REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

BENJAMIN G. KINTANAR, Petitioner,	CTA EB Crim. No. 012 (CTA Crim. Nos. O-031 & O-032)
	Present:
- versus -	ACOSTA, *PJ.* CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, *JJ.*
PEOPLE OF THE PHILIPPINES, Respondent.	**Promulgated:** MAY 07 2012 CnApolinario 9:00 a.m.

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DECISION

UY, J.:

This is a Petition for Review filed by petitioner, Benjamin G. Kintanar, on April 1, 2011, against respondent, People of the Philippines, assailing the Decision dated September 27, 2010 and Resolution dated February 23, 2011, both rendered by the

Third Division of this Court (Court in Division) in the consolidated cases docketed as CTA Crim. Case Nos. O-031 and O-032[1], entitled "People of the Philippines, plaintiff, v. Benjamin G. Kintanar, respondent".

In the assailed Decisions, petitioner-accused, Benjamin G. Kintanar, was found guilty beyond reasonable doubt for violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, in CTA Crim. Case No. O-031; and for violation of Section 255 of the NIRC of 1997, as amended, in CTA Crim. Case No. O-032.

In the assailed Resolution promulgated on February 23, 2011[2], the Court in Division denied petitioner-accused's Motion for Reconsideration of the assailed Decision filed on October 12, 2010, for lack of merit.

THE FACTS

Culled from the records, these are the undisputed facts of the subject consolidated criminal cases.

Admittedly, petitioner-accused, Benjamin G. Kintanar, Filipino and resident of the Philippines, together with his wife, Gloria V. Kintanar, were independent distributors of products of Forever Living Products Philippines, Inc. (FLPPI), whereby the Kintanars received commissions for every Forever Living product that were sold, as well as, from the sales of independent distributors that they referred and/or introduced to FLPPI.

Sometime on April 3, 2003, petitioner-accused received a Letter of Authority from the Enforcement Service Office, Office of the Commission of the Bureau of

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[1] Chaired by Associate Justice Lovell R. Bautista, with Associate Justices Olga Palanca-Enriquez and Amelia R. Cotangco-Manalastas as members.
[2] Docket, pp. 83-94, Annex "B", Petition for Review.

Internal Revenue (BIR), authorizing certain revenue officers to examine the books of accounts of petitioner-accused for all internal revenue taxes covering the years of 1999 to 2002 and requiring the submission of voluminous documents for purposes of audit.

On August 10, 2004 petitioner received a Formal Letter of Demand dated February 26, 2004 together with Assessment Notices from the BIR covering taxable years 1999-2002 for the payment of deficiency taxes. Thus, petitioner-accused protested the deficiency assessments for lack of factual or legal basis, attaching photocopies of his income tax returns for 2000, 2001 and 2002. Said protest was denied in a Final Decision on Disputed Assessment on December 13, 2004.

Thereafter, a preliminary investigation in I.S. No. 2005-449 entitiled "*Bureau of Internal Revenue vs. Spouses Benjamin Kintanar and Gloria Kintanar*" was conducted by the Department of Justice for Attempt to Evade Tax and Failure to File Tax Returns against petitioner-accused. In the Resolution dated February 7, 2008, the Office of the State Prosecutor of the Department of Justice, found probable cause for the filing of three (3) counts of violation of Section 255 of the Republic Act No. 8424 otherwise known as the "Tax Reform Act of 1997" or "Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withheld and Remit Tax and Refund Excess Taxes Withheld on Compensation" against the Spouses Benjamin Kintanar and Gloria Kintanar, and the same were filed with the Court in Division of this Court.

The first count refers to the taxable year 1999 and is the subject of another case before the Court *En Banc.* The two (2) other counts (CTA Crim. Case Nos. 0-031 and 0-032) pertaining to the taxable year 2000 and 2001 were resolved by the Third Division of this Court in the assailed Decision dated September 27, 2010 and

Resolution dated February 23, 2011, both of which are the subject of the instant Petition for Review.

The accusatory portions of the two (2) separate Informations filed in CTA Crim. Nos. 0-031 and 0-032[3] charging petitioner-accused Benjamin G. Kintanar for his alleged failure to file his income tax return for the taxable years 2000 and 2001 read as follows:

Criminal Case No. O-031

"That on or about the 16th day of April 2001, in Parañaque City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino citizen residing in the Philippines, who is engaged in business and earning income as distributor of Forever Living Products Philippines, Inc., with obligation under the law to file his Income Tax Return (ITR) for the taxable year 2000 on or before the 15th day of April 2001, did, then and there, wilfully, unlawfully and feloniously fail to file his income tax return with the Bureau of Internal Revenue for the year 2000, to the damage and prejudice of the Government in the estimated amount of **P3,475,090.64**, exclusive of penalties, surcharges and interest.'

CONTRARY TO LAW."

Criminal Case No. O-032

"That on or about the 16th day of April 2002, in Parañaque City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino citizen residing in the Philippines, who is engaged in business and earning income as distributor of Forever Living Products Philippines, Inc., with obligation under the law to file his Income Tax Return (ITR) for the taxable year 2001 on or before the 15th day of April 2002, did, then and there, wilfully, unlawfully and feloniously fail to file his income tax return with the Bureau of Internal Revenue for the year 2001, to the damage and prejudice of the Government in the estimated amount of **P5,175,242.12**,[4] exclusive of penalties, surcharges and interest.'

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[3] Both initially raffled before the Second Division of the Court of Tax Appeals.

[4] The CORRECT ESTIMATED AMOUNT is **"5,172,519.25"**. Note that in Exhibit "J-4", the *Total Income Tax Still Due* from Benjamin Kintanar for the taxable year 2001 is **"5,172,519.25"** and **NOT** "5,175,242.12" as erroneously provided for in the Information filed by the State Prosecutor. "Exhibit "J-4" is Annex "A" of the *Final Decision on Disputed Assessment* issued by Jose Mario C. Buñag, Deputy Commissioner of the Legal and Inspection Group of the BIR.

CONTRARY TO LAW."

Petitioner voluntarily surrendered before the Second Division of the Court of Tax Appeals and posted the required surety bail bond for his provisional liberty in the total amount of P40,000.00 for both cases.[5]

Upon arraignment, petitioner, Benjamin G. Kintanar, assisted by defense counsel *de parte*, Atty. Marie Michelle D. Muñoz, admitted that he is the same person charged in both criminal cases, and he entered a plea of "NOT GUILTY" to both charges.[6] Preliminary Conference and Pre-trial were held on May 30, 2007 and June 14, 2007, respectively. The Court in Division, upon motion of both parties' counsel ordered the consolidation of the two criminal cases also on June 14, 2007.[7]

Thereafter, trial on the merits ensued, wherein both parties presented their respective testimonial and documentary evidence. Upon termination thereof, both parties were ordered to submit their respective Memorandum.

Meanwhile, the consolidated criminal cases were transferred to the Third Division of the Court of Tax Appeals (Court in Division) on January 11, 2010, pursuant to CTA Administrative Circular No. 01-2010.[8]

On January 18, 2010, petitioner-accused Benjamin G. Kintanar, Jr., through counsel, filed his Memorandum, while respondent submitted a Memorandum on February 17, 2010. In the Resolution promulgated on February 25, 2010 by the Court in Division, the consolidated criminal cases were submitted for decision.[9]

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[5] CTA Crim. No. O-031, Volume 1, Records, pp. 38-87; CTA Crim. No. O-032, Records, p. 39.
[6] Certificate of Arraignment dated May 21, 2007 and Identity Admission of the Accused dated May 21, 2007, CTA Crim. No. O-031, Volume 1, Records, pp. 166-167 and CTA Crim. No. O-032, Records, pp. 111-112; Resolution dated May 21, 2007, CTA Crim. No. O-031, Volume 1, Records, pp. 170-171; CTA Crim. No. O-032, Records, pp. 115-116.
[7] Minutes of the Hearing held on June 14, 2007, CTA Crim. No. O-031, Volume 1, Records, p. 179; CTA Crim. No. O-032, Records, p. 125.
[8] Order dated January 11, 2010, CTA Crim. Nos. O-031 and O-032, Volume 3, Records, p. 1136.
[9] CTA Crim. Nos. O-031 and O-032, Volume 3, Records, p. 1172.

In the assailed Decision dated September 27, 2010[10], the Court in Division found accused Benjamin G. Kintanar, Jr., guilty beyond reasonable doubt for violation of Section 255 of the NIRC of 1997, as amended, in said consolidated criminal cases, the dispositive portions of which are quoted hereunder for ready reference, to wit:

> "**WHEREFORE**, premises considered, Court finds and so holds that:
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> 1. In CTA Criminal Case No. 0-031, accused Benjamin G. Kintanar, Jr. (petitioner herein), is **GUILTY BEYOND REASONABLE DOUBT** of violation of Section 255 of the National Internal Revenue Code of 1997, *as amended*, and is hereby sentenced to suffer an indeterminate penalty of imprisonment of one (1) year as minimum, to two (2) years as maximum, and is **ORDERED** to pay a fine in the amount of P10,000.00, with subsidiary imprisonment in case accused has no property with which to meet the said fine, pursuant to Section 280 of the NIRC of 1997, *as amended.*
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> As regards civil liability, accused is hereby **ORDERED TO PAY** deficiency income tax for the taxable year 2000 in the amount of EIGHT MILLION TWO HUNDRED FIFTY ONE THOUSAND SIX HUNDRED TWO AND 72/100 PESOS (P8,251,602.72), inclusive of the surcharge and interest, plus 20% delinquency interest per annum from the total amount of P8,251,602.72, counted from April 12, 2005, until fully paid, pursuant to Section 249(C)(3) of the NIRC of 1997, *as amended*; and
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> 2. In CTA Criminal Case No. 0-032, accused Benjamin G. Kintanar, Jr. (petitioner herein), is **GUILTY BEYOND REASONABLE DOUBT** of violation of Section 255 of the National Internal Revenue Code of 1997, *as amended*, and is hereby sentenced to suffer an indeterminate penalty of imprisonment of one (1) year as minimum, to two (2) years as maximum, and is **ORDERED** to pay a fine in the amount of P10,000.00, with subsidiary imprisonment in case accused has no property with which to meet the said fine, pursuant to Section 280 of the NIRC of 1997, *as amended.*
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> As regards civil liability, accused is hereby **ORDERED TO PAY** deficiency income tax for the taxable year 2001 in the amount of TEN MILLION SEVEN HUNDRED THIRTY THOUSAND THREE HUNDRED NINETY ONE AND 18/100 PESOS (P10,730,391.18), inclusive of the surcharge and interest, plus 20% delinquency interest per annum from the total amount of P10,730,391.18, counted from

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[10] CTA Crim. Nos. O-031 and O-032, Volume 3, Records, pp. 1185-1232.

April 12, 2005, until fully paid, pursuant to Section 249(C)(3) of the NIRC of 1997, *as amended.*

No costs.

SO ORDERED."[11]

Petitioner-accused's Motion for Reconsideration of the aforesaid Decision filed on October 12, 2010 was subsequently denied for lack of merit by the Court in Division in the Resolution promulgated on February 23, 2011[12].

Hence, this recourse before the Court *En Banc* praying that: (a) the assailed Decision dated September 27, 2010 and assailed Resolution dated February 23, 2011 of the Court in Division be reversed and set aside; and (b) a new one be issued acquitting petitioner of the offenses charged against him in CTA Criminal Case Nos. O-031 and O-032.

In the Report dated May 26, 2011 issued by the Judicial Records Division of this Court[13], respondent failed to file any comment/opposition to the instant Petition for Review as directed in the Resolution dated April 19, 2011[14].

On June 8, 2011[15], the parties were ordered to file their respective Memorandum within thirty (30) days from notice. Upon submission of petitioner's Memorandum on August 31, 2011[16], this case was considered submitted for decision on September 20, 2011[17], sans respondent's Memorandum upon verification[18] from this Court's Judicial Records Division.

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[11] Assailed Decision dated September 27, 2010, pp. 47-48, CTA Crim. Nos. O-031 and O-032, Volume 3, Records, pp. 1230-1231.
[12] CTA Crim. Nos. O-031 and O-032, Volume 3, Records, pp. 1262-1273.
[13] Records Verification Form issued on May 26, 2011 by the Clerk IV-Receiving Unit and Receiving Clerk, of the Judicial Records Division, Docket, p. 181.
[14] Docket, pp. 146-147.
[15] Resolution dated June 8, 2011, Docket, pp. 183-184.
[16] Petitioner's Memorandum, Docket, pp. 191-213.
[17] Resolution dated September 20, 2011, Docket, pp. 216-217.

Hence, this Decision.

THE ISSUES

The following issues are submitted for the Court's consideration:

a. Whether or not petitioner willfully, unlawfully, and feloniously failed to file his ITR for taxable years 2000 and 2001;

b. Whether or not proof beyond reasonable doubt was established to hold petitioner liable for violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, or "Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withheld and Remit Tax and Refund Excess Taxes Withheld on Compensation"; and

c. Whether or not petitioner is civilly liable for deficiency income tax for taxable years 2000 and 2001.

Petitioner's arguments

Petitioner-accused, Benjamin G. Kintanar, submits that the Court in Division failed to consider the testimonial and documentary defense evidence to negate the existence of willful tax evasion, or willful failure to file the ITRs for the year 2000 and 2001 on the part of the Kintanar spouses.

Petitioner-accused avers the following factual circumstances and legal arguments which, if taken collectively, allegedly reveal the lack of willfulness on his part to commit the offense charged against him in violation of Section 255 of the NIRC of 1997, as amended:

a. Alleged hiring of the services of the accountant, Marina Mendoza, to handle all their tax liabilities and BIR reportorial requirements, and the submission of the Certificates of Income Tax Withheld from petitioner's employer, creates a reasonable inference that petitioner acceded to being assessed accordingly for the proper determination of his income taxes for the taxable years 2000 and 2001;

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[18] Records Verification Form issued on September 1, 2011 by the Receiving Clerk and Records Officer I-Receiving Unit, of the Judicial Records Division, Docket, p. 214.

b. Belief in good faith on the part of petitioner and his wife that the alleged hired accountant, Ms. Mendoza, had been up-to-date in the filing of their ITRs considering that they were given duly stamped copies of their ITRs together with certifications from BIR-RDO officers, which misled them with the impression that he and his wife have complied with their tax obligations through said accountant;

c. Letter of protest dated August 31, 2004, with the copies of the joint ITRs of the spouses attached thereto, against the Assessment Notice sent by BIR which explained that all along he was of knowledge that they are up-to-date with the filing of their ITRs; thus, the court *a quo*'s finding that there was disregard of BIR warnings on his part has no basis;

d. Belief in good faith that petitioner and his wife have consistently filed their joint ITRs since the year 1999 through their alleged hired accountant, Ms. Mendoza; thus, the court *a quo*'s finding that there was a pattern of non-filing for consecutive years is precisely a fact in dispute which was proven otherwise by the testimonial and documentary evidence presented before it;

e. Failure of the alleged hired accountant to deny the fact that she rendered similar kind of services to petitioner's sister, Jennifer Abad, and her spouse, from the years 1998 to 2002 and received payments therefor; hence, the possibility that said accountant may have actually done the same services to petitioner and his spouse;

f. The fact of large gross income of petitioner and his spouse as a sign of willfulness of failure to file their returns and ultimately to evade tax liabilities, cannot be considered as a logical and fair inference for the court *a quo* to consider;

g. Willful blindness theory is inapplicable in the present case considering that petitioner's mistaken belief (reliance on the representations and assurances of his alleged hired accountant in complying with all his tax obligations, i.e. proper filing of their joint ITRs) does not justify the application of the principles of "conscious avoidance" or "willfulness blindness". In other words, a person must suspect wrongdoing and deliberately fail to investigate to be willfully blind;

h. Moreover, willful blindness requires a showing that an individual has demonstrated a conscious purpose to avoid the truth. Such was never intended to supplant specific intent, or proof thereof, to do an unlawful act. Thus, in addition to requiring a "known legal duty", willful blindness requires proof that the defendant "voluntarily and intentionally violated that duty". It is more than a general intent to accomplish an act, as it requires proof that the act was done with the specific intent to do something that the law forbids;

i. Petitioner has indeed paid his income tax liabilities through his employer, Forever Living Products Philippines, Inc. (FLPPI), after it was withheld and subsequently remitted to the BIR, as evidenced by the Certificates of Creditable Tax Withheld issued to petitioner with the stampings of receipt thereon by the BIR. Accordingly, neither willful non-payment of tax nor tax evasion can be charged against petitioner, absent the indispensable element of "willfulness" or deliberate intent;

j. The reliance of petitioner to his alleged hired accountant, with the presented evidentiary support of such services performed in his behalf, *prima facie* casts doubts on the existence of willful violation, and ultimately the offense charged against petitioner. Suffice it to state that there is no moral certainty that petitioner deliberately refused to submit his ITRs, or that he intended to evade payment of his income taxes, since his acts of allegedly hiring an accountant and payment through her support the contention that there was willingness to comply with pertinent internal revenue regulations; and

k. It can hardly be argued that the guilt of petitioner had been shown beyond reasonable doubt. Such guilt cannot rely merely on inferences and presumptions which are by themselves are badges of doubt and uncertainty. The instant case involves the interpretation and application of a penal statute. Consistent with the elementary principle that a penal statute should be considered strictly against the powerful machinery of the government and in favor of the accused, every reasonable protection must be afforded to the latter.

THE COURT EN BANC'S RULING

The criminal charges against petitioner-accused Benjamin G. Kintanar in the two (2) consolidated cases filed before the Court in Division in CTA Crim. Case Nos. 0-031 and 0-032, pertain to his alleged **failure to make or file is Income Tax Returns** for the taxable years 2000 and 2001 on his supposed taxable incomes in the estimated amounts of **P3,475,090.64** and **P5,175,242.12**, respectively, exclusive of penalties, surcharges and interest in violation of the first paragraph of Section 255

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of the National Internal Revenue Code (NIRC) of 1997, as amended, which allegedly caused damage and prejudice to the government. Said Section provides:

> "SEC. 255. FAILURE TO FILE RETURN, SUPPLY CORRECT AND ACCURATE INFORMATION, PAY TAX, WITHHOLD AND REMIT TAX AND REFUND EXCESS TAXES WITHHELD ON COMPENSATION.- **Any person required under this Code or by rules and regulations promulgated thereunder to** pay any tax, **make a return**, keep any record, or supply correct and accurate information, **who willfully fails to** pay such tax, **make such return,** keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld on compensation, **at the time or times required by law or rules and regulations** shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10, 000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years." *(Emphasis Ours)*

From the foregoing, and as correctly pointed out by the Court in Division, to establish the offense of failure to make or file a return, the prosecution must prove and establish three (3) essential elements beyond reasonable doubt before the Court in Division, to wit:

(1) That the accused was a person required to make or file a return;
(2) That accused failed to make or file the return at the time required by law; and
(3) That the failure to make or file the return was willful.

As regards the first requirement, the Court in Division has categorically ruled that being a resident and citizen of the Philippines, and upon establishing that he earned income as an independent distributor of health and fitness products of Forever Living Products Philippines, Inc. (FLPPI), petitioner-accused is obligated to file his annual income tax returns during the taxable years that he had been earning income within the Philippines, particularly during the taxable years 2000 and 2001. This duty and responsibility to make and file his income tax returns for the taxable years 2000 and 2001, is required under the applicable provisions of the NIRC of 1997, as amended, particularly Sections 51(A)(1)(a), 51(A)(4)(a), 51(D), and 74(A), on or before the 15th day of April 2001 and 15th day of April 2002, respectively, which must include all his income earned within said periods.

This finding is uncontroverted.

As to the second element, the Court in Division had extensively discussed the matter, and We quote with approval the following factual and legal pronouncements:

> "After a careful evaluation of the records at hand, this Court is satisfied and so holds that the prosecution satisfactorily laid down the pieces of evidence needed to prove that there is no record of filing of the required Income Tax Returns within the reglementary period, in any of the revenue districts of the Bureau of Internal Revenue, where accused resided, at specific points in time, prior to or during the taxable years 2000 and 2001.
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> Full credence is accorded by this Court to the Certification[19] issued, affirmed and testified to by Atty. Barroga, OIC, Assistant District Officer of the BIR RDO No. 52, Parañaque City, to the effect that accused Benjamin G. Kintanar, Jr., did not file his ITRs for the years 1999, 2000 and 2001. Said certification corroborates another Certification[20] issued by the former Revenue District Officer Carmelita R. Bacod on September 17, 2002 in response to the request of the Tax Fraud Division reflected on the Access Letter dated July 18, 2002. Likewise, the same weight is given to the Certification[21] issued, affirmed and testified to by Romeo Naranjo, assigned as Revenue District Officer of Revenue District Office No. 43, Pasig City, which essentially states that accused Benjamin G. Kintanar (Jr.) and spouse Gloria V. Kintanar have not filed any return in their office and that they are not registered in their district.
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> Above finding is fortified by another Certification[22] dated September 26, 2007, signed by Victoria T. De Leon, Head Revenue Executive Assistant of the Information Systems Operations Service of the BIR, in behalf of Assistant Commissioner Alberto Pio De Roda, which substantially states that based on the ITS of the BIR accused Benjamin G. Kintanar, Jr. is a registered Professional Taxpayer,

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[19] Exhibit "K", CTA Crim. Nos. O-031 and O-032, Volume 2, Records, p. 549.
[20] Exhibit "P", CTA Crim. Nos. O-031 and O-032, Volume 2, Records, p. 567.
[21] Exhibits "S", "S-1" and "S-2", CTA Crim. Nos. O-031 and O-032, Volume 2, Records, pp. 571-573.
[22] Exhibit "FF", CTA Crim. Nos. O-031 and O-032, Volume 2, Records, p. 710.

however, BIR has no record of accused having filed his ITRs for the years 1999-2001.

For his part, accused presented Exhibits '6' and '11' to substantiate his claim that he filed his ITRs for the years 2000 and 2001 with the BIR RDO No. 40, Cubao, Quezon City, through Ms. Marina Mendoza, who was a former employee at the BIR Revenue District Office, Quezon City.

We are not convinced. A careful examination of the ITRs presented by accused belies his claim, for the said ITRs are of doubtful authenticity, materially flawed with the following irregularities surrounding its existence, to wit:

1) The subject ITRs are incomplete in itself, as both failed to indicate the Community Tax Certificate (CTC) Number, Place and Date of issuance and the Amount paid (Boxes 107-110);

2) The subject ITRs contain an address (Blk. 73, Lot 24, Lagro Subdivision, Quezon City) which, as admitted by the accused, had never been the legal residence of his family;

3) The subject ITRs bear the stamp 'Received' by RDO No. 40 of Cubao, Quezon City, which is not the district office that has jurisdiction over the accused given address (Lagro Subdivision, Quezon City) in the subject ITRs, hence, even if authentic, were filed at the wrong venue; and

4) The accused admitted that he did not read all the contents of the subject ITRs and just relied on Ms. Marina Mendoza as to its preparation and filing.

Moreover, Court cannot give-in and afford credit to the above ITRs on the ground that a stamp received by BIR-RDO No. 40 seemingly appears on the face of the document. This Court is of the considered view that ITRs are public documents, specifically falling under Section 19(c) of Rule 132 of the Rules of Court which refers to *'public records of private documents required by law to be entered therein'*. As such, Section 27, Rule 132 of the Rules of Court declares:

> SEC. 27. *Public record of a private document.* -- An authorized public record of a private document may be proved by the original record, or by a copy thereof, attested by the legal custodian of the record, with an appropriate certificate that such officer has the custody.

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As can be gleaned from the foregoing provision, in order to convince this court to accord probative value on the ITRs presented, accused must prove the existence of the subject ITRs in the records of BIR RDO No. 40, either by presenting the original record of BIR RDO No. 40, or by a copy thereof, attested by the appropriate officer of BIR RDO No. 40, with an appropriate certificate that such officer has the custody. Clearly, the accused failed on this point."[23]

Supported by the testimonies and Certifications presented by the respondent attesting to the fact that, contrary to the strong assertion of accused, there is no record of filing of the required ITRs by petitioner-accused in any of the revenue districts of the Bureau of Internal Revenue, where he may have resided, at specific points in time, prior to or during the taxable years 2000 and 2001, the Court *En Banc* concurs with the Court in Division's ruling on this aspect.

Likewise, petitioner-accused's attempt to persuade this Court that he was able to make and file the alleged corresponding ITRs for taxable years 2000 and 2001 (submitted as Exhibits "6" and "11" for the defense) before BIR RDO No. 40 is futile as the same was controverted by the testimony of prosecution witness, Romeo E. Naranjo, the highest ranking official of RDO No. 40, which has jurisdiction over Cubao, Quezon City, where the supposed ITRs were purportedly filed. Prosecution witness Romeo Naranjo testified[24] that no ITR was filed, either by petitioner-accused or his wife, or by anyone on their behalf, for the taxable years 2000 and 2001 at BIR RDO No. 40. This testimonial evidence was never refuted during the trial proper and thus became an undisputed fact against petitioner.

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[23] Decision dated September 27, 2010, pp. 34-37, Docket, pp. 67-70.

[24] Affidavit dated May 27, 2008, Exhibit "JJ", CTA Crim. Nos. O-031 and O-032, Volume 2, Records, pp. 826-827

As to the existence of the third element of "willfulness" in the non-filing of return as an essential requirement for the conviction of petitioner-accused for the offense charged, as defined under Black's Law Dictionary:

> ***"Act is 'willful'*** within meaning of section of Internal Revenue Code imposing penalty for willful failure to pay federal income and social security taxes withheld from employees ***if it is voluntary, conscious and intentional; no bad motive or intent to defraud the United States need be shown, and a 'reasonable cause' or 'justifiable excuse' element has no part in definition.*** Harrington v. U.S., C.A.R.I., 504 F.2d 1306, 1315."[25] *(Emphasis Ours)*

Further, it is also stated therein that **"willfulness"** is a state of mind that may be inferred from the circumstances of the case.[26] Thus, proof of willfulness may be, and usually is, shown by circumstantial evidence alone.[27]

Clearly therefore, to convict petitioner-accused for willful failure to file income tax returns, it must be shown that such failure or omission, was done knowingly, intentionally and with the specific intent not to file the said returns. In other words, it must be shown that petitioner-accused was aware of his obligation to file annual income tax returns, but he, or his supposed agent, nevertheless, voluntarily, knowingly and intentionally failed to file the required returns. Bad motive or intent to defraud the government need not be shown.

In the case at bench, petitioner-accused claims that he hired an accountant, a certain Marina Mendoza, who now becomes his agent, to handle his tax concerns, thereby saying he did not willfully fail to file the required tax returns as he relied in good faith on said accountant's professional knowledge and expertise to perform his tax obligations. However, when the aforesaid accountant, Marina Mendoza, testified

[25] Black's Law Dictionary, 6th Edition, p. 1599.
[26] Ibid.
[27] *United States v. Grumka, 728 F.2d 794, 796-97 (6th Cir. 1984); United States v. Gleason, 726 F.2d 385, 388 (8th Cir. 1984); United States v. Marabelles, 724 F.2d 1374, 1379 (9th Cir. 1984).*

as a defense witness, she vehemently denied any involvement in the filing of the ITRs of petitioner-accused and further denied having been hired by petitioner-accused as his accountant. Instead, she said that she never acted, for and in behalf of petitioner-accused, as his accountant in any other similar transaction.

Granting for the sake of argument that the alleged agent/accountant, Marina Mendoza, was the person tasked by petitioner-accused to file his required ITRs during the taxable years 2000 and 2001, this alleged agreement is not a valid defense that will relieve him of his obligation to strictly comply with his duty to file his ITR under Section 255 of the NIRC of 1997, as amended.

The Court considers petitioner-accused's complete reliance on his supposed accountant to file his required ITRs, as a willful act to delegate the performance of his legal duty to said accountant, tantamount to "deliberate ignorance" or "conscious avoidance" on his part to ensure the filing of his required income tax returns. Consequently, as said accountant clearly failed to perform her supposed duties, petitioner-accused must bear the legal consequences arising from such omission.

Moreover, petitioner-accused's admission that he merely signed without reading all the contents of the subject ITRs further manifests his evident lack of concern and interest, definitely a voluntary act and an intentional disregard of his tax responsibilities to the government. Worst, as earlier pointed out, petitioner-accused presented materially flawed ITRs purporting to be received by a revenue district of which he is not a resident.

It must be remembered that the material element of "willfulness" in the crime charged in these cases should not be equated with criminal intent. Knowledge of a taxpayer's obligation to file the required return and the voluntary failure to comply therewith in the manner required by law are sufficient to establish the element of willfulness in this particular offense.

By way of resume, there was a deliberate and intentional disregard of his obligation when petitioner failed to do any act to ascertain that he has complied with his obligation as a taxpayer. The failure to ensure his proper compliance to file a return is by itself a sin of omission on the part of the petitioner, tantamount to a willful non-filing of a return. The legal obligation to comply with our tax laws is personal in nature to the taxpayer, more especially in this case, that petitioner-accused was earning a substantial annual income. It is therefore logical that a more stringent application of the mandate of our tax laws pertaining to the proper filing of ITRs, as provided in the applicable provisions of the NIRC of 1997, as amended, should be observed.

Having painstakingly considered all testimonial and documentary evidence presented by both parties, this Court finds that the prosecution in the Court *a quo* was able to establish the guilt of the petitioner beyond reasonable doubt of the crime charged in the subject consolidated criminal cases for violation of Section 255 of the NIRC of 1997, as amended.

Lastly, as regards the civil liability of petitioner-accused, Section 228 of the NIRC of 1997, as amended, clearly provides that the taxpayer should file a protest within thirty (30) days from receipt of the assessment, and within sixty (60) days therefrom, the taxpayer should submit all the required documents in support of his protest.

In the present case, petitioner failed to establish that he has submitted any document in support of his protest, after the letter-protest was filed. Further, even granting that a valid protest was filed at the administrative level, the assessments have nevertheless attained finality for failure of petitioner to judicially appeal the final decision[28] within thirty (30) days from receipt thereof.

Consequently, petitioner is barred from disputing the correctness of the subject assessments and absent any proof of irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.[29]

In light of all the foregoing considerations, We see no errors of fact or law committed by the Court in Division that would warrant a reversal or modification of the assailed Decision dated September 27, 2010 and Resolution dated February 23, 2011 in CTA Crim. Nos. O-031 and O-032.

WHEREFORE, premises considered, the instant petition is hereby **DISMISSED** for lack of merit. Accordingly, the Decision dated September 27, 2010 and Resolution dated February 23, 2011 of the Court in Division in CTA Crim. Nos. O-031 and O-032 are hereby **AFFIRMED in *TOTO***.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

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[28] Exhibits "J" to "J-4", CTA Crim. Nos. O-031 and O-032, Volume 2, Records, pp. 544-546.
[29] *Republic vs. Court of Appeals,* G.R. No. L-38540, 30 April 1987, 149 SCRA 351, 357.

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice