**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***SECOND DIVISION***

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| PEOPLE OF THE PHILIPPINES, *Plaintiff,* -versus- TERESA E. SISON, *Accused.* | **CTA Crim. Case No. O-627** For: Violation of Section 255 of the National Internal Revenue Code of 1997 (NIRC), as amended. (Failure to File Income Tax Return) |

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| PEOPLE OF THE PHILIPPINES, *Plaintiff,* -versus- TERESA E. SISON, *Accused.* | **CTA Crim. Case No. O-628** For: Violation of Section 255 of the National Internal Revenue Code of 1997 (NIRC), as amended. (Failure to File Income Tax Return)<br><br>Members:<br><br>**CASTAÑEDA, JR.,** *Chairperson, and* **MINDARO-GRULLA,** *JJ.*<br><br>Promulgated:<br>APR 03 2019<br>9:30 a.m. |

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## DECISION

***MINDARO-GRULLA, J.:***

Submitted for decision on January 18, 2019, are two (2) consolidated cases docketed as CTA Crim. Case No. O-627 and CTA Crim. Case No. O-628.

Accused Teresa E. Sison is charged before this Court with violation of Section 255 of the NIRC of 1997, as amended, under two (2) separate Informations which, respectively, read as follows:

**<u>Crim. Case No. O-627</u>**

"The undersigned prosecutor of the Department of Justice, with the approval of the Commissioner of Internal Revenue, hereby accuses Teresa E. Sison of Violation of Section 255 of the National Internal Revenue Code of 1997, as amended, committed as follows:

That on or about April 15, 2010, and thereafter, and within the jurisdiction of this Honorable Court, accused Ma. Teresa C. Sison [sic], registered with the BIR Revenue District Office No. 4, Calasiao, West Pangasinan (RDO No. 4) under Tax Identification Number 167-090-408, as the sole proprietor of T. Sison Commercial, required by law to file income tax returns and to pay the corresponding income tax, did then and there willfully, unlawfully, and feloniously fail to file income tax return for taxable year 2009 despite income in the amount of P10,023,657.16 and to pay income tax thereon in the amount of Three Million One Hundred Fifty Five Thousand Five Hundred Twenty Seven and 9/100 Pesos (P3,155,527.09), exclusive of surcharges and interest.

CONTRARY TO LAW." [1]

**<u>Crim. Case No. O-628</u>**

"The undersigned prosecutor of the Department of Justice, with approval of the Commissioner of Internal Revenue, hereby accuses Teresa E. Sison of violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

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[1] Docket, CTA Crim. Case No. O-627, pp. 6-7.

> That on or about April 15, 2011, and thereafter, and within the jurisdiction of this Honorable Court, accused Ma. Teresa C. Sison [sic], registered with the BIR Revenue District Office No. 4, Calasiao, West Pangasinan (RDO No. 4) under Tax Identification Number 167-090-408, as the sole proprietor of T. Sison Commercial, required by law to file income tax returns and to pay the corresponding income tax, did then and there willfully, unlawfully, and feloniously fail to file income tax return for taxable year 2010 despite income in the amount of P3,910,792.24 and to pay income tax thereon in the amount of One Million Two Hundred Thousand Four Hundred Fifty Three and 52/100 (P1,200,453.52), exclusive of surcharges and interest.
>
> CONTRARY TO LAW."[2]

On February 22, 2017, on the initial schedule of accused's arraignment[3], counsel for the accused, Atty. Terence M. Marata moved for the consolidation of CTA Case Nos. O-627 and O-628, which this Court granted considering that prosecution interposed no objection.

Meanwhile, prosecution moved for the correction of the accused's name in the Informations in CTA Case No. O-627 and O-628 from **"Ma. Teresa C. Sison"** to **"Teresa E. Sison"**. Accordingly, the Court granted the motion and noted that accused is the same person in the above-mentioned cases with the name corrected as **"Teresa E. Sison"**.

Thereafter, counsel for accused moved for the resetting of the arraignment based on his manifestation that there is a pending Motion for Reconsideration filed before the Department of Justice (DOJ). Prosecution confirmed the

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[2] Docket, CTA Crim. Case No. O-628, pp. 6-7.
[3] Minutes of the Hearing held on February 22, 2017, Dockets, CTA Crim. Case No. O-627, PP. 96-98; CTA Crim. Case No. O-628, pp.103-104.

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manifestation and did not interpose any objection thereto, thus, the Court granted the resetting of the arraignment on April 26, 2017.

During the arraignment on April 26, 2017, counsel for the accused reiterated the pending Motion for Reconsideration filed before the DOJ, nonetheless, the Court proceeded with the arraignment[4] pursuant to Section 11(c), Rule 116[5] of the Rules of Court.

Consequently, the above-named accused, duly assisted by her counsel *de parte*, entered her plea of not guilty to the crimes charged against her.

Pre-Trial proceeded. In the Pre-Trial Order[6] dated November 28, 2017, the admissions and issues read as follows:

> **"II. As stated in the "Joint Stipulation of Facts" filed on August 2, 2017, in the Pre-Trial Conference held on August 2, 2017, and in the Preliminary Conference held on June 14, 2017, prosecution and accused stipulated as follows:**
>
> **A. Facts:**
>
> 1. Republic Act No. 1125, as amended, otherwise known as "An Act Creating the Court of Tax Appeals" grants exclusive jurisdiction to the Honorable Court over all criminal offenses arising from violation of the provisions of the NIRC.

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[4] Certificate Of Arraignment and Minutes Of The Hearing Dated April 26, 2017, Docket, CTA Crim. Case No. O-627, pp. 105-111.

[5] Sec. 11. Suspension Of Arraignment. - Upon Motion By The Proper Party, The Arraignment Shall Be Suspended In The Following Cases:

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> (C) A **Petition For Review Of The Resolution Of The Prosecutor Is Pending At Either The Department Of Justice, Or The Office Of The President**; Provided, That The Period Of Suspension Shall Not Exceed Sixty (60) Days Counted From The Filing Of The Petition With The Reviewing Office. (Emphasis Supplied)

[6] Docket, CTA Crim. Case No. O-627, pp. 308-317.

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2. The accused Teresa E. Sison is being charged for violation of Section 255 of the NIRC for taxable years 2009 and 2010; and

3. The accused is the same person named and charged in the Information(s), for violation of Section 255 of the NIRC, subject of these cases.

**B. Issues:**

a. For CTA Crim. Case No. O-627

Whether accused is guilty beyond reasonable doubt for failure to pay income tax in the amount of Three Million One Hundred Fifty Five Thousand Five Hundred Twenty Seven Pesos and Nine Centavos (Php3,155,527.09) for taxable year 2009, exclusive of surcharges and interest in violation of Section 255 of the NIRC; and

b. For CTA Crim. Case No. O-628

Whether accused is guilty beyond reasonable doubt for failure to pay income tax in the amount of One Million Two Hundred Thousand Four Hundred Fifty Three Pesos and Fifty Two Centavos (Php 1,200,453.52) for taxable year 2010, exclusive of surcharges and interest in violation of Section 255 of the NIRC.

During trial, the prosecution presented the testimonies of the following witnesses:

**1. <u>SHERYL V. BALOLONG</u>**

Based on her Judicial Affidavit, Sheryl V. Balolong is currently designated as a Revenue Officer (RO) II of the Bureau of Internal Revenue (BIR), currently assigned at Revenue District Office (RDO) No. 4-Calasaio, Pangasinan. Prior to being assigned at RDO 34, she served also as a RO at RDO No.4 from January 2009 to May 2014, and from June

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2014 to April 2017 at RDO No. 3. According to her, pursuant to a Memorandum dated November 28, 2012 issued by Regional Director of Revenue Region No. 1, Atty. Arnel S.D. Guballa, her group was directed to assist the Special Investigation Department on the possible tax liabilities of the accused for taxable years 2009 and 2010. Her group consisted of Regan De Guzman and Eman Michael Mendiguarin.

She further testified that after the issuance of the Memorandum, the group, under Electronic Letter of Authority (E-LA) 211-2013-00000147 dated August 29,2013, proceeded with the assessment against the accused and sent access letters to Silver Swan Manufacturing Company, Inc. and Nissin Universal Robina Corporation, in order to secure certifications of the purchases made by them from the accused. The group was able to secure from Silver Swan Manufacturing Company, Inc. a certification stating that they purchased a total of P1,394,157.00 in 2009 and P584,125.00 in 2010 from accused. Meanwhile, Nissin Universal Robina issued a commercial summary list of purchases for 2009 and 2010 stating that they purchased a total of P8,629,500.16 in 2009 and P3,326,667.24 in 2010 from the accused.

Likewise, in the course of the investigation, the group secured from RDO Christine M. Cardona two certifications both issued on April 10, 2013, stating that accused did not file her income tax returns for both taxable years 2009 and 2010. Thus, based on these documents, the group made computation sheets of the aggregate and basic income tax and VAT deficiencies of the accused.

**2. <u>MARIA RAQUEL V. ROSARIO</u>**

Maria Raquel V. Rosario testified that she is currently occupying the position of Revenue Officer at the Assessment Division of BIR Revenue Region No. 1. In the Judicial Affidavit, she stated that she computed the tax liabilities of the accused for taxable years 2009 and 2010 in the Preliminary Assessment Notices (PAN) with the Attached Details of Discrepancies, Final Assessment Notices (FAN) and the Formal Letter of Demand (FLD). She also stated that all

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the documents she prepared were all approved and signed by then Regional Director Marina C. De Guzman.

**3. JOSE G. GARCIA VI**

In his Judicial Affidavit, Jose G. Garcia VI stated that he is presently assigned as the Revenue Officer I of Revenue District Office No. 4- Calasiao, Pangasinan. He stated that he served the PAN, FAN and FLD to the accused. He testified that he tried to personally serve the notices twice to accused but the latter refused, and the Barangay Council also refused to be witnesses for the service. As a result, he served the afore-mentioned notices through LBC, a licensed courier.

**4. RESTITUTO D. MOSQUITO**

In the course of his testimony, he identified the letter dated February 18, 2013, sent to Atty. Victoriano S. Villegas, Chief Special Investigation Division of the BIR. He further testified that the summary list of purchases made by Nissin Universal Robina Corporation could no longer be validated considering that a fire broke out.

**5. PERLITA N. LOPEZ**

Perlita N. Lopez is currently retired, but prior to her retirement, she testified that she was the Accounting Supervisor for Silver Swan Manufacturing Company, Inc. In her Judicial Affidavit, she stated that she had issued a Certification on March 21, 2013 in connection with the purchases of Silver Swan Manufacturing Company, Inc. from T. Sison Commercial which is owned by the accused. She further stated that the basis of the Certification was from the Company's tax returns and other tax records filed through the BIR Electronic Filing and Payment System.

On February 26, 2018, the prosecution filed its Formal Offer of Evidence. The documentary exhibits read as follows:

| Exhibit: | Description: |
|---|---|
| P-1 | Letter of Authority No. 211-2013-00000147 |

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| | dated August 29, 2013 |
| P-2 | Letter Notice for Taxable Year 2009 |
| P-3 | Letter Notice for Taxable Year 2010 |
| P-4 | Memorandum of Atty. Arnel S.D. Guballa, Regional Director of Revenue Region No. 1 dated November 28, 2012 |
| P-5 | Letter dated January 7, 2013 signed by Atty. Victoriano S. Villegas, Chief of the Special Investigation Division, addressed to the President of Silver Swan Manufacturing Company Inc |
| P-6 | Letter dated January 7, 2013 signed by Atty. Victoriano S. Villegas, Chief of the Special Investigation Division, addressed to the President of Nissin Universal Robina Corporation |
| P-7 | Certification of Silver Swan Manufacturing Co., Inc. dated March 21, 2013 |
| P-8, P-8-A, P-8-B | Letter of Nissin Universal Robina Corporation dated February 18, 2013 with T. Sison Commercial Attached List of Purchases for 2009 and 2010 |
| P-9 | Printout issued by Revenue District Officer Christine M. Cardona |
| P-10 | Certification issued by Revenue District Officer Christine M. Cardona dated April 10, 2013 for Taxable Year 2009 |
| P-11 | Certification issued by Revenue District Officer Christine M. Cardona dated April 10, 2013 for Taxable Year 2010 |
| P-12, P-12-A | Computation of Undeclared Income for Taxable Year 2009 |
| P-13, P-13-A | Computation of Deficiency Income Taxes for Taxable Year 2010 |
| P-14, P-14-A | Computation of Deficiency Value-Added Taxes for Taxable Year 2010 |
| P-15 | Notice of Informal Conference dated September 10, 2012 |
| P-16, P-16-A | Preliminary Assessment Notice (PAN) with Attached Details of Discrepancies dated September 23, 2016 |
| P-17, P-18, P-19, P-20 | Final Assessment Notices for Income Tax of 2009, Value Added Tax for 2009, Income Tax for 2010 and Value Added Tax for 2010 |
| P-21, P-21-A | Formal Letter of Demand dated November 9, 2016 with Attached Detail of Discrepancies |
| P-22, 22-A | Judicial Affidavit of Sheryl Balolong |
| P-23, 23-A | Judicial Affidavit of Ma. Racquel Rosario |
| P-24, 24-A | Judicial Affidavit of Jose Garcia VI |
| P-24-B | Computer Printout of LBC Website showing that Package No. 126402460066 was received |

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| | by Clyde Jefferson Sison on November 12, 2016 and that Package No. 126249927511 was received by the Accused on September 30, 2016 |
| P-25, P-25-A | Judicial Affidavit of Perlita Lopez |

On March 7, 2018, accused filed her comment thereto. Acting on the Formal Offer of Evidence, this Court, in a Resolution[7] dated April 24, 2018, admitted Exhibits **"P-1", "P-2", "P-3", "P-4", "P-5", P"-6", "P-7", "P-8, P-8-A, P-8-B", "P-9", "P-10", "P-11", "P-12, P-12-A", "P-13, P-13-A", "P-14, P-14-A", "P-"P-16, P-16-A", "P-17", "P-18", "P-19", "P-20", "P-21, P-21-A", "P-22, P-22-A", "P-23, P-23-A", "P-24, P-24-A", "P-25, P-25-A" and "P-24-B"**, subject to this Court's final evaluation and appreciation of their purposes, materiality, relevancy, and probative value to the issues involved in this case.

However, the Court denied the admission of Exhibit **"P-15"**, for failure of the plaintiff to identify the same.

With the admission of the above-mentioned exhibits, prosecution is deemed to have rested its case. Thereafter, the Court gave accused ten (10) days within which to file her Demurrer to Evidence.

Accordingly, on May 21, 2018, accused filed her Demurrer to Evidence. The prosecution filed their Comment/Opposition (To the Demurrer to Evidence of the Accused) on June 14, 2018.

Finding no merit in accused's Demurrer to Evidence, the Court issued a Resolution[8] dated July 4, 2018 denying the Demurrer to Evidence. Thus, trial proceeded.

The defense presented the following witnesses:

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[7] Docket, CTA Crim. Case No. O-627, pp. 387-388.
[8] Ibid., pp. 418-427.

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1. **MARILOU B. ABAD**

She testified that she was the former Municipal Disaster Risk Reduction Management Officer of San Jacinto, Pangasinan. In her Judicial Affidavit, she stated that, upon request of the accused, she issued a Certification that T. Sison Commercial was devastated by Typhoon Pepeng in September 2009.

2. **ZANDRO V. DE GUZMAN**

Zandro V. De Guzman has been the Punong Barangay of Sto. Tomas, Pangasinan since 2010. He stated in his Judicial Affidavit that accused, as the owner of T. Sison Commercial secures permit from his office. Further, he testified that he issued a Certification that T. Sison Commercial has ceased its business operation since 2010.

3. **OFELIA JESUSA S. NAVALTA**

She stated in her Judicial Affidavit that accused is her younger sister. She testified that accused suffered serious mental illness after T. Sison Commercial was devastated by Typhoon Pepeng in 2009. She further testified that after learning of the criminal case filed against accused, they presented before the DOJ Manila the Official Receipt paid to BIR Calasiao, Pangasinan, reflecting the total amount of Four Hundred Nineteen Thousand Five Hundred Thirty Seven Pesos and Fifty Nine Centavos (P419,537.59), as compromise offer. Likewise, she mentioned that an Application for Compromise Settlement of Internal Revenue Tax Liabilities Pursuant to Revenue Regulation No. 7-2001 was filed before the Office of the BIR Commissioner.

4. **DR. WILSON S. TIBAYAN**

Dr. Wilson S. Tibayan attested that he is a licensed physician since 1993, and a psychiatrist since 1998. He stated in his Judicial Affidavit that as a licensed physician-psychiatrist, he was sought, in not less than sixty (60) court cases already, as an expert witness in order to determine

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and evaluate the mental condition of a person as well as make necessary recommendations as required.

He testified that accused is his patient, and is diagnosed with Schizophrenia, characterized by delusions, auditory hallucinations, suspiciousness/paranoia, impaired sleep, disorganized speech and behavior. He also confirmed that he prepared the two clinical abstracts which show his evaluation, diagnosis and medical recommendations for the accused.

Notably, counsel for the defense manifested that he will no longer present accused, and that Dr. Tibayan is his last witness.

On October 1, 2018, accused filed her Formal Offer of Evidence, as follows:

| Exhibit: | Description: |
|---|---|
| A-1-1 | Certification from the Municipal Disaster Risk Reduction Management Office dated December 13, 2016 |
| A-1-3 | Certification from the Office of the Provincial Assessor dated March 10, 2017 |
| A-1-4 | Certification from the Office of the Punong Barangay Brgy. Sto. Tomas, San Jacinto, Pangasinan dated December 14, 2016 |
| A-4 | Clinical Abstract dated April 28, 2016 of Dr. Wilson S. Tibayan |
| A-5 | Clinical Abstract dated December 10, 2016 of Dr. Wilson S. Tibayan |
| A-6 | Clinical Abstract of Dr. Emelyn Joy D. Cuaresma |
| A-6-5 | Doctor's Prescription dated October 11, 2016 issued to Teresa E. Sison |
| A-7 | Letter to the BIR dated March 16, 2017 signed by Atty. Terence M. Marata, CPA |
| A-7-1 | Letter of the BIR dated May 9, 2017 addressed to Atty. Terence M. Marata, CPA |
| A-8 | Judicial Affidavit of Marilou B. Abad |
| A-9 | Judicial Affidavit of Zandro V. De Guzman |
| A-10 | Judicial Affidavit of Ofelia Jesusa S. Navalta |
| A-11 | Judicial Affidavit of Dr. Wilson S. Tibayan |

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Thereafter, the prosecution filed its comment on October 5, 2018. Thus, acting on the Formal Offer of Evidence, the Court admitted Exhibits **"A-1-1"**, **"A-1-3"**, **"A-1-4"**, **"A-4"**, **"A-5"**, **"A-6"**, **"A-6-5"**, **"A-6-5[9]"**, **"A-7"**, **"A-7-1"**, **"A-8"**, **"A-9"**, **"A-10"** and **"A-11"**, subject to this Court's final evaluation and appreciation of their purposes, materiality, relevancy, and probative value to the issues involved in this case.

Consequently, with the admission of the afore-mentioned documentary exhibits, accused was deemed to have formally rested her case in a resolution dated November 16, 2018. Accordingly, the Court directed both parties to file their respective memoranda.

Plaintiff filed its memoranda on December 12, 2018, while accused filed her memoranda on December 27, 2018. Thus, on **<u>January 18, 2019</u>**, this Court issued a Resolution stating that these cases are now considered submitted for decision.

We resolve.

In the case at bar, accused is charged before this Court for violation of Section 255 of the NIRC, as amended, for taxable years 2009 and 2010. We quote:

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

[9] Exhibits marked and identified as Exhibits "A-6-5" and "A-6-6" were offered as Exhibit "A-6-5".

> 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 nor more than ten (10) years.
>
> Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of an internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years." *(Emphasis supplied)*

In order to sustain a conviction for failure to make or file a return under Section 255 of the NIRC of 1997, as amended, the following elements must be established:

1. The accused was **required under the NIRC of 1997 to pay any tax**, make a return keep any 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;

2. The **accused failed to pay the required tax**, make a return or keep the required record, or supply the correct and accurate information; and

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

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On these bases, the Court shall proceed to determine whether the prosecution was able to discharge the burden of establishing by proof beyond reasonable doubt each and every element of the crime charged. After all, the prosecution has the burden of proving beyond reasonable doubt each element of the crime as its case will rise or fall on the strength of its own evidence, never on the weakness or even absence of that of the defense.[10] Failing to prove the required quantum of evidence, the presumption of innocence must prevail and accused should be acquitted.[11]

A careful scrutiny of the afore-mentioned elements would reveal that the second and third elements are dependent on the first element. Therefore, when the first element is established, it is only then that the remaining elements must be determined to exist.

The showing of the failure to pay the pertinent tax and the willfulness of such failure is dependent on whether the accused is required to pay the said tax in the first place. In sum, there can be no willful failure to pay a tax if there is no requirement to pay the same at all.

As to the first element, it is necessary to determine who are those required to file an income tax return. Sections 51(A) of the NIRC of 1997, as amended, mandates:

> "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

Corollary thereto, Section 74 of the same Code provides:

[10] Alferez vs. People of the Philippines, et. al., G.R. No. 182301, January 31, 2011.
[11] The People of the Philippines vs. Santos, G.R. No. 175593, October 17, 2007.

"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. x x x"

A careful review of the evidence adduced by the prosecution reveals that accused is indeed a resident Filipino citizen and is the owner/sole proprietor of "T. Commercial Sison" located at Brgy. Sto. Tomas, San Jacinto, Pangasinan.

Based on the foregoing, accused is clearly required to file an ITR, which brings us to determine the second element of the offense charged. In this regard, the crux of the issue is whether accused had filed the required ITRs for taxable years 2009 and 2010.

Pursuant to Section 51, subsections (B) and (C)(1), of the NIRC of 1997, as amended, a person with legal residence or principal place of business in the Philippines shall file his return with an authorized agent bank, Revenue District Officer, Collection Agent or duly authorized Treasurer of the city or municipality. The return shall be filed on or before the 15th day of April of each year covering income for the preceding taxable year.

Under this premise, accused was clearly supposed to register, file her ITR and pay the corresponding income taxes due with the authorized agent bank, Revenue District

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Office, Collection Agent or duly authorized Treasurer of the City, where she has her legal residence or principal place of business.

Regrettably, there is no record of filing by the accused of the required ITR. In fact, a Certification dated April 10, 2013 was issued by RDO Christine M. Cardona attesting to the fact that accused has no record on file for the years 2009-2010.

In this regard, We now proceed to the third element, wherein it requires that failure to make or file the return was willful. The term "willful" in tax crime statutes means a voluntary, intentional violation of a known legal duty and bad faith or bad purpose need not be shown[12].

In *People v. Judy Anne Santos y Lumagui*[13], the accused was charged with violation of Section 255 by allegedly under-declaring her income. On the issue of willfulness, the CTA ruled as follows:

> Citing *Black's Law Dictionary,* the term "willful" is defined as voluntary and intentional. And in *Merten's Law of Federal Income Taxation,* "willful" in tax crimes statutes is defined as voluntary, intentional violation of a known legal duty.
>
> Applying the foregoing in the case at bench, the element of willful failure to supply correct and accurate information must be fully established as a positive act or state of mind; it cannot be presumed nor attributed to mere inadvertent or negligent acts. *(Citations omitted, underscoring supplied)*

The crime of failure to pay tax under Section 255 is defined by the element of "willfulness" of not paying the tax, which in turn, requires the showing of "knowledge" and "voluntariness". Simply stated, the offender is aware or

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[12] Ongsiako, Jr., Et.Al.,. Vs. People of the Philippines, CTA EB Crim. Case No. 031, May 26, 2015, citing Mertens (Law Of Federal Income Taxation) Chapter 47.05, p. 28, Vol. 13 cited in People of the Philippines vs. Estelita Delos Angeles, CTA Crim. Case No. O-027, November 25, 2009.
[13] CTA Crim. Case No. O-012, January 16, 2013.

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knows the existence of and obligation to pay a tax liability but voluntarily and intentionally failed to pay it.

Applying the same to the instant case, the willful failure to file an ITR was not fully established by the prosecution as a positive act or state of mind of the accused.

Even for the sake of argument that accused is indeed required to file a separate ITR, the above circumstances merely show that the accused's negligence is caused by her condition of becoming mentally-ill caused by the destruction and devastation of her business due to typhoon Pepeng.

The crux of the issue now boils down to whether accused's mental illness constitute diminished willpower so as to exonerate her liability.

This Court deems it necessary to apply the concept of insanity as one of the exempting circumstances enumerated under Article 12 of the Revised Penal Code, to wit:

> "Art. 12. Circumstances which exempt from criminal liability. - The following are exempt from criminal liability:
>
> 1. An imbecile or an insane person, unless the latter has acted during a lucid interval.
>
> xxx xxx xxx

Strictly speaking, a person acting under any of the exempting circumstances commits a crime but cannot be held criminally liable therefor. The exemption from punishment stems from the complete absence of intelligence or free will in performing the act[14].

As a general rule, the defense of insanity is thus in the nature of a confession or avoidance. Thus, the defendant who asserts it is, in effect, admitting to the commission of

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[14] Luis B. Reyes, The Revised Penal Code: Criminal Law: Book One, (19th Edition, 2017).

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the crime. Consequently, the burden of proof shifts to defendant, who must prove his defense with clear and convincing evidence.[15]

In *People vs. Madarang*,[16] the Court ruled that a more stringent standard in appreciating insanity as an exempting circumstance has been established, viz:

> "In the Philippines, the courts have established a **more stringent criterion** for insanity to be exempting **as it is required that there must be a complete deprivation of intelligence in committing the act**, i.e., the accused is deprived of reason; he acted without the least discernment because there is a complete absence of the power to discern, or that there is a total deprivation of the will. **Mere abnormality of the mental faculties will not exclude imputability**." (*emphasis supplied)*

Moreover, the evidence of the defense must establish that such insanity constituting complete deprivation of intelligence existed immediately preceding or simultaneous to the commission of the crime.

In sum, for the defense of insanity to prosper, two (2) elements must concur: (1) that defendant's insanity constitutes a complete deprivation of intelligence, reason, or discernment; and (2) that such insanity existed at the time of, or immediately preceding, the commission of the crime.

Notably, since no man can know what goes on in the mind of another, one's behavior and outward acts can only be determined and judged by proof. Such proof may take the form of opinion testimony by a witness who is intimately acquainted with the accused; by a witness who has rational basis to conclude that the accused was insane based on the witness' own perception of the accused; or by a witness who is qualified as an expert, such as a psychiatrist.[17]

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[15] People of the Philippines vs. Honorio Tibon y Deiso, G.R. No. 188320, June 29, 2010.
[16] People of the Philippines vs. Fernando Madarang y Magno, G.R. No. 132319. May 12, 2000.
[17] People of the Philippines vs. Onas Pantoja y Astorga, G.R. No. 223114, November 29, 2017.

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To prove accused's assertion, the defense presented the testimonies of accused's sister and her psychiatrist, including the following: (1) Clinical Abstract dated April 28, 2016 of Dr. Wilson S. Tibayan; (2) Clinical Abstract dated December 10, 2016 of Dr. Wilson S. Tibayan; (3) Clinical Abstract of Dr. Emelyn Joy D. Cuaresma; and (4) Doctor's Prescription dated October 11, 2016 issued to Teresa E. Sison.

A scrutiny of the evidence presented by accused sufficiently established that she was completely bereft of reason or discernment and freedom of will when she neglected to file her Income Tax Return. The strength in the defense's proof is shown by the following circumstances:

First, the testimony of Ofelia Jesusa S. Navalta attests to the fact that accused exhibited signs of mental illness after Typhoon Pepeng destroyed her business operation in 2009; that she observed changes in her personality. Her testimony clearly identified specific behavior of the accused at the time of the non-filing in question, which could establish that she suffered serious mental illness when she committed the offense, as seen from the following exchange during trial:

> "14.) Q - Awhile ago you made mention that Teresa E. Sison suffered serious mental illness, what is this serious mental illness?
>
> A – Teresa E. Sison has been diagnosed with mental illness of schizophrenia, characterized by delusions and hallucination.
>
> 15.) Q - What is your proof that indeed Teresa E. Sison has been diagnosed with mental illness of schizophrenia, characterized by delusion and hallucination?
>
> A- I have here with me Clinical Abstracts issued by her psychiatrists, sir.
>
> 16.) Q- When did you discover that Teresa E. Sison is suffering from a mental illness?

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A- Since after the floods in 2009, I noticed unusual behaviors of Teresa E. Sison.

17.) Q- What are those unusual behaviors?

A- She was very paranoid, isolating herself inside the house, irritable and suspicious to us.

18.) Q- What did you do when you noticed these unusual behaviors?

A- I confronted her and advice her to seek medical attention but she denied having any mental illness. I thought that everything will be fine but on December 29, 2015 we forcefully brought her to Baguio General Hospital and Medical Center because her situation became worse."[18]

The foregoing narration shows that the behavior of the accused is indicative of insanity at the time of, or immediately preceding, the incident of her non-filing of her ITR, and continued until present.

Second, Dr. Wilson S. Tibayan testified that accused was admitted to the hospital for her mental illness as well as his diagnosis and recommendation as to her mental condition. These facts prove that she was mentally-ill at the time she failed to file her ITR for taxable years 2009 and 2010. Recalling Dr. Tibayan's testimony as follows:

"19.) Q- Do you know the accused in these cases? Teresa E. Sison?

A- Yes, sir. She is my patient.

20.) Q- Why did Teresa E. Sison become your patient?

A- She was confined at Roseville Rehabilitation Complex, Co. Baguio City last January 7, 2016 where I am the medical director.

[18] Docket, CTA Crim. Case No. O-627, pp. 435-436

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21.) Q- Why was Teresa E. Sison confined at Roseville Rehabilitation Compex, Co.,

A- Due to disturbed behavior, sir.

22.) Q- What did you do when Teresa E. Sison was confined?

A- I conducted evaluation and diagnosed Teresa E. Sison is suffering from Psychosis, classified as Schizoprenia, characterized by delusions, auditory hallucinations, suspiciousness/paranoia, impaired sleep, disorganized speech and behavior.

23.) Q- Did you reduce the diagnosis in writing?

A- Yes sir, I have prepared two (2) clinical abstracts.

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25.) Q- Based on your diagnosis, can you tell whether Teresa E. Sison intentionally, knowingly, and purposely failed and refused to pay her tax obligations for the year 2009 and 2010.

A – No, sir.

26.) Q- Why did you say so?

A- Because Teresa E. Sison's mental illness, she is out of touch with reality. She does not know whether things that are happening around her are real or not. Her mental capacity is affected, thus, her judgment is faulty. There is neither willingness nor voluntariness not to pay taxes because she was not aware of her responsibilities at that time.

27.) Q- What are your recommendations with regards to the mental illness of Teresa E. Sison?

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> A- Teresa E. Sison's mental illness is chronic, meaning lifetime. I recommended medications as maintenance and to have a regular follow-up with me to prevent relapse or exacerbation of symptoms."[19]

From the foregoing, insanity was clearly continuous, she had no lucid intervals. Consequently, it is presumed that she was mentally-ill at the time she allegedly committed the crime.

Third, the documents offered in evidence by the defense categorically state that accused was insane; The clinical abstract issued diagnosing accused with paranoid schizophrenia serve as basis to rule that indeed she was insane when she committed the alleged violation under the law. Finally, the doctor's prescription slips contain the medications prescribed, and clearly show the specific illness targeted by the medicine.

At this point, the expert testimony of Dr. Wilson S. Tibayan bears utmost credence and must be given greater weight in determining the liability of herein accused. There is no doubt that the mental condition of the accused constituted absolute deprivation of reason, intelligence, and discernment. Thus, the willfulness as required by the law is lacking in this case.

Further, it is axiomatic that in criminal cases, the prosecution proves that there is unpaid income tax.

A review of the pieces of evidence presented brings us back to the fact that defense, upon learning that a criminal case has been filed against accused, an Official Receipt showing the total amount of Four Hundred Nineteen Thousand Five Hundred Thirty-Seven Pesos and Fifty Nine Centavos (P419,537.59) was paid to BIR Calasiao, Pangasinan as compromise offer paid. Likewise, this Court cannot discount the importance of the fact that an

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[19] Docket, CTA Crim. Case No. O-627, pp. 465-466.

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Application for Compromise Settlement of Internal Revenue Tax Liabilities Pursuant to Revenue Regulation No. 7-2001 was filed before the Office of the BIR Commissioner.

Unfortunately, prosecution failed to offer contrary evidence that accused was not completely deprived of intelligence or consciousness of her acts when she committed the alleged violation, or that there is sufficient indication that she was not suffering from some impairment of her mental faculties. Consequently, the Court is left with no option but to give probative value to the evidence offered by the defense.

All told, absent the third element, the Court finds that the prosecution has failed to establish the guilt of the accused with the requisite quantum of evidence. Having fallen short of that quantum necessary to establish accused's guilt, the prosecution's case must fail.

In criminal cases, the burden is on the prosecution to prove, beyond reasonable doubt, the essential elements of the offense with which the accused is charged; and if the proof fails to establish any of the essential elements necessary to constitute a crime, the accused is entitled to an acquittal. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding the possibility of error, produces absolute certainty.

Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. At best, the evidence proffered by the prosecution only goes so far as to create a suspicion that accused probably perpetrated the crime charged. But suspicion alone is insufficient, the required quantum of evidence being proof beyond reasonable doubt. When the People's evidence fail to indubitably prove the accused's authorship of the crime of which they stand accused; then, it is the Court's duty, and the right of the accused, to proclaim their innocence. Acquittal, therefore, is in order.[20]

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[20] Darvin vs. Court of Appeals, et. al., G.R. No. 125044, July 13, 1998.

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As to the civil aspect of these consolidated cases, the same is deemed simultaneously instituted and jointly determined with the instant criminal cases pursuant to Section 7(b)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282, which provides that "the filing of a 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."

However, while this Court submits that the acquittal of accused Sison on the ground that the prosecution failed to prove the element of "willfulness" in the commission of the crime charged, it does not, however, necessarily constitute extinction of their civil liability.

Corollary thereto, the Supreme Court has numerous times held that in case of acquittal, the accused may still be adjudged civilly liable. The extinction of the penal action does not carry with it the extinction of the civil action where (a) the acquittal is based on reasonable doubt as only preponderance of evidence is required; (b) the court declares that the liability of the accused is only civil; and (c) the civil liability of the accused does not arise from or is not based upon the crime of which the accused was acquitted.[21]

Lastly, the rule that the acquittal of an accused of the crime charged do not necessarily extinguish his civil liability, unless the court declares in a final judgment that the fact from which the civil liability might arise did not exist.[22] Courts can acquit an accused on reasonable doubt but still order payment of civil damages in the same case.[23]

In the case at bar, the two elements of the crime charged were proven by the prosecution and was impliedly admitted without qualification by the accused. Only willful intent to commit the crime charged was not established which caused her acquittal. She was exonerated for absence or lack of willfulness on their part not to pay the taxes due.

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[21] Jaime Alferez vs. People of the Philippines, G.R. No. 182301, January 31, 2011.
[22] Bautista v. Court of Appeals, G.R. No. 46025, 2 September 1992.
[23] Padilla v. Court of Appeals, G.R. No. L-39999, 31 May 1984.

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As stated earlier, accused paid the amount of Four Hundred Nineteen Thousand Five Hundred Thirty-Seven Pesos and Fifty-Nine Centavos (P419,537.59) as compromise offer, and filed as well an Application for Compromise Settlement of Internal Revenue Tax Liabilities with the BIR. In other words, accused admitted the existence of the tax liability and her obligation to pay it. Clearly, the civil liability of the accused remains. The Government still has the right to collect and be paid the remaining unpaid deficiency Income tax.

**WHEREFORE,** premises considered, in **CTA Criminal Case Nos. O-627 and O-628**, accused **Teresa E. Sison** is hereby **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt.

As regards the civil liability, accused, as the registered sole proprietor of T. Sison Commercial, is hereby **ORDERED TO PAY** the Commissioner of Internal Revenue the aggregate amount of **Eighteen Million Six Hundred Forty-Five Thousand Three Hundred Seventy-One and 48/100 Pesos (Php18,645,371.48)**[24] inclusive of the 25% surcharge and deficiency and delinquency interests imposed under Sections 248(A)(1)(3) and 249(B) and (C) of the NIRC of 1997, as amended, respectively computed until December 31, 2017[25] as follows:

| | 2009 | 2010 | TOTAL |
|---|---|---|---|
| Basic Deficiency Income Tax | ₱ 3,155,527.09 | ₱ 1,200,453.52 | ₱ 4,355,980.61 |
| Surcharge | 788,881.77 | 300,113.38 | 1,088,995.15 |
| Deficiency Interest<br>4/16/2010 to 1/15/2014 [1,371 days]<br>(3,155,527.09 x 20% x 3.7562 yrs.) | 2,370,535.69 | | 3,032,265.14 |
| 4/16/2011 to 1/15/2014 [1,006 days]<br>(1,200,453.52 x 20% x 2.7562 yrs.) | | 661,729.45 | |
| **Total Amount Due-Jan. 15, 2014** | **₱ 6,314,944.56** | **₱2,162,296.35** | **₱ 8,477,240.90** |
| Deficiency Interest<br>1/16/2014 to 12/31/2017 [1,446 days] | 2,500,214.89 | | 3,451,368.75 |

[24] In view of the effectivity of Republic Act No. 10963 (TRAIN Law) on January 1, 2018 and the issuance of Revenue Regulations No. 21-2018 dated September 14, 2018. Regulations Implementing Section 249 (Interest) of the National Internal Revenue Code (NIRC) of 1997, as amended under Section 75 of the Republic Act (RA) No. 10963 or the "Tax Reform for Acceleration and Inclusion (TRAIN Law).
[25] Section 6 of Revenue Regulations No. 21-2018 dated September 14,2018.

| | | | |
|---|---|---|---|
| (3,155,527.09 x 20% x 3.9616 yrs.) | | | |
| 1/16/2014 to 12/31/2017 [1,446 days] (1,200,453.52 x 20% x 3.9616 yrs.) | | 951,153.86 | |
| Delinquency Interest 1/16/2014 to 12/31/2017 [1,446 days] (6,314,944.56 x 20% x 3.9616 yrs.) | 5,003,512.23 | | 6,716,761.83 |
| 1/16/2014 to 12/31/2017 [1,446 days] (2,162,296.35 x 20% x 3.9616 yrs.) | | 1,713,249.60 | |
| **Total Amount Due-Dec. 31, 2017** | **₱13,818,671.68** | **₱4,826,699.80** | **₱18,645,371.48** |

Further, accused is liable to pay delinquency interest at the rate of 12%[26] on the total unpaid basic deficiency tax, surcharge and deficiency interest as of January 15, 2014 amounting to ₱6,314,944.56 for the taxable year 2009 and ₱2,162,296.35 for the taxable year 2010, or in the aggregate amount of ₱8,477,240.90, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN).

**SO ORDERED.**

Cielito N. Mindaro-Grulla
**CIELITO N. MINDARO-GRULLA**
Associate Justice

I CONCUR:

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

[26] Section 2 of Revenue Regulations No. 21-2018 dated September 14, 2018.

## ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice
2nd Division Chairperson

## CERTIFICATION

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

**ROMAN G. DEL ROSARIO**
Presiding Justice