REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-*versus*-

RONNEL LAMPA DE GUZMAN (LUCKY SEA TRADING),
Accused.

CTA Crim. Case No. O-690
For: Violation of Section 255 of the NIRC of 1997, as amended

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PEOPLE OF THE PHILIPPINES,
Plaintiff,

-*versus*-

RONNEL LAMPA DE GUZMAN (LUCKY SEA TRADING),
Accused.

CTA Crim. Case No. O-691
For: Violation of Section 255 of the NIRC of 1997, as amended

Members:

DEL ROSARIO, *P.J.*, *Chairperson*
and
MANAHAN, *JJ.*

Promulgated:

JUN 09 2021 8:30 am

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D E C I S I O N

MANAHAN, *J.:*

These are consolidated cases[1] against the accused, Ronnel Lampa De Guzman, for alleged violations of Section 254, in relation to Section 255 of the 1997 National Internal Revenue Code (NIRC), as amended, in relation to his willful failure to file Income Tax Return (ITR) for taxable years (TYs) 2012 and 2013 under CTA Crim. Case Nos. O-690 and O-691, respectively.

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[1] Docket, CTA Crim. Case No. O-690, Resolution dated August 13, 2019, pp. 180-181

Antecedents

Indicted is Ronnel Lampa De Guzman under CTA Criminal Case Nos. O-690 and O-691 for violation of Section 254, in relation to Section 255 of the 1997 NIRC, as amended, for his willful failure to file his ITRs for taxable years 2012 and 2013, allegedly committed as follows:

CTA Crim. Case No. O-690

> "That on or before April 15, 2013 in the City of Manila and within the jurisdiction of this Honorable Court, the above-named accused a registered taxpayer and the sole proprietor of LUCKY SEA TRADING, having sources of income in the amount of Thirty Three Million Two Hundred fifteen Thousand Eight Hundred Sixteen (PHP33,215,860.00) during the taxable year 2012, required by law and regulations to pay income tax and make return, did then and there, willfully unlawfully and feloniously fail to file his Income Tax Return (ITR) with the Bureau of Internal Revenue for taxable year 2012, to the damage and prejudice of the Government in terms of Basic tax in the amount of Ten Million Five Hundred Seventy Eight Thousand Seventy Five Pesos (PHP10,578,075.00).
>
> CONTRARY TO LAW."

CTA Crim. Case No. O-691

> "That on or before April 15, 2014 in the City of Manila and within the jurisdiction of this Honorable Court, the above-named accused a registered taxpayer and the sole proprietor of LUCKY SEA TRADING, having sources of income in the amount of Six Hundred Sixty Nine Million Four Hundred Four Thousand Nine Hundred Forty Six Pesos (PHP669,404,946.00) during the taxable year 2013, required by law and regulations to pay income tax and make return, did then and there, willfully unlawfully and feloniously fail to file his Income Tax Return (ITR) with the Bureau of Internal Revenue for taxable year 2013, to the damage and prejudice of the Government in terms of basic tax in the amount of PHP Two Hundred Fourteen Million One Hundred Fifty Eight Thousand Five Hundred Eighty Two Pesos and 72/100 (PHP214,158,582.72).
>
> CONTRARY TO LAW."

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However, the Court found discrepancies in the Informations filed by the prosecutors under CTA Crim. Case Nos. O-690[2] and O-691[3], hence, it was directed to correct each of said Information.

The prosecution then moved to amend the two (2) Informations on May 17, 2019 for CTA Crim. Case No. O-690[4] and CTA Crim. Case No. O-691[5] which were both granted and admitted[6] by this Court on June 4, 2019. The Amended Informations stated the following:

CTA Crim. Case No. O-690[7]

> "That on or before April 15, 2013 in the City of Manila and within the jurisdiction of this Honorable Court, the above-named accused a registered taxpayer and the sole proprietor of LUCKY SEA TRADING, having sources of income in the amount of Thirty Three Million Two Hundred Fifteen Thousand Eight Hundred Sixty Pesos (PHP33,215,860.00) during the taxable year 2012, required by law and regulations to pay income tax and make return, did then and there, willfully unlawfully and feloniously fail to file his Income Tax Return (ITR) with the Bureau of Internal Revenue for taxable year 2012, in terms of basic tax in the amount of Ten Million Five Hundred Seventy Eight Thousand Seventy Five and 20/100 Pesos (PHP10,578,075.20) exclusive of penalties, surcharges, and interest, to the damage and prejudice of the government.
>
> CONTRARY TO LAW."

CTA Crim. Case No. O-691[8]

> "That on or before April 15, 2013 in the City of Manila and within the jurisdiction of this Honorable Court, the above-named accused, a registered taxpayer and the sole proprietor of LUCKY SEA TRADING, having sources of income in the amount of Six Hundred Sixty

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[2] Docket, CTA Crim. Case No. O-690, Resolution dated April 2, 2019, pp. 99-101.
[3] *Id.*, CTA Crim. Case No. O-691, Resolution dated March 29, 2019, pp. 99-101.
[4] *Id.*, CTA Crim. Case No. O-690, Motion to Admit Attached Amended Information with Compliance, pp. 102-105.
[5] *Id.*, CTA Crim. Case No. O-691, Motion to Admit Attached Amended Information with Compliance, pp. 102-105, pp. 102-105.
[6] *Id.*, CTA Crim. Case No. O-690, Resolution dated June 4, 2019, pp. 118-120; CTA Crim. Case No. O-691, Resolution dated June 4, 2019, pp. 117-119.
[7] *Id.*, CTA Crim. Case No. O-690, Amended Information, pp. 106-108.
[8] *Id.*, CTA Crim. Case No. O-691, Amended Information, pp. 106-108.

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Nine Million Four Hundred and Four Thousand Nine Hundred Forty Six Pesos (Php 669,404,946.00) during the taxable year 2013, required by law and regulations to pay income tax and make return, did then and there, willfully unlawfully and feloniously fail to file his Income Tax Return (ITR) with the Bureau of Internal Revenue for taxable year 2013, in terms of basic tax in the amount of Two Hundred Fourteen Million One Hundred *Fifty Eight Thousand* Five Hundred Eighty Two and *72/100* Pesos (PHP214,158,582.72) exclusive of penalties, surcharges, and interest, to the damage and prejudice of the government.

CONTRARY TO LAW."

After careful consideration of the allegations in the two (2) Amended Informations and the attachments thereto, the Court found probable cause for the issuance of a warrant of arrest against accused De Guzman under CTA Crim Case Nos. O-690 and O-691 under Resolutions dated June 4, 2019.[9]

Thus, Warrants of Arrest (WOAs) against the accused were issued on July 10, 2019[10] and July 18, 2019[11] for CTA Crim. Case Nos. O-690 and O-691, respectively.

On July 24, 2019, accused De Guzman was arrested by virtue of the abovementioned WOAs by the operatives of Manila Police District, Philippine National Police.[12] Accused De Guzman posted bail in both cases on July 25, 2019.[13]

During his arraignment on September 11, 2019, accused pleaded Not Guilty to both crimes charged.[14] The Pre-Trial Conference was reset on November 13, 2019.

The prosecutor filed its Pre-Trial Brief[15] on September 5, 2019 while the accused filed his Pre-Trial Brief[16] on October 1,

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[9] *Supra.*, Note 6.
[10] Docket, CTA Crim. Case No. O-690, Warrant of Arrest, pp. 121-123.
[11] *Id.*, CTA Crim. Case No. O-691, Warrant of Arrest, pp. 120-122.
[12] *Id.*, CTA Crim. Case No. O-690, Certificate of Detention, p.128; Docket, CTA Crim. Case No. O-691, Certificate of Detention, p.127.
[13] *Id.*, CTA Crim. Case No. O-690, Order dated July 25, 2019, pp. 146-147; Docket, CTA Crim. Case No. O-691, Order dated July 25, 2019, pp. 135-136.
[14] *Id.*, CTA Crim. Case No. O-690, Minutes of the Hearing dated September 11, 2019 and Certificate of Arraignment dated September 11, 2019, pp. 263-266; Docket, CTA Crim. Case No. O-691, Certificate of Arraignment dated September 11, 2019, p. 185.
[15] *Id.*, CTA Crim. Case No. O-690, pp. 190-195.
[16] *Id.*, CTA Crim. Case No. O-690, pp. 278-286.

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2019. The parties filed their *Joint Stipulations*[17] on October 19, 2019. Thus, on January 16, 2020, the Pre-Trial Order[18] of the case was issued.

On September 1, 2020, after its presentation of evidence, the prosecutor filed its Formal Offer of Evidence[19] with the following exhibits, to wit:

Exhibit	Document
P-1[20]	Complaint-Affidavit, dated February 4, 2016 of Angela Marie Simpit-De Leon, Mahley B. Matanog, and Arlene F. Grageda
P-2[21]	Referral Letter dated February 3, 2016 signed by Commissioner Kim Jacinto-Henares submitting the complaint to DOJ Task Force on Anti-Fraud Division for preliminary investigation.
P-4[22]	Bureau of Internal Revenue (BIR) Certificate of Registration
P-5[23]	BIR Integrated Tax System (ITS) Print-Out
P-6[24]	Department of Trade and Industry (DTI) Certification dated November 4, 2015
P-7[25]	Memorandum dated October 26, 2015 of Sixto Dy, Chief of National Investigation Division of the Bureau of Internal Revenue to Arlene Grageda, Angela Marie S. De Leon, and Mahleyl Matanog
P-8[26]	Letter of Authority LOA211-2015-00000297 dated October 28, 2015 for Ronnel Lampa De Guzman with attached List of Requirements
P-9[27]	BIR access letter dated September 4, 2015 signed by Assistant Commissioner James H. Roldan of Enforcement and Advocacy Service (EAS), Bureau of Internal Revenue (BIR) addressed to Commissioner Alberto D. Lina of Bureau of Customs
P-9-a	Bureau of Customs Acknowledgment letter dated September 28, 2015 signed by Raulito Fabio Antonio Reyes, for the Office of the Commissioner
P-10[28]	Bureau of Customs Reply Letter dated October 2, 2015 signed by Raulito Fabio Antonio S. Reyes, Office of the Commissioner

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[17] Docket, CTA Crim. Case No. O-690, pp. 293-308.
[18] *Id.*, CTA Crim. Case No. O-690, pp. 347-373.
[19] *Id.*, CTA Crim No. O-690, pp. 501-510.
[20] *Id.*, CTA Crim. No. O-690, p. 36.
[21] *Id.*, CTA Crim. No. O-690, pp. 37-38.
[22] *Id.*, CTA Crim. No. O-690, p. 47 and p. 326.
[23] *Id.*, CTA Crim. No. O-690, pp. 48-51 and pp. 327-330.
[24] *Id.*, CTA Crim. No. O-690, p. 52.
[25] *Id.*, CTA Crim. No. O-690, p. 53.
[26] *Id.*, CTA Crim. No. O-690, p. 54.
[27] *Id.*, CTA Crim. No. O-690, p. 58.
[28] *Id.*, CTA Crim. No. O-690, p. 60.

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P-11[29]	1st Indorsement Letter dated September 30, 2015 by Dennis B. Reyes, Deputy Commissioner of Management Information System and Technology Group (MISTG) of the Bureau of Customs (BOC) with attached Data of Importations of Lucky Sea, ADLC and Zone Lane Trading covering years from 2012 to 2014
P-12[30]	BIR Access Letter to Revenue District Office No. 33, Intramuros, Ermita-Malate dated October 27, 2015 signed by then Deputy Commissioner of Legal Group Estela V. Sales, addressed to then RDO Raner D. Narvaez of Revenue District Offfice
P-13[31]	Certification of Revenue District Office No. 33 dated November 23, 2015 signed by Carmelita C. Glorioso
P-14[32]	Computation Sheet for taxable year 2012
P-15[33]	Summary of Importation for taxable year 2012
P-16[34]	Computation Sheet for taxable year 2013
P-17[35]	Summary of Importation for taxable year 2013
P-18, P-18-a[36]	Judicial Affidavit of Mahleyl B. Matanog
P-19, P-19-a[37]	Judicial Affidavit of Carmelita C. Glorioso
P-20[38]	Preliminary Assessment Notice with attached Details of Discrepancies dated February 4, 2020
P-21, P-21-a [39]	Judicial Affidavit of Arlene F. Gragerda
P-22, P-22-a[40]	Judicial Affidavit of Angela Marie S. De Leon
P-23, P-23-a[41]	Judicial Affidavit of Adrienne B. Aprecio

Except for Exhibit P-1 which was not admitted because the document described in the Formal Offer of Evidence and the document identified by prosecution's witness do not correspond with the document duly marked and submitted to the Court, all other exhibits were admitted.[42]

On the other hand, accused De Guzman did not offer any documentary evidence but only his bare testimony with the Court. Accused de Guzman mainly denied that the business entity, Lucky Sea Trading, was his and alleged that the

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[29] Docket, CTA Crim. No. O-690, p. 61-85.
[30] *Id.*, CTA Crim. No. O-690, p. 86.
[31] *Id.*, CTA Crim. No. O-690, p. 87.
[32] *Id.*, CTA Crim. No. O-690, p. 88 and p. 331.
[33] *Id.*, CTA Crim. No. O-690, p. 89 and p. 332.
[34] *Id.*, CTA Crim. No. O-690, p. 90 and p. 333.
[35] *Id.*, CTA Crim. No. O-690, pp. 91-97 and pp. 334-340.
[36] *Id.*, CTA Crim. No. O-690, pp. 408-419; In FOE, indicated as Judicial Affidavit of Carmelita C. Glorioso.
[37] *Id.*, CTA Crim. No. O-690, pp. 423-427; In FOE, indicated as Judicial Affidavit of Mahleyl B. Matanog.
[38] *Id.*, CTA Crim. No. O-690, pp. 450-453.
[39] *Id.*, CTA Crim. No. O-690, pp. 446-449.
[40] *Id.*, CTA Crim. No. O-690, pp. 457-460.
[41] *Id.*, CTA Crim. No. O-690, pp. 481-485.
[42] *Id.*, CTA Crim. Case No. O-690, Resolution dated October 15, 2020, pp. 519-520.

registration of said business was made by another person as contained in his Judicial affidavit, to wit:[43]

3. Q: Are the allegations against you true or not

A: They are not true.

4. Q: What are the allegations that are untrue?

A: First, that I am the owner or sole-proprietor of Lucky Sea Trading; Second, that I conducted business or made importations under that proprietorship.

5. Q: What exactly do you mean when you say you are the (sic) not the owner or sole-proprietor of Lucky Sea Trading?

A: First, I did not register Lucky Sea Trading with the Department of Industry, Bureau of Internal Revenue, Bureau of Customs, or any other government agency. Second, I did not manage, operate, or do business under the name of Lucky Sea Trading, especially import any goods or items.

6. Q: If you did not register Lucky Sea Trading with the DTI, BIR, and BOC, and did not do business using it, how did you come to know about Lucky Sea Trading?

A: The first time I heard of Luck(y) Sea Trading was in 2012 when Ms. Ana Beloria registered it with the DTI, BIR, and BOC. But I did not know that she used my personal credentials for its registration. I only knew that she used my personal credentials for its registration. I only knew that she used my credentials when the BIR started its audit/investigation.

7. Q: How do you know that Ms. Ana Beloria was one who caused the registration of Lucky Sea Trading?

A: A few days before I left her customs brokerage firm, I already heard the name Lucky Sea Trading as one of the accredited consignee/importer that Ms. Beloria used by Ms. Beloria as a front for her clients for the importation of motor vehicles.

On December 16, 2020, the prosecution filed its Memorandum while accused De Guzman filed his

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[43] Docket, CTA Crim. No. O-690, Judicial Affidavit of Ronnel Lampa De Guzman, pp. 0521-526.

Memorandum on December 17, 2020. Thus, on January 14, 2020, the case was submitted for decision.

Issue[44]

The sole issue to be resolved is whether accused is guilty beyond reasonable doubt of violating Section 255 of the 1997 NIRC, as amended.

Ruling of the Court

Accused De Guzman, under CTA Crim Case Nos. O-690 and O-691, was charged under Section 255 of the 1997 NIRC, as amended, for failure to file his ITR with the Bureau of Internal Revenue (BIR) for TY 2012 and 2013, respectively. The provision is quoted below:

> SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* - **Any person required under this Code** or by rules and regulations promulgated thereunder **to** pay any tax, **make a return**, keep any record, or supply correct and accurate information, **who willfully fails to** pay such tax, **make such return**, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, **at the time or times required by law or rules and regulations** shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years. (*Emphasis supplied*)

The following, therefore, are the elements of the offenses under Section 255 to be considered committed or consummated, to wit:

1. **The offender is required under the 1997 NIRC**, as amended, or by rules and regulations promulgated thereunder **to** pay any tax, **make a return**, keep any record, or supply correct and accurate information;

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[44] Docket, CTA Crim. Case No. O-690, Order dated November 13, 2019, pp. 316-318; Pre-Trial Order dated January 16, 2020, pp. 347-373, at p. 348.

2. **The offender fails to** pay such tax, **make such return**, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations; and

3. **Such failure was willful**.

As to the first element of the offense charged, the prosecution presented the Department of Trade and Industry (DTI) Certification dated November 4, 2015[45], Certificate of Registration[46], and ITS Print-Out[47] of accused De Guzman as proprietor of Lucky Sea Trading to establish that he has a business which is subject to income taxation.

The existence of these documents was not disputed by the accused although he denied his knowledge of and participation to such tax and business registration. Empirically, the prosecution was able to establish that the accused was a sole proprietor operating under the business name, Lucky Sea Trading and therefore was required under the law to file tax returns whether he obtained an income or not. The obligation to file an income tax return is found in the following provisions of the 1997 NIRC, 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;
>
> (b) Every Filipino citizen residing outside the Philippines, on his income from sources within the Philippines;
>
> (c) Every alien residing in the Philippines, on income derived from sources within the Philippines; and
>
> (d) Every nonresident alien engaged in trade or business or in the exercise of profession in the Philippines.
>
> (2) The following individuals shall not be required to file an income tax return:

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[45] *Supra*, Note 24.
[46] *Supra*, Note 22.
[47] *Supra*, Note 23.

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(a) An individual whose taxable income does not exceed Two hundred fifty thousand pesos (P250,000) under Section 24(A)(2)(a): Provided, That a citizen of the Philippines and any alien individual engaged in business or practice of profession within the Philippine shall file an income tax return, regardless of the amount of gross income;

(b) An individual with respect to pure compensation income, as defined in Section 32 (A)(1), derived from sources within the Philippines, the income tax on which has been correctly withheld under the provisions of Section 79 of this Code: Provided, That an individual deriving compensation concurrently from two or more employers at any time during the taxable year shall file an income tax return;

(c) An individual whose sole income has been subjected to final withholding tax pursuant to Section 57(A) of this Code; and

(d) A minimum wage earner as defined in section 22 (HH) of this Code or an individual who is exempt from income tax pursuant to the provisions of this Code and other laws, general or special.

(3) The foregoing notwithstanding, any individual not required to file an income tax return may nevertheless be required to file an information return pursuant to rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner.

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

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

(b) A nonresident citizen - on his income derived from sources within the Philippines;

(c) A resident alien - on his income derived from sources within the Philippines; and

(d) A nonresident alien engaged in trade or business in the Philippines - on his income derived from sources within the Philippines.

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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, shall make and file a declaration of his estimated income for the current taxable year on or before April 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. Non-resident Filipino citizens, with respect to income from without the Philippines, and non-resident 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.
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> (B) *Return and Payment of Estimated Income Tax by Individuals.* - The amount of estimated income as defined in Subsection (C) with respect to which a declaration is required under Subsection (A) shall be paid in four (4) installments. The first installment shall be paid at the time of the declaration and the second and third shall be paid on August 15 and November 15 of the current year, respectively. The fourth installment shall be paid on or before April 15 of the following calendar year when the final adjusted income tax return is due to be filed."

On the second element of the offense, the prosecution presented a Certification from Revenue District Office No. 33 dated November 23, 2015 signed by Carmelita C. Glorioso[48], then Chief of Collection Section of Revenue District Office (RDO) No. 33-Intramuros, Manila, stating that based on their records and the BIR ITS Print-Out, the accused operating under the business name of Lucky Sea Trading, with TIN 259-648-135-000 has no record of Annual Income Tax Returns, Quarterly Income Tax Returns, Monthly and Quarterly Value-Added Tax Returns, and Monthly Withholding Tax Returns on Compensation filed for TYs 2012 and 2013, in order to prove that the accused did not file any tax returns on his business.

Such certification was not disputed by the accused during the trial. Hence, the prosecution was able to prove that the accused indeed did not file any ITR for TYs 2012 and 2013.

Now, as to the third element, the question is whether such failure to file said ITRs for TYs 2012 and 2013 was willful?

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[48] *Supra*, Note 31.

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According to 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.)"[49]

In *People of the Philippines v. Sixta Lee Go*[50], "willfulness was also defined as follows:

> "Willfulness' in tax crimes has been simply defined as:
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> "Willful in the tax crime statutes means a voluntary, intentional violation of a known legal duty and bad faith or bad purpose need not be shown."

Further, it is also stated that "willfulness" is a state of mind that may be inferred from the circumstances of the case. Thus, proof of willfulness may be, and usually is, shown by circumstantial evidence alone.[51]

During the trial, the accused merely denied that he owns Lucky Sea Trading and that it was another person, Ms. Ana Beloria, his employer, who was the one who caused his BIR registration as well as the business name registration in the DTI. No corroborative evidence other than his testimony was presented by the accused.

Such denial by the accused without a corroborative evidence is considered an alibi, which has long been considered weak and unreliable as held in *People of the Philippines v. King Rex A. Ambatang*[52]:

> "As against these, accused-appellant offered denial and alibi as defenses, which jurisprudence has long considered weak and unreliable...."

Notably, the accused failed to take affirmative actions to prove his lack of prior knowledge or active participation in the said registration of his business, like proving that his

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[49] *People of the Philippines v. Gloria V. Kintanar*, CTA Crim Case Nos. O-033 and O-034, August 26, 2009.
[50] CTA Crim. Case No. O-659, November 27, 2019.
[51] *Supra*, Note 49.
[52] G.R. No. 205855, March 29, 2017.

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signature was forged or his personal credentials were stolen. Given his educational attainment as a college graduate and having worked in the customs brokerage firm of Ms. Ana Beloria for five (5) years, this Court finds it incredulous that the accused, equipped with a college diploma, agreed to receive a measly weekly salary of Five Hundred Pesos (P500.00) for a period of 5 years, and having knowledge of the practice of his employer, Ms. Beloria, to pay royalties[53] to traders who serve as fronts or dummies for importation of motor vehicles, will have no inkling whatsoever that he will also be used as a front. His actual knowledge of this dubious practice of the firm that he worked with for 5 years should have alerted the accused to inform the BIR about his innocence and total lack of knowledge of his business registration with the BIR and DTI **immediately** upon learning of the tax assessment notices against him.[54] No such action, however, was undertaken by the accused. These undeniably striking circumstances only indicate that the accused must have been fully aware of this modus operandi of Ms. Beloria and therefore impel the Court to put no credence to accused's bare testimony. Being aware of his registration as a sole proprietor with business name of Lucky Sea Trading, the accused has the obligation to file ITRs and pay taxes, if any.

Let it be emphasized that in the case of non-filing of an ITR, being a statutory offense or *malum prohibitum*, lack of intent to commit the crime is unavailing as a defense.[55] As aptly explained in the cases of *People of the Philippines v. Gloria Kintanar*[56], and we quote:

> "The Supreme Court further explained in the case of ***Garcia vs. Court of Appeals***, that in crimes that are *mala prohibita*, the criminal acts are not inherently immoral but become punishable only because the law says they are forbidden. With these crimes, the sole issue is whether the law has been violated. Criminal intent is not necessary where the acts are prohibited for reasons of public policy.
>
> Hence, the material element of 'wilfulness' 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 will suffice**." (*Emphasis supplied*)

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[53] *Transcript of Stenographic Notes* (TSN), Hearing dated November 18, 2020, pp. 12-15.
[54] TSN, Hearing dated November 18, 2020, pp. 9-10.
[55] *Supra.*, Note 49.
[56] *Ibid.*, citing the case of *People v. Barton*, CA-G.R. No. 16671, December 12, 1975.

Based on the documentary and testimonial evidence presented, the Court finds that the prosecution had established the guilt of the accused beyond reasonable doubt of the crimes charged in these consolidated cases for violation of Section 255 of the 1997 NIRC, as amended.

As to the civil liability of the accused, Section 205 of the 1997 NIRC, as amended, is controlling, to wit:

> "**SEC. 205.** ***Remedies for the Collection of Delinquent Taxes.*** - The civil remedies for the collection of internal revenue taxes, fees or charges, and any increment thereto resulting from delinquency shall be:
>
> (a) By distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts and interest in and rights to personal property, and by levy upon real property and interest in rights to real property; and
>
> (b) By civil or criminal action.
>
> Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes: Provided, however, That the remedies of distraint and levy shall not be availed of where the amount of tax involve is not more than One hundred pesos (P100).
>
> The judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case **as finally decided by the Commissioner**.
>
> The Bureau of Internal Revenue shall advance the amounts needed to defray costs of collection by means of civil or criminal action, including the preservation or transportation of personal property distrained and the advertisement and sale thereof, as well as of real property and improvements thereon." (*Emphasis supplied*)

As shown in the abovementioned provision, there should be a final action from the CIR, which is either in the form of Final Assessment Notice (FAN), Final Letter of Demand (FLD), or Final Decision on Disputed Assessment (FDDA). However, the records of the case reveal that the prosecution merely presented the PAN and no other subsequent notice after such issuance was served to the accused. Hence, there was no final action on the part of the CIR.

Further, the alleged basis for the assessment made by the public complainant against the accused was from his

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alleged income from importation of vehicles from the Bureau of Customs (BOC) as evidenced by the Summary of Importations[57] from the Data of Importations of Lucky Sea Trading[58] from the BOC, Computation Sheet for taxable year 2012[59], Computation Sheet for taxable year 2013[60], and based on the testimonies by the prosecution witnesses.

The testimony[61] also of the prosecution witness, Mr. Mahleyl B. Matinog, also reveals, as admitted by him, that the resulting assessment of their tax investigation was based merely on a presumption that the payments made for the importation of said vehicles were income of the accused's business on the basis of expenditure method, to wit:

> ATTY. JONGKO:
>
> Q: And when you computed the tax deficiencies of the accused using the expenditure method, you used the total importations contained in the Bureau of Customs letter response, correct?
>
> MR. MATANOG:
>
> A: Yes.
>
> xxx xxx xxx
>
> ATTY. JONGKO:
>
> Yes. Your Honors. So just to rephrase, your Honors.
>
> Q: So, you based this computation of the tax deficiencies only to the documents submitted to you by the different (Paused) by the Bureau of Customs only?
>
> MR. MATANOG:
>
> A: Yes, because we are allowed under the National Internal Revenue Code.
>
> xxx xxx xxx
>
> JUSTICE MANAHAN:
>
> Clarification, just to follow on the question of counsel regarding the utilization of the expenditure method in your answer to Question No. 37. So, other than the

[57] *Supra.*, Notes 33 and 35.
[58] *Supra.*, Note 29.
[59] *Supra.*, Note 32.
[60] *Supra.*, Note 34.
[61] TSN during the Hearing on January 29, 2020, pp. 23-30.

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data gathered from the Bureau of Customs Summary List of Importation, were there other documents that you used as reference to be able to impute alleged undeclared income on the part of the taxpayer? Other that the Summary List of Importations, what other documents did you resort to, to be able to come up with a deficiency income tax assessment against the taxpayer?

MR. MATANOG:

A: Your Honors, aside from the Summary of Importations, we have certification from RDO 33 where the taxpayer is registered, that the taxpayer has no record of any tax return filed, your Honors. So, (Interrupted)

JUSTICE MANAHAN:

I think that is your answer to Question No. 34, that there were no records of the following tax returns being filed by the taxpayer. So precisely, you are resorting to expenditure method because there are no returns which you can examine. So, again, my question is, other than the Summary List of Importations, were there other documents that your referred to, to be able to impute alleged underdeclaration or non-declaration of income on the part of the taxpayer, in addition to the Bureau of Custom's list of importations?

MR. MATANOG:

A: No, Your Honors.

JUSTICE MANAHAN:

Further on, did you just merely rely on the summary? Did you exert efforts to get the source documents from where these summary figures have been derived, such as what the previous counsel asked about the import entry declaration?

MR. MATANOG:

A: Your Honors, as far as I can remember, we secured the ATRIG, The Authority to (Interrupted)

JUSTICE MANAHAN:

The Authority to Release Imported Goods?

MR. MATANOG:

A: Yes, in our Division in the National Office. In the said ATRIG, it appears the name of the accused, your Honors.

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JUSTICE MANAHAN:

So, those ATRIGs, did you try to match these ATRIGs with the different importations that have been included in the summary list? Because every importation s requires an ATRIG. So, you have a list of importations from the Bureau of Customs. Did you match, did you try to compare the ATRIGs with the data provided by the Bureau of Customs regarding these importations?

MR. MATANOG:

A: No, your Honors.

JUSTICE MANAHAN:

So, how many ATRIGs did you examine?

MR. MATANOG:

A: There are so many, your Honors. It is three boxes.

JUSTICE MANAHAN:

So, you attempted to match or compare these ATRIGs with the Bureau of Customs list of importations before you arrived at the total figure of the alleged underdeclaration income?

MR. MATANOG:

A: We just cross-refer, your Honors. I mean. As to the details, the total of the ATRIG versus the total of the importation, we were not able to compare the same.

JUSTICE MANAHAN:

So you did not really examine the very source documents of this list, mainly whether as ano (sic) that the importer paid for these importations. So, that based on the summary, then you just computed the alleged underdeclaration or non-declaration.

MR. MATANOG:

A: Yes.

JUSTICE DEL ROSARIO:

Just a follow up question on that expenditure method, The Court has gone over the Resolution of the prosecution when the case was filed, and there is here a supposed theory on the expenditure method. Do you confirm that the expenditure method is utilized when

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the declared income apparently does not reflect other possible sources of income in an income tax return? Is that it? Is that the theory?

MR. MATANOG:

A: Yes.

JUSTICE DEL ROSARIO:

What would be the basis for the supposed declared income here if there was no income tax return filed? How do we know that it is this proportionate to the income declared as compared to the expenses? How do you go about a situation like that?

MR. MATANOG:

A: Your Honors, since the amount of money used by the accused in importing said sports utility vehicles cannot explained by him, we presumed that is his income, your Honors. So, since there is no tax return filed, your Honors, such amount is considered as undeclared income.

JUSTICE DEL ROSARIO:

So, the basis is actually the mere expense being made by the taxpayer?

MR. MATANOG:

A: Yes, your Honors because (Paused) where that money came from, that is the question.

JUSTICE DEL ROSARIO:

So supposed an ordinary taxpayer makes an importation, you automatically consider that the imported article is an income? Is that the theory? It must already be reported in the event (Paused) For an instance, you consider yourself already a taxpayer (I'm sure you are also a taxpayer) you bought three cars, automatically the cars should be reflected, the amount you paid for the purchase of the car, you should reflect it already as an income in your income tax return? Is that the theory?

MR. MATANOG:

A: Yes, your Honors.

JUSTICE DEL ROSARIO:

So, all of us, when we buy a car, we must indicate there

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that the car we bought is actually an income. Is that it?

MR. MATANOG:

A: Yes, your Honors. Because if they came from our salary, so it is an income.

JUSTICE DEL ROSARIO:

No, the basic premise is that there is an importation, there is purchase, and just because there is a purchase, that purchase is actually the amount, rather, the amount that was used in the purchase is an income. So every time that there is a purchase, that is going to be an income that should be reflected in an income tax return. That is simply my question. Because in this case, there is no income tax return to speak of. And then if anyone would purchase a vehicle, spend something for the purchase of a vehicle, you are saying that the purchase must necessarily be an income. Is that it?

MR. MATANOG:

A: Yes.

JUSTICE DEL ROSARIO:

I see, Don't you think that is not reasonable? Or since you are from the BIR, you think that is reasonable enough? All taxpayers who made a purchase must automatically declare an income equivalent to the amount of the purchase price. Is that it?

MR. MATANOG:

A: Yes, your Honors.

In *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*[62], the Supreme Court categorically stated that an assessment must be based on credible evidence and should not be arbitrarily made, to wit:

> "The rule is that in the absence of the accounting records of a taxpayer, his tax liability may be determined by estimation. The petitioner is not required to compute such tax liabilities with mathematical exactness. Approximation in the calculation of the taxes due is justified. To hold otherwise would be tantamount to holding that skillful concealment is an invincible barrier to proof. However, the

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[62] G.R. No. 136975, March 31, 2005.

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rule does not apply where the estimation is arrived at arbitrarily and capriciously.

We agree with the contention of the petitioner that, as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessmen t. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the *prima facie* presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.

However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a "naked assessment," i.e., without any foundation character, the determination of the tax due is without rational basis. In such a situation, the U.S. Court of Appeals ruled that the determination of the Commissioner contained in a deficiency notice disappears. *Hence, the introduced and its ultimate determination must find support in credible evidence.*" (*Emphasis supplied*)

In *Commissioner of Internal Revenue v. Island Garment Manufacturing Corporation et al.*[63], citing the case of *Collector of Internal Revenue vs. Alberto D. Benipayo*[64], the Supreme Court ruled that an assessment should not be based on presumption but on actual facts, to wit:

"We find respondent Court's reasoning to be well-taken. As held in *Collector of Internal Revenue vs. Benipayo*:

An assessment fixes and determines the tax liability of a taxpayer. As soon as it is served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded. Hence, **assessments should not be based on mere presumptions no matter how reasonable or logical said presumptions may be** ... ."

[63] G.R. No. L-46644, September 11, 1987.
[64] G.R. No. L-13656, January 31, 1962.

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> In order to stand the test of judicial scrutiny, **the assessment must be based on actual facts**. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption ..."

Similarly, a scrutiny of the prosecution's evidence also reveals that the LOA[65] issued for the conduct of the investigation was not received by the accused as shown in the lower left portion of said document. Mr. Matanog, in his judicial affidavit[66], explains that when he went to the accused's business address, he was informed that Lucky Sea Trading is no longer a tenant in the said building, hence, he went to the accused's possible residential address but was informed that the accused has no business or residential record in the said place. Thus, as stated and testified by the accused[67], he only knew of the tax audit when the BIR Team already started its tax audit or investigation.

However, the BIR Team, through Ms. Angela Marie S, De Leon, was able to serve the resulting Preliminary Assessment Notice (PAN) at the accused's supposed residence though it was addressed to the latter's business address and was received by a certain Kyle Orante who was allegedly the accused's authorized representative. Such fact was not controverted by the accused.

Pursuant to Sections 6 and 13 of the 1997 NIRC, as amended, prior authorization is needed in the conduct of any tax audit or investigation and such authorization, in the form of an LOA, is necessary and cannot be dispensed with as held in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[68], to wit:

> "Contrary to the ruling of the CTA *en banc*, **an LOA cannot be dispensed with** just because none of the financial books or records being physically kept by MEDICARD was examined. To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives **before an examination "of a taxpayer" may be made**. **The requirement of authorization is** therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but **only on**

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[65] *Supra.*, Note 26.
[66] *Supra.*, Note 36, at pp. 412-414.
[67] *Supra.*, Note 43; TSN, Hearing on November 18, 2020, p. 10.
[68] G.R. No. 222743, April 5, 2017.

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> **whether a taxpayer is being subject to examination**." (*Emphasis supplied*)

Thus, it must be served by the BIR and actually received by the taxpayer. The records of the case reveal that the subject LOA was not received by the accused, hence, he had no prior knowledge of the supposed impending tax audit. Accused became only aware of said investigation when the BIR Team was already conducting the same.

The failure of the BIR Team to serve and of the accused to receive the subject LOA is tantamount or akin to a tax audit or investigation without proper authorization which is required under the law. The absence of such authorization shall invalidate the investigation itself and the PAN.[69]

Considering that the assessment was based merely on a presumption and on an unauthorized tax audit, such PAN becomes invalid and the notices issued subsequent to it are void. An invalid or void assessment bears no valid fruit. As held in *Commissioner of Internal Revenue v. Azucena T. Reyes:*[70]

> "*Fourth*, petitioner violated the cardinal rule in administrative law that the taxpayer be accorded due process. Not only was the law here disregarded, but no valid notice was sent, either. **A void assessment bears no valid fruit**.
>
> The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence. In the instant case, respondent has not been informed of the basis of the estate tax liability. Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made. The haphazard shot at slapping an assessment, supposedly based on estate taxation's general provisions that are expected to be known by the taxpayer, is utter chicanery." (*Emphasis supplied*)

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[69] *Commissioner of Internal Revenue v. Opulent Landowners, Inc.,* G.R. Nos. 249883-84, January 27, 2020.

[70] G.R. Nos. 159694 & 163581, January 27, 2006.

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The absence of the final action from the CIR and the nullity of the PAN absolves the accused from any civil liability in the instant consolidated cases.

WHEREFORE, premises considered, the Court rules as follows:

1. In CTA Crim. Case No. O-690, accused **RONNEL LAMPA DE GUZMAN** is hereby found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 255 of the NIRC of 1997, as amended, for taxable year 2012 and is hereby **SENTENCED** to suffer an indeterminate penalty of imprisonment of one (1) year as minimum, to ten (10) years as maximum, and **ORDERED** to pay a fine in the amount of Php10,000.00, with subsidiary imprisonment, in case accused has no property with which to meet such fine, pursuant to Section 280 of the 1997 NIRC, as amended.

2. In CTA Crim. Case No. O-691, accused **RONNEL LAMPA DE GUZMAN** is hereby found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 255 of the 1997 NIRC, as amended, for taxable year 2013 and is hereby **SENTENCED** to suffer an indeterminate penalty of imprisonment of one (1) year as minimum, to ten (10) years as maximum, and **ORDERED** to pay a fine in the amount of Php10,000.00, with subsidiary imprisonment, in case accused has no property with which to meet such fine, pursuant to Section 280 of the 1997 NIRC, as amended.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

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REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM. CASE NO. O-690** For Violation of Section 255 of the NIRC of 1997, as amended
-versus-	
RONNEL LAMPA DE GUZMAN (LUCKY SEA TRADING), *Accused.*	

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PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM. CASE NO. O-691** For Violation of Section 255 of the NIRC of 1997, as amended
	Members:
-versus-	**DEL ROSARIO**, *P.J., Chairperson, and* **MANAHAN**, *JJ.*
RONNEL LAMPA DE GUZMAN (LUCKY SEA TRADING), *Accused.*	Promulgated: JUN 09 2021 8:30 am

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CONCURRING OPINION

***DEL ROSARIO, P.J.*:**

I give my assent to the conclusion reached in the *ponencia* that accused is criminally liable for violating the provisions of Section 255 of the National Internal Revenue Code (NIRC) of 1997. I likewise agree that accused is not civilly liable to pay the basic income tax for taxable years 2012 and 2013, in the respective amounts of Php10,578,075.00 and Php214,158,582.72, albeit on a different ground which I will expound hereunder.

I submit that the civil action for the recovery of the aforestated civil liabilities in the form of basic income tax is not deemed instituted with the criminal actions filed against the accused. The obligation of the accused to pay the basic income taxes for taxable years 2012 and 2013, in the respective amounts of Php10,578,075.00 and Php214,158,582.72, is an obligation that is created by law and does not arise from the criminal offense of violating Section 255 of the NIRC of 1997 arising from his failure to file his 2012 and 2013 Income Tax Returns (ITRs). Hence, the accused may not be held civilly liable in the present proceedings for such basic income taxes.

Prescinding from *Macario Lim Gaw, Jr. vs. Commissioner of Internal Revenue,*[1] the following pronouncements have become doctrinal:

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

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

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

4. While the institution of the criminal action automatically carries with it the institution of the civil action for the recovery of civil liability, the case for the **collection** of unpaid customs duties and taxes **cannot be simultaneously instituted and determined in the same criminal proceedings** (citing *Proton Pilipinas Corp. v. Republic of the Phils.*[3]).

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

6. While the tax evasion case is pending, the BIR is not precluded from issuing an FDDA. In order to prevent the assessment from becoming final, executory and demandable,

[1] G.R. No. 222837, July 23, 2018.
[2] 127 Phil. 105 (1967).
[3] 535 Phil. 521 (2006).

> the taxpayer may file with the CTA a Petition for Review within 30 days from receipt of the decision or the inaction of the CIR. **The remedy of the taxpayer to appeal the disputed assessment is not deemed instituted with the criminal case. To rule otherwise would be to render nugatory the procedure in assailing the tax deficiency assessment.**

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

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

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

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

As shown in the Informations, accused was charged for violation of Section 255 of the NIRC of 1997, as amended, **for failure to file his 2012 and 2013 ITRs.** Notably, there is nothing in the Informations filed against the accused that alleged that there were final assessment notices issued against him that have become final and executory. Thus, the conviction of the accused does not have for its consequence the assessment and collection in the present criminal cases of the basic income taxes in the amounts of Php10,578,075.00 and Php214,158,582.72, for the years 2012 and 2013 respectively; to do so would deprive the accused of the remedies in disputing tax assessments, thus, rendering nugatory the procedure in assailing a tax deficiency assessment under Section 228 of the NIRC of 1997, as amended.

All told, I *CONCUR* in the result.

ROMAN G. DEL ROSARIO
Presiding Justice