. The Tax Identification Number (TIN) required from the gold sellers was only used for identification purposes and not for withholding of tax.

The defense filed its Formal Offer of Exhibits *via* registered mail on May 19, 2023[64] and rested its case with the admission of all its documentary evidence on July 27, 2023.[65]

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[64] *Id.*, pp. 1034-1038.
[65] *Id.*, pp. 1199-1200.

The plaintiff submitted its Memorandum *via* registered mail on September 04, 2023,[66] while the defense filed its Memorandum (For Accused Rizaldy G. Chua)[67] on September 13, 2023 *via* accredited courier. The case was submitted for decision in the Resolution dated October 02, 2023.[68]

The Issues

This Court is confronted with these main issues:[69]

1. Whether or not accused is liable for violation of Section 255 of the NIRC of 1997, as amended; and

2. Whether or not accused is liable for deficiency income tax for the taxable years 2009 and 2010 as charged in the Informations subject of the consolidated cases.

The Arguments

The prosecution claims that accused is guilty beyond reasonable doubt of violating Section 255 of the NIRC of 1997, as amended:

1) First, accused is a person required under the NIRC of 1997, as amended, to pay any tax, make a return, keep any record, or supply correct and accurate information at times required by law and regulations;

2) Second, accused failed to supply such correct and accurate information in his tax returns and to pay such tax; and

3) Third, accused's failure to supply such correct and accurate information in his tax returns and to pay such tax was willful.

Conversely, the defense argues that the third element – willful failure to to supply correct and accurate information in his tax returns and to pay such tax, is lacking. The plaintiff failed to prove that accused's non-declaration of his income in his ITRs for taxable years 2009 and 2010 pertaining to his gold sales with the

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66 *Id.,* pp. 1201-1219.
67 *Id.,* pp. 1220-1250.
68 *Id.,* p. 1283.
69 *Id.,* Pre-Trial Order, Statement of Issues, p. 200.

the BSP was willful or with design to evade or defeat his income tax obligation for the following reasons:

1) The witnesses for the plaintiff have no personal knowledge of the crime imputed;

2) Fraud is a question of fact that should be alleged and duly prove. The pieces of evidence plaintiff presented failed to point out the specific act constituting fraud or willful neglect of the accused to file the required tax return as well as the fraudulent intent to evade payment of taxes;

3) Accused acted in good faith and lacked any malicious intent. He relied on the assurance of the BSP that the gold transactions were tax free and that it is implementing "no questions asked policy" to encourage traders to sell to BSP; and

4) The present case is identical with *People of the Philippines v. Rashdi Camlian Sakaluran*[70] as it involves tax evasion cases for gold transactions with BSP Zamboanga Gold Buying Station. The Court of Tax Appeals Second Division acquitted Rashdi Camlian Sakaluran on the strength of the testimony of former BSP Administrative Officer Melodino Patiño, who testified on the tax-free transactions and the "no questions asked policy" of the BSP.

The Ruling of the Court

In these consolidated cases, accused is charged before this Court for his alleged failure to supply correct and accurate information in his ITRs for taxable years 2009 and 2010. The plaintiff claims that accused has violated the first paragraph of Section 255 of the NIRC of 1997, as amended, which reads as follows:

> "**Sec. 255.** *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* – **Any person required under this Code** or by rules and regulations promulgated thereunder **to** pay any tax, make a return, keep any record, or **supply any correct and**

[70] CTA Crim Case No. O-411 to O-414, September 16, 2019.

accurate information, who willfully fails to pay such tax, make such return, keep such record, or **supply such correct and accurate information**, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, **at the time or times required by laws or rules and regulations** shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000.00) and suffer imprisonment of not less than one (1) year but not more than ten (10) years."[71]

From the foregoing, the plaintiff must prove beyond reasonable doubt the following three (3) essential elements before accused can be held liable under Section 255 of the NIRC of 1997, as amended:

1. The accused is the person required under the Tax Code or by rules and regulations to file a return, to supply correct and accurate information;

2. The accused failed to supply correct and accurate information at the time required by law; and

3. Such failure to supply correct and accurate information was willful.

Accused is required under the NIRC of 1997, as amended, to supply correct and accurate information in his ITRs

Accused is a registered taxpayer with Tax Identification Number (TIN) 110-710-702-000.[72] He is engaged in retail sale of goods and operates a store located in Sta. Cruz, Agusan del Sur under the primary industry type "Retail in Liquefied Petroleum Gas".[73]

There is no question that accused as a natural person operating a business has the duty to file an Annual ITR, as well as to supply correct and accurate

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71 *Emphasis supplied.*

72 *See* Docket, BIR Integrated Tax System (ITS) Registration Details of accused (Exhibit "P-2" to "P-2-a"), Annual Income Tax Return (BIR Form No. 1701) of accused for taxable year 2009 with attached balance sheet (Exhibit "P-3") and Annual Income Tax Return (BIR Form No. 1701) of accused for taxable year 2010 with attached balance sheet (Exhibit "P-4"), pp. 306-307, 308-312 and 313-317.

73 Docket, Exhibits "P-2" to "P-2-a", pp. 306-307.

information thereon under Sections 51 and 74 of the NIRC of 1997, as amended, to wit:

"**SEC. 51.** *Individual Return.* –

(A) Requirements. -

(1) Except as provided in paragraph (2) of this Subsection, **the following individuals are required to file an income tax return**:

(a) **Every Filipino citizen residing in the Philippines**;

xxx xxx xxx

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

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

xxx xxx xxx

(B) Where to File. - Except in cases where the Commissioner otherwise permits, the return shall be filed with an authorized agent bank, Revenue District Officer, Collection Agent or duly authorized Treasurer of the city or municipality in which such person has his legal residence or principal place of business in the Philippines, or if there be no legal residence or place of business in the Philippines, with the Office of the Commissioner.

(C) When to File. -

(1) The return of any individual specified above shall be filed on or before the fifteenth (15th) day of April of each year covering income for the preceding taxable year..."[74]

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[74] *Emphasis supplied.*

"**SEC. 74.** *Declaration of Income Tax for Individuals.* –

(A) In General. - Except as otherwise provided in this Section, every individual subject to income tax under Sections 24 and 25(A) of this Title, who is receiving self-employment income, whether it constitutes the sole source of his income or in combination with salaries, wages and other fixed or determinable income, **<u>shall make and file a declaration of his estimated income</u>** for the current taxable year on or before May 15 of the same taxable year. **In general, 'self-employment income' consists of the earnings derived by the individual from the practice of profession or conduct of trade or business carried on by him as a sole proprietor or by a partnership of which he is a member.** Nonresident Filipino citizens, with respect to income from without the Philippines, and nonresident aliens not engaged in trade or business in the Philippines, are not required to render a declaration of estimated income tax. The declaration shall contain such pertinent information as the Secretary of Finance, upon recommendation of the Commissioner, may, by rules and regulations prescribe. An individual may make amendments of a declaration filed during the taxable year under the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner."[75]

Indeed, accused filed his Annual ITRs for taxable years 2009[76] and 2010[77] with BIR RDO No. 104.

On the other hand, Section 32(A)(2) of the NIRC of 1997, as amended, states that a taxpayer is duty bound to declare all of his or her income from all sources, including, but not limited to, the conduct of trade or business:

"**SEC. 32.** *Gross Income.* –

(A) General Definition. — Except when otherwise provided in this Title, gross income means **all income derived from whatever source**, including (but not limited to) the following items:

xxx xxx xxx

[75] *Emphasis and underscoring supplied.*
[76] *Id.*, Exhibit "P-3", pp. 308-312.
[77] *Id.*, Exhibit "P-4", pp. 313-317.

(2) Gross income derived from the conduct of trade or business or the exercise of a profession..."[78]

In these consolidated cases, the plaintiff was able to prove that accused sold gold to BSP in 2009 and 2010 as shown by the BSP Letter[79] dated November 12, 2013 signed by BSP Davao Regional Office Director Demetrio E. Casipong with attached documents denominated as "Amount of Gold Sales Per Month for Taxable Year 2009" and "Amount of Gold Sales Per Month for Taxable Year 2010" and Letters of Delivery and Sale from the BSP[80]. Accused did not deny that he executed the Letters of Delivery and Sale offered in evidence by the plaintiff. Even accused himself disclosed that he sold gold to the BSP Davao buying station during taxable years 2009 and 2010. The pertinent portions of the accused's Judicial Affidavit[81] is reproduced hereunder:

"3. Q : Unsa ang imong mga negosyo sauna?

A : Naa ko sa una nga retail store ug sa una sad nag engage pud as a small scale miner sa among area.

(Q : What kind of business do you have before?

A : I used to have a retail store and at one time in the past, and I engaged as a small scale miner in our area.)

xxx xxx xxx

5. Q : Gi ingon nimo na sauna naga engage ka as a small scale miner. Kanusa mani?

A : Sa mga tuig na 2009 ug 2010.

(Q : You mentioned that at one time in the past you were engaged as a [small scale miner] when was this?

A : In the years 2009, 2010.)

6. Q : Asa man nimo ni ginabaligya ang bulawan?

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[78] *Emphasis supplied.*
[79] Docket, Exhibits "P-6" to "P-6-b", pp. 254-256.
[80] *Id.*, Exhibit "P-13", pp. 257-281.
[81] *Id.*, Exhibit "A-5", pp. 1049-1050.

A : Sa Bangko Sentral ng Pilipinas, sa ilang buying station sa Davao City sir.

(Q : Where did you sell this gold?

A : To the Bangko Sentral ng Pilipinas, in its buying station in Davao City, sir.)"

The wife of accused, Lenne B. Chua, also confirmed in her Amended Judicial Affidavit[82] that she and his husband had transactions with the BSP Davao buying station during 2009 and 2010, to wit:

"7. Q : You mentioned that at one time in the past you were engage [*sic*] with the trading of gold, when was this?
A : In the years 2009 and 2010, sir.

8. Q : When you say trading of gold, what do you mean by that?
A : We are buying gold from small-scall [*sic*] miners in our province and sell it also, sir.

9. Q : Where did you sell this gold?
A : To the Bangko Sentral ng Pilipinas, in its buying station in Davao city, sir."

Clearly, accused received money from the sale of gold to the BSP, and therefore was duty bound to declare the same as part of his gross income in his Annual ITRs for 2009 and 2010 since he is required by law to declare his income derived from all sources.

Hence, the first element of the crime charged, requiring accused to supply correct and accurate information in his ITRs, *i.e.,* declare all of his gross income from all sources, is clearly satisfied in this case.

Accused failed to supply correct and accurate information in his ITRs for taxable years 2009 and 2010 at the time or times required by law or rules and regulations

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82 *Id.*, Exhibit "A-1", p. 1040.

Having established that there was income on the part of accused and that he is required by law to declare all of his income from all sources, We shall now determine if he supplied correct and accurate information when he filed his Annual ITRs for 2009 and 2010.

Equally important with the filing of the ITRs at the time required by the Tax Code is the accuracy of the information contained in the same. The ITRs should reflect the true and correct amount of income earned by the taxpayer for the given period.[83]

A review of the Annual ITR and the attached Income Statement of the accused reveals that he declared gross sales of Php190,532.00 and other income of Php64,020.53 for 2009. Nevertheless, this Court cannot locate from the said documents the receipt by accused from the BSP of the amount totalling Php87,910,434.73 representing gold sales. The same is true with the year 2010. The receipt by accused from the BSP of the P8,120,045.04 cannot be traced to the Annual ITR and the attached Income Statement for 2010, where accused declared gross sales of Php204,061.75 and other income of Php70,600.00.[84] These only show that accused failed to include in his Annual ITRs the receipt of payment from his sale transactions with the BSP.

More importantly, the accused admitted in his Judicial Affidavit[85] that he failed to declare in his ITRs the revenue received from his transactions with the BSP.

> "13. Q : Pwede ba nimo iignon sa Honorable Court nganung ang imong mga gold transactions sa BSP wala man ni reflect sa imong Annual Income Tax Returns para sa tuig nga 2009 ug 2010.
>
> A : Sa akong nahibal-an, giingon sa among bookkeeper nga dili na kinahanglan kay tungod ingon sa BSP tax exempt daw ang gol transaction sa ilaha.
>
> (Q : Will you kindly tell the Honorable Court **why your gold trading transactions with the BSP were not reflected in [your] Annual Income Returns for years 2009 and 2010**?

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[83] *Id.*, Exhibit "A-5", p. 1052.
[84] *People v. Rommel Ynion y Salva*, C.T.A. Crim. Case Nos. O-313, O-314, O-315, O-316, O-317, O-318, O-319 & O-320, December 04, 2019.
[85] Docket, Exhibit "A-5", p. 1052.

A : All I know based on what our bookkeeper told us that there is no need because the BSP said that gold transactions with them are tax exempt.)"[86]

Again, this fact was confirmed during the cross-examination of accused – that is, his transactions with the BSP were not included in the annual declaration of revenue in the subject Annual ITRs, to wit:

"Q: In Question No. 5, you mentioned that at one time in the past, you engaged as a small scale miner in the years 2009 and 2010, is this correct?

A: Opo, correct po.

Q: **When you sold gold in the year 2009 and 2010, you admit that you did not report this endeavour to the BIR eventhough [*sic*] you earned Income from such engagement?**

Witness: **Wala po.**

Atty. Pineda:

In Question No. 6. you mentioned that you sold your gold to the BSP and its buying station in Davao City. Is this correct?

A: Opo.

xxx xxx xxx

Q: **So, do you admit that you kept selling gold to the BSP and continuously did not report the same to the BIR?**

A: **Opo** tax exempt." [87]

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[86] *Emphasis supplied.*
[87] *Emphasis supplied.*

From the foregoing, it is apparent that accused's income from the sale of gold with the BSP during 2009 and 2010 were not included in his Annual ITRs.

Therefore, the second element of the crime charged has been sufficiently proven in these consolidated cases.

The plaintiff failed to prove beyond reasonable doubt that failure by accused to supply correct and accurate information was willful

It has already been demonstrated that accused failed to supply correct and accurate information in his Annual ITRs for taxable years 2009 and 2010. What is left now for the Court to ascertain is whether such failure was willful.

An act or omission is "willfully" done, if "done voluntarily and intentionally and with specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to obey or to disregard the law".[88]

Thus, even when the first two elements of the crime are present, accused cannot be convicted unless the prosecution was able to prove beyond reasonable doubt that the failure to supply correct and accurate information in accused's Annual ITRs for taxable years 2009 and 2010 was done willfully, with knowledge and voluntariness, and with intentional violation of a known legal duty.

According to the plaintiff, accused's underdeclaration of gross sales/receipts for two (2) consecutive years and failure to update his tax registration details to include "gold trading" to his registered activities as additional line of industry, shows his act to be willful and deliberate.

Accused avers otherwise. He maintains that such failure were without malice considering that he merely relied on representations made by the BSP Davao City Buying Station that the same were tax-free. Simply stated, accused asserts that there was no intention on his part to violate the law, and such failure was mere negligence and pure inadvertence. According to him, he was of the

[88] Black's Law Dictionary, 5th ed., p. 1434, cited in People of the Philippines v. Gloria V. Kintanar, CTA EB Crim. Case No. 006 (CTA Crim. Case No. O-033 and O-034), December 03, 2010.

mistaken, but honest, notion that it was not necessary for him to include his gold sales in the said Annual ITRs for the simple reason that they were tax-free.

To recall, accused was adamant during his direct testimony[89], cross-examination, re-direct, re-cross examination and clarificatory questions from the Court that the BSP in Davao City told him that his sale of gold was tax exempt, although he cannot remember the name of the person who told him so. As such, accused did not see the need to declare the proceeds of the gold sales in his 2009 and 2010 Annual ITRs. Petinent portions of the Transcript of Stenographic Notes during the hearing on March 01, 2023 are reproduced below:

"**<u>CROSS-EXAMINATION:</u>**

xxx xxx xxx

Q: What is the reason why you did not report the sales of gold to the BSP to the BIR?

A: **Exempted ang gold transaction sa Central Bank.**

Q: Who told you that this gold transaction with the Central Bank is actually exempt from tax?

A: **Central Bank ang nagsabi.**

Q: Is there a particular person who told you?

A: Central Bank. Hindi ko na matandaan yung ano.

xxx xxx xxx

Q: **You also mentioned that BSP made mention that you have nothing to pay because it was tax exempt and that BSP has a policy of no questions asked in selling of goods to the BSP, is this correct?**

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[89] Docket, Exhibit "A-5", pp. 1051-1053.

A:

Opo.

Q:

Did you ask the BSP why it did not deduct?

A:

Sinabi ng BSP na tax exempt ang gold transaction sa Central Bank in Visaya.

Q:

So, knowing that this is tax exempt you no longer declared these transactions with the BIR, is this correct?

A:

Opo.

xxx xxx xxx

REDIRECT:

Atty. Taglucop:

During cross examination tinanong ka bakit hindi ka nagbabayad ng buwis sa BIR sa gold transaction mo. bakit hindi ka nagbabayad?

xxx xxx xxx

A:

Tax exempt ang transaction ng gold sa Central Bank.

Q:

Dun sa cross-examination, tinanong ka bakit mo binebenta ang gold mo sa BSP at hindi sa black market? Bakit?

A:

Mas kampante ako magbenta sa Central Bank kase yun ang ahensya ng gobyerno inatasan magbili ng mga gold at saka tax exempt doon.

/V

Atty. Taglucop:

That would be all, Your Honors.

JUSTICE SAN PEDRO:

Recross?

Atty. Pineda:

You mentioned that the BSP told you that your gold transactions are actually exempt from taxes, so did you mention the same to the BIR, that it is exempt from taxes?

Witness:

Sinabi po.

Atty. Pineda:

When did you say it?

A:

Hindi ko na po matandaan.

Atty. Pineda:

No more questions, Your Honors.

JUSTICE SAN PEDRO:

Just some clarificatory. So, just to confirm, **it was the BSP who told you that the gold transactions were tax exempt,** correct?

A:

Yes, your Honor.

JUSTICE SAN PEDRO:

Pero hindi mo na alam kung sino sa BSP ang nagsabi sa iyo nito, wala kang mabanggit na pangalan?

A:

Meron po taga Central Bank. Pero hindi ko maalala ang pangalan.

JUSTICE SAN PEDRO:

Saang Central Bank, saang opisina?

A:

Davao po."[90] (TSN dated March 01, 2023, pp. 10-20)

When she was called to the witness stand, the wife of accused, Ms. Lenne B. Chua, reiterated BSP's assurance to them that there are no taxes to be paid on the gold transactions. Petinent portions of the Transcript of Stenographic Notes during the hearing on February 01, 2023 are reproduced hereunder:

"***Cross-Examination of Ms. Lenne B. Chua conducted by Atty. Maica P. Pineda***

xxx xxx xxx

ATTY. PINEDA

Q What is your reason for non-registration of this gold trading with the BIR?

MS. CHUA

A Because **upon inquiry from Davao City BSP**, they did not require us for the registration, they only required sedula and 2 IDs, *and* ***nagsabi sila na wala taxes na babayaran****. Kung mayron man, sila na daw ang magbabayad.*

xxx xxx xxx

Re-Direct Examination of Ms. Lenne B. Chua conducted by Atty. Anthony P. Banzali Chua

ATTY. BANZALI

Q During the cross examination, Madam Witness, you were asked what was the basis of your belief or your honest belief that there is no need for you to pay taxes. Can you please tell the

[90] *Emphasis supplied.*

Honorable Court, what particular insights that you were able to have that belief?

MS. CHUA

A ***Hindi kami ngbayad* [*sic*] *ng tax kasi nung pagpunta naming* [*sic*] *sa BSP, nag inquire kami, sabi nila, walang taxes na kukunin,*** *kung may babayaran man, sila na daw ang magbabayad.* ***Yan ang sinabi ng taga BSP.***

ATTY. BANZALI

That would be all, Your Honors.

xxx xxx xxx

JUSTICE SAN PEDRO

I have some clarificatory questions. Mrs. Chua, in question no. 14 to 15, you said that it was your honest belief that there is no need to include the taxes because it has already been collected by BSP and that you understood it is the BSP who is obliged by law to pay those taxes. Where did you get this understanding, what is your basis for saying this. *May nagsabi ba sa inyo nito?*

MS. CHUA

A *Yes.*

JUSTICE SAN PEDRO

Why was it your understanding, what is your basis did anyone tell you this?

MS. CHUA

A **In the buying station during the inquiry in Central Bank *sinabihan kami ng walang taxes.***

JUSTICE SAN PEDRO

Who told you this in the BSP?

MS. CHUA

In the buying station.

JUSTICE SAN PEDRO

Who, was there a particular officer you were talking to, who told you this?

MS. CHUA

In the buying station, Ma'am."[91] (TSN dated February 01, 2023, pp. 16-35)

The testimony of accused and his wife were corroborated by Mr. Roberto B. Plana, the Head of Financial Services Section of the Davao BSP Regional Office. During his testimony, he revealed that before July 11, 2011, the BSP buying stations had a policy of "no questions asked" and non-imposition of taxes from the sale of gold. This was supported by the fact that there was also no requirement for the sellers of gold to register their business and issue receipts to the BIR. Lastly, BSP only required from the sellers their TIN for identification purposes. Petinent portions of the Transcript of Stenographic Notes during the hearing on May 10, 2023 are provided below:

"Atty. Taglucop:

How about before July 11, 2011? Did the Bangko Sentral ng Pilipinas withhold excise and creditable withholding tax from the sales of gold?

A:

To my knowledge we never deducted any withholding taxes from deliberates [*sic*] of gold buying to the Bangko Sentral ng Pilipinas by traders or small scale miners.

Q:

And may we know what was the policy of Bangko Sentral ng Pilipinas with regard to the taxation of sales of gold to Bangko Sentral ng Pilipinas?

A:

During that time, the policy was there will be no questions asked, no withholding of taxes.

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[91] *Emphasis supplied.*

Q:

What about for the years 2009 and 2010, what was the policy with regard to the taxation of the sales of gold?

A:

That being covered by the period before we started imposing withholding taxes. **There was no withholding of taxes during that time.**

Atty. Taglucop:

And because it was a no question asked policy, is that correct?

Witness:

Yes, sir.

xxx xxx xxx

Atty. Taglucop:

You mentioned that in the gold buying transaction with the Bangko Sentral ng Pilipinas, Bangko Sentral ng Pilipinas did not withhold tax. is that correct?

A:

That's accurate, sir.

Q:

And again, may I know the reason why?

A:

For one, that was the internal policy of the Bangko Sentral ng Pilipinas Davao Regional Office which we confirm with other branches as well that has gold buying station so we were uniformed [*sic*] with the other gold buying stations of the Bangko Sentral ng Pilipinas.

Q:

So, when you mentioned that there is no question asked policy in relation to the gold transaction with Bangko Sentral ng Pilipinas, was this also the position of the other Bangko Sentral ng Pilipinas buying stations in the country other than Davao City?

A:

To the extent that I undertook confirmation of that, yes I can say so, sir.

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Atty. Taglucop:

If you know what were the requirements asked from the gold sellers before they can transact and sell their gold to Bangko Sentral ng Pilipinas?

Witness:

Well, for one the gold itself and then **the government Issued ID for the purpose of ascertaining that we would be paying to the same party the proceeds of the gold that was delivered.**

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JUSTICE SAN PEDRO:

Were the gold sellers required to issue receipts to the Bangko Sentral ng Pilipinas?

A:

No, Your Honor.

xxx xxx xxx

Q:

I am clarifying the position of the Bangko Sentral ng Pilipinas with regard to the tax treatment of the gold buying transactions in the year 2009 and 2010?

A:

I don't seem to understand the question but during that time that was [*sic*] the only I knew about the gold buying program was that, we'll buy gold from the small scale miners, traders and there will be no questions asked and no withholding of taxes that [is] the general understanding and practice that we had at that time.

Q:

So, you mentioned that there was no questions asked at that time?

Witness:

Yes. Ma'am.

Atty. Pineda:

Is this an official policy of the Bangko Sentral Pilipinas?.

A:

That was the same question that I had and that's the reason why we undertook an inquiry with our other gold buying stations during that time a part ord diligence because I recall Atty. Casipong being concerned of that absence of a withholding tax from the transaction but **we were able to confirm with all the other gold buying stations of the Bangko Sentral ng Pilipinas that our practice was the same**. It was uniformed among all the GBS.

Q:

How did you confirm about this, Mr. Witness?

A:

By calling the Heads of the various gold buying stations of the Bangko Sentral ng Pilipinas.

Q:

So, when you call this buying stations, did they mention to you any authority or order from the Central office of the Bangko Sentral ng Pilipinas stating that the gold buying transactions is actually tax exempt or that you will not be questioning the sellers of gold to Bangko Sentral ng Pilipinas?

Witness:

N

The only recollection I have was that it was confirmed. I never, personally never asked for the documents so it was confirmatory only on may part.

Atty. Pineda:

Could you elaborate the meaning of confirmatory? How was it confirmed?

A:

As [*sic*] the practice is also the same with their gold buying station that they do not ask questions and they do not withhold taxes, ma'am.

Q:

Whose [*sic*] specifically did you ask?

A:

One in particular was Mr. Patiño of our Bangko Sentral ng Pilipinas Zamboanga, however, he is already retired. **The other one from Naga.** I could not recall his name probably because of age also. **And the one from Baguio.** I cannot recall his name also.

Q:

With regard to these persons that you confirmed this fact, Mr. Witness, do you know if they are authorized to actually tell you and confirmed to you that you will have no questions asked?

A:

Yes, Ma'am. [T]hat person was actually the Head of the Zamboanga branch of the Bangko Sentral ng Pilipinas.

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Atty. Pineda:

If we could clarify the matter, Mr. Witness, do you or do you not qualify the sellers of good to the Bangko Sentral ng Pilipinas?

Witness:

When you say qualify, ma'am, what do you mean?

Q:

For example you are [*sic*] asking them for a certain certification or checking whether they are legitimate, their business is legitimate. they are good standing with the government, they don't have any criminal record of some sort?

A:

No. Ma'am, like I mentioned earlier there was no questions asked and then no withholding of taxes. That's the only thing we...

Q:

But you also mentioned a while ago that you still require the TIN and the ID of the seller, is this correct?

A:

Yes, Ma'am. **Part of the documents that we asked would be a government issued ID and that would include also the TIN or a driver's license in that case**.

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JUSTICE SAN PEDRO:

You also mentioned that you required a TIN from the both [*sic*] sellers, that's correct?

A:

Yes, Your Honor.

JUSTICE SAN PEDRO:

And this was even if you were not withholding - since no taxes were involved, what was the purpose in requiring the TIN, just for identification?

A:

Yes, Your Honor."[92] (TSN dated February 01, 2023, pp. 12-42)

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92 *Emphasis supplied.*

From the foregoing, We find that the third element of the crime charged is missing in the case at bar. That the accused willfully failed to supply the correct and accurate information on his Annual ITRs filed for taxable years 2009 and 2010 was not proven by plaintiff beyond reasonable doubt.

CONCLUSION

An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his or her guilt is shown beyond reasonable doubt, he or she must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged.[93]

In all criminal prosecutions, the burden of proof is on the prosecution to establish the guilt of the accused beyond reasonable doubt. It has the duty to prove each and every element of the crime charged in the Information to warrant a finding of guilt for the said crime or for any other crime necessarily included therein.[94]

In the appreciation of evidence in criminal cases, it is a basic tenet that the prosecution has the burden of proof in establishing the guilt of the accused for the offense with which he is charged. *Ei incumbit probation qui dicit non qui negat; i.e.*, "he who asserts, not he who denies, must prove." The conviction of appellant must rest not on the weakness of his defense, but on the strength of the prosecution's evidence.[95]

After careful consideration of the testimonial and documentary evidence presented by both parties, the Court finds that the plaintiff failed to prove that there was willful failure by accused to supply correct and accurate information in the Annual ITRs filed for taxable years 2009 and 2010, creating reasonable doubt as to his guilt. Accordingly, the Court finds that the plaintiff failed to discharge the burden to prove all the essential elements of the crime attributed to accused. Accused should be acquitted of the offense charged.

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93 Boac, et al. v. People of the Philippines, G.R. No. 180597, November 07, 2008 *citing* People of the Philippines v. Ganguso, G.R. No. 115430, November 23, 1995.

94 Leonila Batulanon v. People of the Philippines, G.R. No. 139857, September 16, 2006.

95 People of the Philippines v. Nenita B. Hu, G.R. No. 182232, October 06, 2008 *citing* People of the Philippines v. Corpuz, G.R. No. 148198, October 01, 2003.

Regarding the civil aspect of this case, the Supreme Court recently published[96] its decision on *People of the Philippines v. Joel C. Mendez*[97] (*People v. Mendez*) which contained the following doctrines:

1) The finding of liability for unpaid taxes in the criminal tax case is a consequence of the government's exercise of its remedy to collect taxes in the same action to prosecute a criminal offense under the tax laws. Simply stated, the criminal action is deemed a collection case for unpaid taxes; and

2) The obligation of the taxpayer to pay the tax is not a civil liability arising from the crime that could be extinguished by his acquittal in the criminal charge. In other words, even if the guilt of the accused has not been satisfactorily established, he is not necessarily exempt from civil liability for taxes which may be proved by preponderance of evidence[98] only.

Before *People v. Mendez* and during the trial of the instant case, the treatment in tax criminal cases is that acquittal of the crime meant there was no finding of civil liability. On this assumption, accused focused on the possible acquittal of the criminal charges filed against him and not on the civil liability for unpaid taxes. Accused did not present evidence both for criminal and civil aspects of the case.

In the interest of justice, the case shall be reopened for reception of evidence for the accused on the civil aspect of the case. Thereafter, plaintiff shall be allowed to present rebuttal evidence, if any.

It is a basic tenet that penal laws and by necessary implication, penal jurisprudence should be retroactively applied only in so far as they favor the accused. Here, the retroactive application of the ruling in *People v. Mendez* would result in an oppressive consequence to the accused considering that he was not able to defend himself regarding the civil aspect of the case.

WHEREFORE, premises considered, accused **RIZALDY GOLORAN CHUA** is hereby **ACQUITTED** of the offenses charged against him in Criminal Case Nos. O-792 and O-793, for failure of the plaintiff to prove his guilt beyond reasonable doubt.

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[96] Uploaded in the Supreme Court website on November 21, 2023.
[97] G.R. Nos. 208310-11 and 208662, March 28, 2023.
[98] *See* Section 1, Rule 133 of the Revised Rules on Evidence.

As regards his civil liability, the same shall be adjudicated after hearing and reception of evidence.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(On Leave)
CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

I attest that the conclusions in the above decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice