REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, ***Plaintiff,***	**C.T.A. CRIM. CASE NO. O-033** For: Violation of Section 255 of R.A. No. 8424
-versus-	
GLORIA V. KINTANAR, ***Accused.***	

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PEOPLE OF THE PHILIPPINES, ***Plaintiff,***	**C.T.A. CRIM. CASE NO. O-034** For: Violation of Section 255 of R.A. No. 8424
-versus-	Members: CASTAÑEDA, JR., Chairperson UY, and PALANCA-ENRIQUEZ, JJ.
GLORIA V. KINTANAR, ***Accused.***	**Promulgated:** AUG 2 6 2009 11:12 a.m.

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DECISION

UY, J.:

Accused Gloria V. Kintanar is charged before this Court with the crime of Violation of Section 255 of Republic Act No. 8424, otherwise known as the Tax Reform Act of 1997, as amended[1], under the following Informations, which read as follows:

[1] Republic Act No. 8424 is the amending statute of the National Internal Revenue Code consisting of a total of only eight (8) Sections; and Section 3 thereof reproduces the entire provisions of the NIRC, as amended, where Section 255 is found.

Criminal Case No. O-033

"'That on or about the 16th day of April, 2001, in Paranaque 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 her Income Tax Return (ITR) for the taxable year 2000 on or before the 15th day of April 2001, did, then and there, willfully, unlawfully and feloniously fail to file her ITR with the Bureau of Internal Revenue for the year 2000, to the damage and prejudice of the Government in the estimated amount of **P1,329,319.95** exclusive of penalties, surcharges and interest.'

CONTRARY TO LAW."

Criminal Case No. O-034

"'That on or about the 16th day of April, 2002, in Paranaque 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 her Income Tax Return (ITR) for the taxable year 2001 on or before the 15th day of April 2002, did, then and there, willfully, unlawfully and feloniously fail to file her ITR with the Bureau of Internal Revenue for the year 2001, to the damage and prejudice of the Government in the estimated amount of **P1,517,242.12** exclusive of penalties, surcharges and interest.'

CONTRARY TO LAW."

The two cases were ordered consolidated on July 9, 2007.[2]

Accused voluntarily surrendered before this Court and posted the required bail bonds for her provisional liberty by way of cash bonds in the amount of P20,000.00 for each case[3].

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[2] Resolution, CTA Crim. Case No. O-034, Docket, p. 248.
[3] Official Receipt No. 2904507, CTA Crim. Case No. 0-033, Docket, p. 49; Official Receipt No. 2904508, CTA Crim. Case No. O-034, Docket, p. 203.

Upon arraignment,[4] accused assisted by defense counsel de parte, Atty. Salvador V. Quebral, entered a plea of "Not Guilty" to both charges. After the termination of the pre-trial held on September 26, 2007,[5] the parties presented their respective evidence.

The prosecution presented seven (7) witnesses to establish accused's culpability, namely: Simplicio Cabantac, Romeo Naranjo, Atty. Christina Barroga, Julio Alcasabas, Michael Cajandab, Carmencita Flores, and Assistant Commissioner Alberto Pio de Roda. Thereafter, the prosecution rested its case with the admission of its evidence.[6]

On the other hand, the defense presented two (2) witnesses, the accused herself, Gloria V. Kintanar and her spouse, Benjamin G. Kintanar, Jr. Upon admission of its documentary evidence, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice.[7] Accused filed her Memorandum on March 6, 2009,[8] while the prosecution submitted its Memorandum on May 12, 2009.[9] Thus, this case was deemed submitted for decision on May 15, 2009.[10]

Evidence of the Prosecution

On the basis of a confidential information reaching the office of Revenue Officer Simplicio V. Cabantac, Jr., presently the Section Chief of the National Investigation Division of the Bureau of Internal Revenue (BIR), regarding the alleged

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[4] Resolution dated August 22, 2007, Docket, pp. 126-127.
[5] Docket, p. 137.
[6] Exhibits "A" to "RRR", Resolution dated June 4, 2008, CTA Crim. Case No. O-033, Docket, p. 955.
[7] Ibid.
[8] CTA Crim. Case No. O-033, Docket, pp. 1070-1074 (as admitted in the Resolution dated March 10, 2009).
[9] CTA Crim. Case No. O-033, Docket, pp. 1096-1154.
[10] Resolution dated May 15, 2009, CTA Crim. Case No. O-033, Docket, p. 1155.

tax evasion scheme of certain taxpayers, namely spouses Benjamin G. Kintanar, Jr. and Gloria V. Kintanar, for non-filing of tax returns, an Access Letter dated July 18, 2002 addressed to the Revenue District Officer of Revenue District No. 52, Parañaque City was issued by Armando R. Rosimo, Chief of the Tax Fraud Division, requesting for photocopies of documents pertaining to spouses Kintanar, with both postal address at No. 2 Granada St., Merville Subd., Paranaque City, for the years 1996 to 2001, to wit:

"1. Income Tax Returns (ITR) with Financial Statements;
2. Value Added Tax (VAT) Returns (Monthly & Quarterly);
3. Percentage Tax Returns (Monthly & Quarterly);
4. BIR Registration Certificate"[11]

Another Access Letter dated July 19, 2002[12] was also issued addressed to the Managing Director of Forever Living Products Philippines, Inc. (FLPPI), authorizing the investigating team to secure a certification as to the total income payments/commissions and bonuses earned by Spouses Benjamin G. Kintanar, Jr. and Gloria V. Kintanar, together with the amount of taxes withheld for calendar years 1996 to 2001.

In response to the two (2) Access Letters: Revenue District Officer Carmelita R. Bacod, of Revenue District Office No. 52 , Parañaque City, issued a Certification dated September 17, 2002[13] stating that as per verification made from the available records of its office, Spouses Benjamin G. Kintanar, Jr. and Gloria V. Kintanar, have no record on file for the years 1999-2001;[14] while, Michael T. Cajandab, Comptroller

[11] Access Letter dated July 18, 2002, Exhibit "A", CTA Crim. Case No. O-033, Docket, p. 691.
[12] Access Letter dated July 19, 2002, Exhibit "B", CTA Crim. Case No. O-033, Docket, p. 692.
[13] Exhibit "E", CTA Crim. Case No. O-033, Docket, p. 695.
[14] Exhibit "C", CTA Crim. Case No. O-033, Docket, p. 693.

of FLPPI, sent a letter-reply dated January 20, 2003 indicating therein the total income of accused Gloria V. Kintanar for calendar years 1999, 2000 and 2001, to wit:

"Applicable Year	Amount of Income Payments	Amount of Tax Withheld
1999	4,488,164.90	448,816.49
2000	7,311,489.10	731,148.91
2001	8,311,075.09	831,107.51"[15]

As a result of the foregoing initial investigation conducted, it was found that spouses Benjamin G. Kintanar, Jr. and Gloria V. Kintanar are distributors or independent contractors of FLPPI, and are listed as among the top distributor of the said company. Consequently, Letter of Authority (LOA) No. 0029663 dated March 28, 2003[16] was issued against the spouses Benjamin G. Kintanar, Jr. and Gloria V. Kintanar for the examination of their books of accounts and other accounting records for the period covering taxable years 1999, 2000 and 2001. The LOA was allegedly received personally by the husband of accused Gloria V. Kintanar on April 3, 2003, as shown by his signature thereon marked as Exhibit "F-3".

Despite receipt thereof, the required documents were not submitted and a Second Request for Presentation of Records dated April 21, 2003[17] and Final Notice[18] were duly served upon spouses again at their postal address. The non-submission by the Kintanar spouses of the requested documents led to the issuance of a Subpoena Duces Tecum dated June 11, 2003[19] commanding them to appear

[15] Letter dated January 20, 2003, Exhibit "E", CTA Crim. Case No. O-033, Docket, p. 695.
[16] Exhibits "F", "F-1" to "F-3", CTA Crim. Case No. O-033, Docket, pp. 696-698.
[17] Exhibits "G" to "G-1".
[18] Exhibits "H" to "H-1".
[19] Exhibits "I" to "I-1".

before the Chief Prosecution Division in order to enforce compliance in the presentation of their books of accounts and other accounting and tax records.

Again, the spouses did not comply, and a Letter dated September 3, 2003 was issued by Armando R. Rosimo, Chief of Tax Fraud Division to the Kintanar spouses informing them that the results of the investigation conducted on their internal revenue taxes for taxable years 1999 to 2002 had already been submitted to their office and requiring them to present their side, otherwise, they shall be deemed to have waived their right to a conference.

On December 9, 2003, a Preliminary Assessment Notice[20] was issued against the spouses informing them that deficiency taxes were found against them for taxable years 1999 to 2002 together with complete details of discrepancies, and giving them fifteen (15) days to explain the discrepancies found against them. As there was no compliance once more by the spouses, a Memorandum dated February 26, 2004[21] was submitted by the investigation team regarding the spouses' failure to file their protest with the recommendation for the issuance of a Formal Letter of Demand and Assessment Notice against the spouses.

Thereafter, a Formal Letter of Demand dated February 26, 2004[22] including Assessment Notices[23] were issued for the payment of discrepancies on taxes but no payment of taxes was made by the spouses. And although accused's spouse Benjamin G. Kintanar, Jr. sent a Letter dated August 31, 2004[24] informing the BIR

[20] Exhibits "K" to "K-4".
[21] Exhibits "L" to "L-1".
[22] Exhibits "M" to "M-7".
[23] Exhibits "N" to "N-7".
[24] Exhibit "O".

that they have received Assessment Notices and manifesting their protest thereon for lack of factual and legal basis, together with photocopies of their joint income tax returns for 2000, 2001 and 2002, and undertaking to submit additional documents within sixty (60) days therefrom, no documents were submitted.

In the Letter dated September 30, 2004,[25] Arnel SD Guballa, Chief of the National Investigation Division, informed the spouses that no documents have yet been received by their office and that they have sixty (60) days from the date the protest was filed or until November 3, 2004 to submit their supporting documents otherwise the assessment shall become final, executory and demandable. The spouses' non-compliance thereto resulted in the issuance of a Final Decision on Disputed Assessment dated December 13, 2004[26] informing the spouses about the denial of their protest for non-submission of required documents within the sixty (60) day reglementary period. The spouses were also informed that the Integrated Tax System computerized records and certification from revenue district office of Parañaque do not reflect that they had filed and paid their taxes for taxable years 1999 to 2001; that they also failed to present original copies of their ITRs within the sixty (60) day period mandated by law.

On the basis of the data and documentary evidence gathered, the prosecution found accused Gloria V. Kintanar liable for deficiency income taxes arising from income earned from FLPPI, computed as follows:

> "For taxable year 2000, she earned income in the amount of P7,311,489.10 but did not report the same to the prejudice of the

[25] Exhibit "P".
[26] Exhibits "Q" to "Q-5".

> government in the amount of P1,329,319.95 exclusive of interest, penalties and surcharges;
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> For taxable year 2001, she earned income in the amount of P8,311,075.09 but did not report the same to the prejudice of the government in the amount of P1,517,242.12 exclusive of interest, penalties, surcharges."[27]

Moreover, the prosecution submits that contrary to the assertion of the Kintanar spouses that they filed their income tax returns for taxable years 2000 and 2001, allegedly through their accountant, Marina Mendoza, investigations disclosed that no such returns were actually filed. This valuable information was derived using the Information Systems Operations Service (ISOS) at the Central Office of the BIR, as well as through Access Letters addressed to the district offices where the accused had their past residences in Parañaque, in Pasig, and in Cubao, Quezon City, verifying whether the Kintanar spouses filed their respective returns at said districts. Apparently, the said inquiries yielded negative data on the alleged filing of income tax returns by the Kintanar spouses at any of the places aforementioned for the taxable years 1999, 2000 and 2001.

In view of the foregoing findings, these two Criminal Case Nos. O-033 and O-034 were filed against accused Gloria V. Kintanar.

Evidence of the Defense

For her defense, accused Gloria V. Kintanar vehemently denies the allegations in the informations that she willfully, unlawfully and feloniously failed to file her Income Tax Returns (ITRs) for the taxable years 2000 and 2001, and claims that she filed the said ITRs on March 28, 2001 and April 5, 2002, as evidenced by

[27] Paragraph 21 (b) and (c), Affidavit of Revenue Officer Simplicio V. Cabantac, Jr., CTA Crim. Case No. O-033, Docket, pp. 804-810, at p. 809.

Exhibits "9, 9-A"[28], "10" and "10-A"[29]. However, she said that she did not personally file the said ITRs but her husband, and that she has no personal knowledge about the actual filing of the said returns. Presently, her current residence is at Unit 122 Doña Juana Townhomes, Doña Juana Subdivision, Rosario Pasig City. During the taxable years 2000 and 2001, however, her residence was at No. 2 Granada St., Merville Park Subdivision, Parañaque City. She admits receiving income from Forever Living Products, Philippines, Inc. (FLPPI) since 1996 up to the present and is paid commission by FLPPI through check payments, which she either encashes or clears through her bank account at BPI-North Greenhills where she maintains Account No. 2575004248. Admittedly, she knows Michael Cajandab as the Comptroller of FLPPI.

To corroborate her testimony, her husband, Benjamin G. Kintanar, Jr., testified that as one of the top-dealers of FLPPI, he earned income therefrom during the taxable years 2000 and 2001, and that he and his wife, the accused in these cases, were filing joint ITRs from the time they got married in 1997 until 2004. According to him, since 1998, his accountant was a certain Marina Mendoza, and he gave documents to her, particularly W2 Forms (Creditable Tax Withheld Certificates) from FLPPI, and let her do everything relative to tax matters. He admitted that he only browsed through the ITRs before signing the same, and because he did not read these, he does not know the address stated in his ITRs and until now, he does not know where his accountant filed their ITRs. He also said that he resided in St. Francis II, Pasig City for 27 years since 1972 until 1997 and transferred to Merville,

[28] Annual Income Tax Return for 2000, CTA Crim. Case No. O-033, Docket, pp. 1015-1016.
[29] Annual Income Tax Return for 2001, CTA Crim. Case No. O-033, Docket, pp. 1017-1018.

Paranaque from 1997 until about 2005 or 2006. Thereafter, he allegedly went back to reside in Oranbo, Pasig City until the present, and that he is registered with the RDO of Pasig City.

THE ISSUE

WHETHER OR NOT ACCUSED GLORIA V. KINTANAR IS LIABLE FOR VIOLATION OF SECTION 255 OF THE 1997 NATIONAL INTERNAL REVENUE CODE, AS AMENDED.

THE COURT'S FINDINGS AND RULING

Accused Gloria V. Kintanar is charged before this Court in the two (2) above-captioned cases for failure to file her Income Tax Returns (ITRs) for taxable years 2000 and 2001 in violation of the first paragraph of *Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended*, and not *Republic Act No. 8424.*[30]

Section 255 of the *NIRC of 1997, as amended*, 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)*

[30] Sec.3 of Republic Act No. 8424 provides: "*Sec. 3. Presidential Decree No. 1158, as amended by, among others, Presidential Decree No. 1994 and Executive Order No. 273, otherwise known as the National Internal Revenue Code, is hereby further amended to read as follows: x x x (citing the entire codal provisions of NIRC of 1997)*"

The undisputed facts are admitted in the Pre-Trial Order dated October 1, 2007,[31] the relevant portions of which state:

"II. Statement of Facts

A. Admitted

1. Accused Gloria Vivar Kintanar, a *Filipino citizen and resident of the Philippines*, is married to Benjamin Gatpayat Kintanar, Jr.

2. Accused and her husband are ***engaged in the business and earning income in the form of commissions as distributors or independent contractors of Forever Living Products Philippines, Inc.***, a multi-level marketing firm and a duly registered domestic corporation, during taxable year 1999, 2000, and 2001, and prior years thereto.

3. As distributors or independent contractors, accused and her husband are not employees of Forever Living Products Philippines, Inc., and only earn commission income for selling or distributing the company's products.

4. For taxable years 2000 and 2001, accused and her husband were consistently ranked among the company's top product distributors, earning substantial amount of income.

5. Accused received from Forever Living Products Philippines, Inc., commission income.

6. ***As married individuals who do not derive(d) income purely from compensation, accused and her spouse are obligated under the Tax Code, in particular Sections 51 (A)(1), 51 (B), 51 (C), 51 (D), 74 (A) and 74 (B), to file income tax returns for taxable years 2000 and 2001, on or before the 15th day of April 2001 and 15th day of April 2002, respectively, to include the income of both spouses.***

7. That Gloria V. Kintanar is legally married to Benjamin G. Kintanar." *(Emphasis Ours)*

[31] CTA Crim. Case No. O-033, Docket, p. 152.

Section 255 covers four (4) different situations, each of which constitutes a failure to perform, in a timely manner, an obligation imposed by the *NIRC of 1997, as amended*, namely:

(1) To pay an estimated tax or taxes;
(2) To make (file) a return;
(3) To keep records; and
(4) To supply information.

The identical charge against accused in these two (2) consolidated cases is her alleged failure to make or file a return for the taxable years 2000 and 2001 on her supposed taxable incomes which caused damage and prejudice to the government in the estimated amounts of **P1,329,319.95** and **P1,517,242.12** in Criminal Case Nos. O-033 and O-034, respectively, exclusive of penalties, surcharges and interest.

To establish the offense of failure to make or file a return, the prosecution must prove three (3) essential elements beyond reasonable doubt, 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;
(3) That the failure to make or file the return was willful.

Required by Law to Make or File A Return.

The return referred to in these two cases pertains to the filing of an income tax return arising from the supposed income earned by accused for the taxable years 2000 and 2001. Accused's duty to make/file an income tax return is specifically mentioned in Sections 51 and 74 of the *NIRC of 1997, as amended*, the pertinent portions of which read:

"**SEC. 51. Individual Return**. -

(A) Requirements. -

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

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

xxx xxx xxx

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

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

xxx xxx xxx

(D) Husband and Wife. - Married individuals, whether citizens, resident or nonresident aliens, who do not derive income purely from compensation, shall file a return for the taxable year to include the income of both spouses, but where it is impracticable for the spouses to file one return, each spouse may file a separate return of income but the returns so filed shall be consolidated by the Bureau for purposes of verification for the taxable year." *(Emphasis Ours)*

"**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. Nonresident Filipino citizens, with respect to income from without the Philippines, and nonresident aliens not engaged in trade or business in the Philippines, are not required to render a declaration of estimated income tax. The declaration shall contain such pertinent information as the Secretary of Finance, upon recommendation of the Commissioner, may, by rules and regulations prescribe. An individual may make amendments of a declaration filed during the taxable year under the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner." *(Emphasis Ours)*

Worthy of emphasis is the admission of accused that she is aware of her obligation under the provisions of the NIRC to make and file a return within the time required by law, as appearing in Section II (B) (6) of the Pre-Trial Order dated October 1, 2007, wherein the accused admitted that "a*s married individuals who do not derive(d) income purely from compensation, accused and her spouse are obligated under the Tax Code, in particular Sections 51 (A)(1), 51 (B), 51 (C), 51 (D), 74 (A) and 74 (B), to file income tax returns for taxable years 2000 and 2001, on or before the 15th day of April 2001 and 15th day of April 2002, respectively, to include the income of both spouses.*"[32]

Accused also admitted earning commission income from selling or distributing products of Forever Living Products Philippines, Inc. (FLPPI), wherein she and her husband were consistently ranked among the company's top product distributors, earning substantial amount of income during taxable years 2000 and 2001. Notwithstanding said admissions however, the prosecution presented as its witness, Michael Cajandab, Comptroller of FLPPI, who testified that FLPPI paid accused her income and bonuses for the years 1999, 2000, and 2001, as stated in his Letter/Certification dated on January 20, 2003.[33]

Consequent to having earned substantial income, accused is therefore obligated under the law to file her annual income tax returns for all the taxable years that she has been earning income within the Philippines, particularly, the taxable years in question, namely, 2000 and 2001.

[32] Ibid.
[33] Exhibit "E", CTA Crim. Case No. O-033, Docket, p. 695.

Return Not Filed at Time Required by Law.

The venue for the filing of the required income tax return and the period within which to file the same are likewise provided in Section 51, Subsections (B) and (C)(1), to wit:

> "**SEC. 51. Individual Return.** -
>
> xxx xxx xxx
>
> **(B) Where to File.** - Except in cases where the Commissioner otherwise permits, the return shall be filed with an authorized agent bank, Revenue District Officer, Collection Agent or duly authorized Treasurer of the city or municipality in which such person has his legal residence or principal place of business in the Philippines, or if there be no legal residence or place of business in the Philippines, with the Office of the Commissioner.
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> **(C) When to File. –**
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> (1) The return of any individual specified above shall be filed on or before the fifteenth (15th) day of April of each year covering income for the preceding taxable year.
>
> xxx xxx xxx"

Investigations conducted by the authorized officials of the Bureau of Internal Revenue disclose that no Income Tax Returns for the taxable years 2000 and 2001 were filed by accused within the reglementary period, or on or about April 16, 2001 (for Criminal Case No. O-033) and April 16, 2002 (for Criminal Case No. O-034) up to the present. This finding is strongly supported by the testimonies and certifications presented by the prosecution attesting to the fact that, contrary to the strong assertion of accused, there is no record of filing of the required income tax returns by accused, through her husband, in any of the revenue districts of the

Bureau of Internal Revenue, where they may have resided, at specific points in time, prior to or during the taxable years 2000 and 2001.

At the outset, the prosecution established the legal residence of the accused during the years 2000 and 2001, where the accused as a taxpayer was supposed to register, file her income tax returns, and pay the corresponding income taxes due thereon, in accordance with Section 51(B) and (C) of the *NIRC of 1997, as amended.* As admitted by the accused in her direct examination, she was a resident of No. 2 Granada St., Merville Park Subdivision, Parañaque City, during the taxable years in question, and she should therefore have filed her income tax returns at said place.

Proceeding therefrom, Atty. Christina C. Barroga, the incumbent OIC-Assistant Revenue District Officer of Revenue District Office (RDO) No. 52, of Parañaque City, testified that based on available records of their office, the accused has no record on file for the years 1999 to 2001; hence, she caused the issuance of a Certification dated July 20, 2007[34], certifying to the fact that accused Gloria V. Kintanar, with Tax Identification Number (TIN) 206-631-823, is not a registered taxpayer of RDO No. 52 of Parañaque City, and thus corroborating the earlier Certification dated September 17, 2002[35] previously issued by the former Revenue District Officer of RDO No. 52, Carmelita R. Bacod.

In relation to the information derived through the BIR-Integrated Tax System (ITS) that the name and TIN of the accused appeared in RDO No. 54 of Trece Martires City, Cavite, the prosecution presented Julio G. Alcasabas, the Revenue

[34] Exhibit "X", CTA Crim. Case No. O-033, Docket, p. 799.
[35] Exhibit "C", CTA Crim. Case No. O-033, Docket, p. 693.

District Officer of RDO No. 54, who clarified that the accused Gloria V. Kintanar, of No. 2 Granada, Merville Subd., Parañaque City, was registered in their district office as "one-time transaction taxpayer" (ONETT) on June 28, 2000, and that they received tax payments on March 27, 2003 representing one-time transaction for capital gains and documentary stamp tax, but negated the existence at RDO No. 54 of any Income Tax Returns filed by the accused for taxable years 1999 to 2001, as shown by a Certification dated July 26, 2007[36] which he issued, in conformity with the Certifications issued by Anicia C. Santos, Chief of the Document Processing Section[37] and by Lourdes A. Isleta, Chief of the Taxpayer Service Section, Lourdes A. Isleta,[38] both of Revenue District Office No. 54, of Trece Martires City.

To bolster the foregoing assertions, Assistant Commissioner Alberto A. Pio de Roda of the Information Systems Operations Service (ISOS) assigned at the BIR National Office, issued a Certification dated September 24, 2007[39] stating that the BIR has no record of the accused having filed her ITRs for the years 1999 to 2001.

On the other hand, to prove the alleged joint filing of her Annual Income Tax Returns with her husband, the accused presented Exhibits "9" and "10" purporting to be the ITRs for taxable years 2000[40] and 2001[41], respectively, as well as two undated Certifications[42] issued by a certain Ernesto T. Kho, the Revenue District

[36] Exhibit "W", CTA Crim. Case No. O-033, Docket, p. 793.
[37] Exhibit "W-1", CTA Crim. Case No. O-033, Docket, p. 794.
[38] Exhibit "W-2", CTA Crim. Case No. O-033, Docket, p. 795.
[39] Exhibit "KKK", CTA Crim. Case No. O-033, Docket, p. 911.
[40] CTA Crim. Case No. O-033, Docket, pp. 1015-1016.
[41] CTA Crim. Case No. O-033, Docket, pp. 1017-1018.
[42] Exhibits "13" and "14", CTA Crim. Case No. O-033, Docket, pp. 1021-1022.

Officer of RDO No. 28, Novaliches City, which except for the specific taxable year involved, identically read as follows:

*"**CERTIFICATION***

This is to certify that the verification and processing of the income tax return and other accounting records of Mr. Benjamin Kintanar Jr. with postal address at B73, L24, Lagro Subd., Novaliches, Quezon City, for taxable year 2000[43] *has been investigated and completed.*

This certification is issued upon the request of the above-subject taxpayer.

Signed
Ernesto T. Kho
Revenue District Officer
TIN: 113-600-149"

A careful examination of the ITRs presented by accused reveals that the same 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 TIN of the accused, and the Community Tax Certificate (CTC) Number, Place and Date of issuance and the Amount paid (Boxes 6, 107-110, respectively);
2) The subject ITRs contain an address (Blk. 73, Lot 24 Lagro Subdivision, Quezon City) which, as admitted by the Kintanar spouses, had never been their legal residence;

[43] Taxable year referred to in Exhibit "13", and as taxable year 2001 in Exhibit "14".

3) The subject ITRs bear the stamping "Received" by RDO No. 40 of Cubao, Quezon City, which is NOT the district office that has jurisdiction over the spouses' given address (Lagro Subdivision, Quezon City) in the subject ITRs, hence, even if authentic, were filed at the wrong venue; and
4) The husband of the accused, who purportedly caused the preparation of the subject ITRs, clearly admitted that he did not even read the contents of the subject ITRs and does not know up to the present where these were supposedly filed by Marina Mendoza.

Furthermore, the prosecution was able to prove that no ITR was filed, either by the accused or her husband, or by anyone on their behalf, for the taxable years 2000 and 2001 at RDO No. 40, as testified to by 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. This was further verified by Geraldine C. Mariñas, Chief of Document Processing Section of said district.

As regards the two undated, identically worded Certifications from RDO No. 28, Novaliches, Quezon City, the same are tainted with various defects, to wit:

1) On the face of the document: it is undated and does not bear the official dry seal of the BIR;
2) Although RDO No. 28, Novaliches, Quezon City, is the revenue district which has jurisdiction over the address (Blk 73, Lot 24, Novaliches, Quezon City) reflected in accused's ITRs for taxable years 2000 and 2001, it appears however that said ITRs were filed

at RDO No. 40, Cubao, Quezon City, as shown by the stamping "Bureau of Internal Revenue, Received, RDO 40, Cubao, Quezon City". Thus, RDO No. 28 is not the proper revenue district to verify and process the said ITRs. The Certifications did not mention what returns were indeed verified and processed by the signatory, hence no evidentiary value; and

3) The defense did not present, nor was there an attempt to present Ernesto T. Kho, the supposed signatory of the Certifications to attest to the truthfulness, authenticity and due execution of the same.

In light of the foregoing inconsistencies, the Certifications are accorded no probative value. Moreover, granting for the sake of argument that the Certifications were validly issued, the same nevertheless have no favorable effect upon herein accused Gloria V. Kintanar because said Certifications refer only to her husband, Benjamin G. Kintanar, Jr., and not to the spouses Kintanar.

Willfulness in Non-Filing of Return.

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."[44] *(Emphasis Ours)*

[44] Black's Law Dictionary, 6th Edition, p. 1599.

Further, it is also stated therein that **"willfulness"** is a state of mind that may be inferred from the circumstances of the case.[45] Thus, proof of willfulness may be, and usually is, shown by circumstantial evidence alone.[46]

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

We look into the factual circumstances in these cases.

For her defense, accused denied the charges filed against her for willful failure to file her income tax returns for taxable years 2000 and 2001, as it was her husband who took charge of the filing of their required income tax returns and this matter was admitted by her husband. Having thus delegated the supposed filing of the required income tax returns to her husband, accused in effect is saying that she did not willfully fail to comply with her legal duty to file the required income tax returns. For his part, accused's husband claims that he hired an accountant, a certain Marina Mendoza, to handle their tax concerns, thereby likewise saying he also did not willfully fail to file the required tax returns.

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[45] Ibid.
[46] *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).*

Considering however that said Marina Mendoza was never presented in court, the testimony of accused's husband being self-serving, and the checks[47] presented to prove alleged payment for services rendered by Marina Mendoza, are accorded no probative value. Even considering that the alleged agent, Marina Mendoza, was the person tasked by accused's husband to file their required ITRs, this agreement is merely internal between them, and is not a valid defense that can be raised by accused in these cases arising from the supposed agent's non-compliance with the obligation to file the required returns for and on behalf of accused.

It is a settled principle in agency that a principal is liable for the acts/omissions of his/her agent within his/her express authority because the act/omission of such agent is the act/omission of the principal. Under this rule, the principal (accused) is bound by the acts of her agent (her husband or a certain Marina Mendoza) because of the apparent authority which she knowingly permitted the agent to assume. Accused's reliance on her husband to file the required ITRs without ensuring full compliance thereon, is considered as a willful act on her part to delegate the performance of her legal duty to her husband tantamount to "deliberate ignorance" or "conscious avoidance" on her part to determine the facts surrounding the filing of the required income tax returns.

The Court notes that even the accused's husband, who allegedly caused the hiring of an agent for the preparation and filing of their ITRs for the said taxable years, admitted that he merely browsed over the contents of their subject ITRs. The

[47] Exhibits "11" and "12".

evident lack of concern on the part of the Kintanar spouses appear to be voluntary and considered as intentional disregard of their tax responsibilities to the government. Worst, accused even presented fabricated and flawed ITRs purporting to be received by a revenue district of which she is not a resident.

Even assuming that the subject ITRS were actually filed, still, these were misfiled and she was apparently remiss in her duty of ensuring appropriate filing at the proper revenue district office. Her utter lack of participation in preparing and filing of her ITRs is a clear indication of deliberate lack of concern on her part to learn how she is to perform her tax obligations under the *National Internal Revenue Code of 1997, as amended.*

We take note that the *NIRC of 1997* is a special law. It is well settled that any violation of a special law is considered *mala prohibita.* Being so, except for the requirement in Section 255 that the omission be willful, proof of criminal intent to commit such violation is unnecessary. In acts *mala prohibita*, the only inquiry is, "has the law been violated?".[48] Thus, when dealing with acts *mala prohibita,* the Supreme Court said in the case of ***United States vs. Go Chico*** that:

> ". . . it is not necessary that the appellant should have acted with criminal intent. In many crimes, made such by statutory enactment, the intention of the person who commits the crime is entirely immaterial. This is necessarily so. If it were not, the statute as a deterrent influence would be substantially worthless. It would be impossible of execution. In many cases, the act complained of is itself that which produces the pernicious effect the statute seeks to avoid. In those cases, the pernicious effect is produced with precisely the same force and result whether the intention of the person performing the act is good or bad."[49]

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[48] *United States vs. Go Chico, 14 Phil 128 (1909).*
[49] Ibid., at p. 131 (also cited in *Rosa Lim vs. People of the Philippines, G.R. No. 130038, September 18, 2000, En Banc*).

In these cases, the non-filing of an income tax return being a statutory offense or *malum prohibitum,* the lack of intent to commit the crime is unavailing as a defense.[50] The Supreme Court further explained in the case of ***Garcia vs. Court of Appeals***[51], 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 "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 will suffice.

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

As regards the civil liability of accused in these consolidated cases to pay deficiency income taxes, the same are deemed instituted herewith pursuant to Republic Act No. (RA) 1125[52], as amended by Section 7 (b) (1) of Republic Act No. 9282[53], which provides that **the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all time**

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[50] *People vs. Barton, CA-G.R. No. 16671, December 12, 1975*, cited in Vitug and Acosta, Tax Law and Jurisprudence, Second Edition, 2000, p. 185.
[51] *GR No. 157171, March 14, 2006.*
[52] An Act Creating the Court of Tax Appeals.
[53] An Act Expanding the Jurisdiction of the Court of tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, As Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized.

Records reveal that on February 26, 2004, the BIR issued a Formal Letter of Demand[54] together with Assessment Notice Nos. ES-IT-1999-0083[55], ES-VAT-1999-0084[56], ES-IT-2000-0085[57], ES-VAT-2000-0086[58], ES-IT-2001-0087[59], ES-VAT-2001-0088[60], ES-IT-2002-0089[61], and ES-VAT-2002-0090[62], which were admittedly received by the husband of the accused on August 10, 2004. Accused's husband, Benjamin G. Kintanar, Jr., protested these assessments in a letter dated August 31, 2004[63] which was received by the BIR on September 3, 2004. However, as no supporting documents were attached to the letter-protest, the BIR, through Arnel SD. Guballa, Chief of National Investigation Division, sent a letter to the spouses on September 30, 2004 informing them that the BIR has not yet received the documents in support of their protest, and that they have sixty (60) days from the date of filing of their protest to submit the required documents[64].

[54] Exhibit "M".
[55] Exhibit "N".
[56] Exhibit "N-1".
[57] Exhibit "N-2".
[58] Exhibit "N-3".
[59] Exhibit "N-4".
[60] Exhibit "N-5".
[61] Exhibit "N-6".
[62] Exhibit "N-7".
[63] Exhibit "O".
[64] Exhibit "P".

Subsequently, on December 13, 2004, the BIR issued a Final Decision on Disputed Assessment[65] which was received by the spouses on April 12, 2005[66] denying the protest. Neither of the spouses appealed the same with this Court thereby making the assessments[67] issued against them final, executory and demandable due to the spouses' failure to file a valid protest.

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.

The accused failed to establish that they have submitted any document in support of their protest, after the letter-protest sent by her husband on September 3, 2004. Further, even granting that a valid protest was filed at the administrative level, the assessments have nevertheless attained finality for failure of the accused to judicially appeal the final decision[68] within thirty (30) days from receipt thereof. Consequently, accused 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.[69]

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[65] Exhibits "Q" to "Q-4".
[66] Exhibit "Q-5".
[67] Exhibits "N" to "N-7".
[68] Exhibits "Q" to "Q-4".
[69] *Republic vs. Court of Appeals, G.R. No. L-38540, 30 April 1987, 149 SCRA 351, 357.*

However, considering that the criminal cases filed before this Court pertain only to the non-filing of income tax returns for taxable years 2000 and 2001 by accused, what are deemed simultaneously instituted herewith shall be limited only to the corresponding civil liability of accused for deficiency income taxes, inclusive of all civil penalties, surcharges, and interests, for the said taxable periods.

Accordingly, accused is hereby found liable to pay the assessed income tax deficiencies for taxable years 2000 and 2001, in accordance with the subject assessments[70] issued against her, which have become final and demandable, to wit:

Taxable Year	*2000*	*2001*
Deficiency Income Tax	*P1,329,319.95*	*P1,517,242.12*
Surcharge	*664,659.98*	*758,621.06*
Interest 3/31/04	*1,162,490.30*	*871,655.60*
TOTAL AMOUNT	***P3,156,470.22***[71]	***P3,147,518.77***[72]

Section 255 of the *NIRC of 1997, as amended*, provides that upon conviction, a fine of not less than Ten thousand pesos (P10,000.00) and imprisonment of not less than one (1) year but not more than ten (10) years shall be imposed. There being no indication that the accused is disqualified from the scope of the Indeterminate Sentence Law[73], the same shall apply. Therefore, the imposable penalty shall not exceed the maximum fixed by law, which is 10 years, and the minimum penalty, shall not be less than 1 year, the minimum prescribed by the law violated.[74]

[70] Exhibit "Q-4", Docket, p. 736.
[71] Total should have been P3,156,470.23.
[72] Total should have been P3,147,518.78.
[73] Act No. 4103 as amended by Act No. 4225.
[74] Section 1 of Act No. 4103 as amended by Act No. 4225, otherwise known as the Indeterminate Sentence Law.

In the instant cases, considering that there are two informations filed against accused, docketed as Criminal Case Nos. O-033 and O-034, both for failure to file Income Tax Returns for the taxable years 2000 and 2001, respectively, the imposition of a fine of P10,000.00 for each case is proper, as well as the indeterminate penalty of imprisonment of one (1) year as minimum, to two (2) years as maximum for each violation. Moreover, Section 280 of the *NIRC of 1997, as amended*, provides the imposition of subsidiary penalty in the event that accused has no property with which to meet the fine imposed upon him by the court or is unable to pay such fine.

WHEREFORE, judgment is hereby rendered:

1) In Criminal Case No. O-033, finding accused Gloria V. Kintanar, **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 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, or unable to pay such fine, pursuant to Section 280 of the *NIRC of 1997, as amended.*

   As regards the civil liability, accused is **ORDERED to PAY** deficiency income tax for taxable year 2000, the amount of P3,156,470.22, inclusive of penalties, surcharges and interests, plus

20% delinquency interest per annum counted from April 12, 2005[75] until full payment thereof, pursuant to Section 249(C)(3) of the *NIRC of 1997, as amended*; and

2) In Criminal Case No. O-034, finding accused Gloria V. Kintanar, **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 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, or unable to pay such fine, pursuant to Section 280 of the *NIRC of 1997, as amended.*

As regards the civil liability, accused is **ORDERED to PAY** deficiency income tax for taxable year 2001, the amount of P3,147,518.77, inclusive of penalties, surcharges and interests, plus 20% delinquency interest per annum counted from April 12, 2005[76] until full payment thereof, pursuant to Section 249(C)(3) of the *NIRC of 1997, as amended.*

No Costs.

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[75] As the Final Decision on Disputed Assessment dated December 13, 2004 (Exhibit "Q") provides that the subject income tax assessments (inclusive of civil penalties, surcharges, and interests) for taxable years 2000 and 2001 shall be paid immediately upon receipt thereof (Exhibit "Q-2"), delinquency interest shall be counted from April 12, 2005 (Exhibit "Q-5"), the date the accused received the same.
[76] Ibid.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

I dissent, but concur as regards civil liability only.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest 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's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice