REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIM. CASE NOS. O-572, O-573 & O-610** For: Violations of Section 255 of the National Internal Revenue Code, as amended (*Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation*) Members:
-versus-	**CASTAÑEDA, JR.**, *Chairperson, and* **BACORRO-VILLENA**, *JJ.*
ALEXANDER R. GARCIA, Accused.	Promulgated: FEB 15 2021 9:12 Am

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

Accused Alexander R. Garcia is charged before this Court with three (3) counts of violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, in these consolidated criminal cases, docketed as CTA Crim. Case Nos. O-572, O-573 and O-610. The accusatory portions in the respective Information and Amended Information read as follows:

CTA Criminal Case No. O-572:[1]

"INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses **ALEXANDER R. GARCIA** of the offense of willful failure to supply correct and accurate information in his income tax return for taxable year 2011, in violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

> 'That on or about April 16, 2012 and thereafter, in Caloocan City, and within the jurisdiction of this Honorable Court, the above-named accused, the owner/operator of Sacred Heart Dental Center, required by law to file income tax returns and to pay the corresponding tax, did then and there willfully, unlawfully and feloniously fail to supply correct and accurate information in his income tax returns for the taxable year 2011, by then and there not declaring therein his other sources of income amounting to **FOURTEEN MILLION ONE HUNDRED EIGHTY EIGHT THOUSAND NINE HUNDRED NINETY FOUR PESOS** (P14,188,994.00), thereby resulting in deficiency in the amount of **FOUR MILLION TWO HUNDRED THIRTY ONE THOUSAND TWO HUNDRED TWENTY EIGHT PESOS AND 30/100 (P4,231,228.30)** tax deficiency, exclusive of surcharges and interests to the damage and prejudice of the government.

CONTRARY TO LAW."

CTA Criminal Case No. O-573:[2]

"INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses **ALEXANDER R. GARCIA** of the offense of willful failure to supply correct and accurate information in his income tax return for taxable year 2013, in violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

> 'That on or about April 16, 2014 and thereafter, in Caloocan City, and within the jurisdiction of this Honorable Court, the above-named accused, the owner/operator of Sacred Heart Dental

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[1] Docket – Vol. I, (CTA Crim. Case No. O-572), pp. 6 to 7.
[2] Docket – Vol. 1, (CTA Crim. Case No. O-573), pp. 6 to 7.

Center, required by law to file income tax returns and to pay the corresponding tax, did then and there willfully, unlawfully and feloniously fail to supply correct and accurate information in his income tax returns for the taxable year 2013, by then and there not declaring therein his other sources of income amounting to **SEVENTEEN MILLION SIX HUNDRED ELEVEN THOUSAND THREE HUNDRED PESOS (P17,611,300.00)**, thereby resulting in deficiency in the amount of **FIVE MILLION TWO HUNDRED SEVENTY FIVE THOUSAND NINE HUNDRED FORTY SEVEN PESOS AND 60/100 (₱5,275,947.60)** tax deficiency, exclusive of surcharges and interests to the damage and prejudice of the government.'

CONTRARY TO LAW."

<u>CTA Criminal Case No. O-610</u>:[3]

"**<u>AMENDED INFORMATION</u>**

The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses **ALEXANDER R. GARCIA** in violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

'That on or about April 16, 2013 and thereafter, in Caloocan City, and within the jurisdiction of this Honorable Court, the above-named accused, the owner/operator of Sacred Heart Dental Center, required by law to file income tax returns and to pay the corresponding tax, did then and there willfully, unlawfully and feloniously fail to supply correct and accurate information in his income tax returns for the taxable year 2012, by then and there not declaring therein his other sources of income amounting to **TEN MILLION SIX HUNDRED FORTY EIGHT THOUSAND FIVE HUNDRED SIXTY FOUR PESOS (P10,648,564.00)**, thereby resulting in deficiency income tax in the amount of **THREE MILLION SEVENTY SIX THOUSAND ONE HUNDRED NINETY PESOS AND 76/100 (P3,076,190.76)** tax deficiency, exclusive of surcharges and interests to the damage and prejudice of the government.

CONTRARY TO LAW."

[3] Docket – Vol. I (CTA Crim. Case No. O-610), pp. 428 to 429.

THE FACTUAL ANTECEDENTS

Alexander R. Garcia, the accused, is a dentist by profession.[4] He is operating under the business name "Sacred Heart Dental Center", with business address at 129 Asuncion St., Morning Breeze Subdivision, Barangay 84, Zone 8, Caloocan City.[5] The same accused is also a registered taxpayer of Revenue District Office (RDO) No. 27, Caloocan City, with Tax Identification Number (TIN) 101-409-172.[6]

Accused filed his *Annual Income Tax Returns* (ITRs), with attached Financial Statements for taxable years 2011,[7] 2012,[8] and 2013,[9] on April 16, 2012, April 12, 2013, and April 14, 2014, respectively.

The investigation against the accused was prompted by *NID Memo Assignment No. KJH/SCD 2014-05-30-0334* dated May 30, 2014,[10] issued by the Chief, National Investigation Division of the Bureau of Internal Revenue (BIR), Mr. Sixto C. Dy, directing Group Supervisor (GS) Rodrigo B. Dulay and Revenue Officer (RO) Mercedita C. Dizon, to conduct a thorough preliminary investigation on the alleged schemes of tax evasion being perpetrated by the accused to ascertain the veracity of the information.

Thereafter, the *Letter of Authority* (LOA) with Serial Number SN eLA201100060953 (LOA-211-2014-00000191) dated August 14, 2014 was issued against the accused by then Commissioner of Internal Revenue (CIR) Kim S. Jacinto-Henares,[11] authorizing ROs Gerrico

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[4] Par. 5, Pre-Trial Order dated June 21, 2017, Docket – Vol. 2 (CTA Crim. Case No. O-573), p. 532; Par. 5, Pre-Trial Order dated November 21, 2017, Docket – Vol. II (CTA Crim. Case No. O-610), p. 653.

[5] Par. 6, Pre-Trial Order dated June 21, 2017, Docket – Vol. 2 (CTA Crim. Case No. O-573), p. 532; Par. 6, Pre-Trial Order dated November 21, 2017, Docket – Vol. II (CTA Crim. Case No. O-610), p. 653.

[6] Par. 3, Pre-Trial Order dated June 21, 2017, Docket – Vol. 2 (CTA Crim. Case No. O-573), p. 531; Par. 3, Pre-Trial Order dated November 21, 2017, Docket – Vol. II (CTA Crim. Case No. O-610), p. 653.

[7] Exhibit "P-13", Docket – Vol. II (CTA Crim. Case No. O-572), pp. 693 to 705.

[8] Exhibit "P-12", Docket – Vol. I (CTA Crim. Case No. O-610), pp. 465 to 478; Par. 7, Pre-Trial Order dated November 21, 2017, Docket – Vol. II (CTA Crim. Case No. O-610), p. 653.

[9] Exhibit "P-15", Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 852 to 872; Par. 7, Pre-Trial Order dated June 21, 2017, Docket – Vol. 2 (CTA Crim. Case No. O-573), p. 532.

[10] Exhibit "P-14", Docket – Vol. II (CTA Crim. Case No. O-572), p. 706; Exhibit "P-16", Docket – Vol. 2 (CTA Crim. Case No. O-573), p. 873; Exhibit "P-10", Docket – Vol. I (CTA Crim. Case No. O-610), p. 463.

[11] Exhibit "P-12", Docket – Vol. II (CTA Crim. Case No. O-572), p. 692; Exhibit "P-14", Docket – Vol. 2 (CTA Crim. Case No. O-573), p. 851; Exhibit "P-11", Docket – Vol. I (CTA Crim. Case No. O-610), p. 464.

Chico, Romy Carandang, Mercedita Dizon and GS Rodrigo Dulay, to examine the accused's books of accounts and other accounting records, for all internal revenue taxes, including documentary stamp tax and other taxes (miscellaneous tax), for the period from January 1, 2011 to December 31, 2013, pursuant to the R.A.T.E. Program.

On August 28, 2014, CIR Henares wrote a letter to the then Secretary of Justice Leila De Lima,[12] referring the *Joint Complaint-Affidavit* executed by the said ROs and GS,[13] for preliminary investigation and the filing of appropriate information in court, if evidence so warrants.

In the said *Joint Complaint-Affidavit*, the complainants alleged, among others, that after evaluating and comparing the gross income or revenues declared by the accused in his ITRs for the taxable years 2011, 2012 and 2013, with the payments made through credit cards of accused's clients for the said years and written statements of the accused, they discovered that the latter deliberately failed to declare his correct tax base by substantially underdeclaring his income for the said years.

In his *Courter-Affidavit*,[14] the accused denied the charges against him and claimed that he religiously paid his income tax and filed his ITRs on time; that he is a practicing dentist, his only field of expertise; that accounting and taxation are matters that are very alien to him, and which he has very little knowledge of, and thus, he leaves those things to the care of his accountant; that whatever charges he is accused of are mere results of his inadvertence and lack of knowledge of the law, and not because of fraud or any malicious intent on his part; that the so-called amounts that were allegedly underdeclared were exaggerated and bloated; and that the Certifications issued by the BDO and Citibank were not under oath, thus, should be considered as mere hearsay.

On the other hand, in their *Joint-Reply Affidavit*,[15] the complainants alleged, among others, that the claim of good faith is evidentiary in nature and is at best discussed in full-blown trial; that gc

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[12] Exhibit "P-3", Docket – Vol. II (CTA Crim. Case No. O-572), pp. 611 to 613; Exhibit "P-3", Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 770 to 772; Exhibit "P-3", Docket – Vol. I (CTA Crim. Case No. O-610), pp. 481 to 483.

[13] Exhibit "P-4", Docket – Vol. II (CTA Crim. Case No. O-572), pp. 614 to 626; Exhibit "P-4", Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 773 to 785; Exhibit "P-4", Docket – Vol. I (CTA Crim. Case No. O-610), pp. 484 to 496.

[14] Docket – Vol. I (CTA Crim. Case No. O-572), pp. 89 to 94.

[15] Exhibit "P-5", Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 69 to 81.

accused Garcia cannot just pass the buck to his accountant as he is liable for "willful blindness"; that the finding of tax deficiency was based on a comprehensive audit conducted by the said ROs; that third party information is admissible in evidence; and that there is probable cause to hold accused Garcia liable of the commission of the offenses charged.

In his *Rejoinder-Affidavit*,[16] accused reiterated, among others, that he trusted Mr. Miranda, an accredited tax practitioner authorized by the BIR, insofar as his competence, credibility and technical know-how surrounding his expertise; and that the alleged estimated tax liabilities for deficiency income tax and value-added tax (VAT), covering taxable years 2011, 2012, and 2013, inclusive of surcharges and interest, have no basis in fact and in law.

Subsequently, Assistant State Prosecutor Karla Torres Cabel issued the Resolution dated October 15, 2015,[17] finding probable cause and recommending the filing of criminal information against the accused. The said Resolution was approved by Prosecutor General Claro A. Arellano. Another Resolution was issued by the said Assistant State Prosecutor on June 22, 2016,[18] likewise duly approved by Prosecutor General Arellano, denying the *Motion for Reconsideration* filed by the accused.

PROCEEDINGS BEFORE THIS COURT

For an orderly presentation of these consolidated cases, the Court deems it proper to state the proceedings for each case prior to consolidation, followed by the proceedings thereafter, since the prosecution had already rested its case when the instant criminal cases had been consolidated. Subsequently, the Court shall summarize the evidence presented and the arguments raised by each party.

<u>CTA Crim. Case No. O-572</u>:

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[16] Docket – Vol. I (CTA Crim. Case No. O-610), pp. 19 to 75.

[17] Exhibit "P-1", Docket – Vol. I (CTA Crim. Case No. O-572), pp. 8 to 12; Exhibit "P-1", Docket – Vol. 1 (CTA Crim. Case No. O-573), pp. 373 to 377; Exhibit "P-1", Docket – Vol. I (CTA Crim. Case No. O-610), pp. 14 to 18.

[18] Exhibit "P-2", Docket – Vol. II (CTA Crim. Case No. O-572), pp. 608 to 610; Exhibit "P-2", Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 767 to 769; Exhibit "P-2", Docket – Vol. I (CTA Crim. Case No. O-610), pp. 455 to 457.

On June 15, 2016, the prosecution filed an *Information* before this Court,[19] charging the accused for the offense of willful failure to supply correct and accurate information in his ITR for taxable year 2011, in violation of Section 255 of the NIRC of 1997, as amended.

After careful review of the said *Information* and supporting documents submitted by Assistant State Prosecutor Cabel, the Court, in its Resolution dated July 7, 2016,[20] found the existence of probable cause and directed the issuance of the warrant of arrest against accused. Thus, the *Warrant of Arrest* dated July 11, 2016 was issued against accused Garcia.[21]

On July 18, 2016, accused voluntarily appeared and submitted his person to the jurisdiction of the Court, and posted a cash bail bond in the amount of ₱20,000.00 for his provisional liberty.[22]

When arraigned on November 9, 2016, the accused, duly assisted by his counsel, pleaded "NOT GUILTY" to the offense charged against him.[23] In the same hearing, the Court initially set the Preliminary Conference before Atty. Ma. Victoria P. Dural, the Executive Clerk of Court II for the Second Division of this Court, on December 19, 2016, while the Pre-Trial Conference was set on February 6, 2017. Nonetheless, the said Preliminary Conferences were held on February 20, 2017,[24] and March 20, 2017,[25] while the Pre-Trial Conferences were held on April 24, 2017,[26] and June 5, 2017.[27]

Meanwhile, the prosecution's *Pre-Trial Brief* was filed on April 19, 2017,[28] while the *Accused's Pre-Trial Brief* was submitted on April 24, 2017.[29] The Court then issued the Pre-Trial Order dated June 30,

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[19] Docket – Vol. I, (CTA Crim. Case No. O-572), pp. 6 to 7.
[20] Docket – Vol. I (CTA Crim. Case No. O-572), pp. 367 to 369.
[21] Docket – Vol. I (CTA Crim. Case No. O-572), p. 370.
[22] Resolution dated July 18, 2016, Docket – Vol. I (CTA Crim. Case No. O-572), p. 372.
[23] Minutes of the hearing held on, and Order dated, November 9, 2016, Docket – Vol. I (CTA Crim. Case No. O-572), pp. 402 to 404; Certificate of Arraignment dated November 8, 216, Docket – Vol. I (CTA Crim. Case No. O-572), p. 400.
[24] Minutes of the Preliminary Conference held on February 20, 2017, Docket – Vol. I (CTA Crim. Case No. O-572), pp. 410 to 414.
[25] Minutes of the Preliminary Conference held on March 20, 2017, Docket – Vol. I (CTA Crim. Case No. O-572), pp. 426 to 428.
[26] Minutes of the hearing held on, and Order dated, April 24, 2017, Docket – Vol. I (CTA Crim. Case No. O-572), pp. 443 to 444.
[27] Minutes of the hearing held on, and Order dated, June 5, 2017, Docket – Vol. I (CTA Crim. Case No. O-572), pp. 445 to 447.
[28] Docket – Vol. I (CTA Crim. Case No. O-572), pp. 432 to 438.
[29] Docket – Vol. I (CTA Crim. Case No. O-572), pp. 440 to 442.

2017,[30] deeming the termination of the pre-trial, and stipulating therein the following facts, to wit: (1) that this Court has jurisdiction over the case filed against the accused; and (2) that the accused Alexander R. Garcia is the same person named and charged in the CTA Criminal Case No. 0-572.

Trial ensued.

During trial, the prosecution presented their documentary and testimonial evidence. Initially, the prosecution offered the testimonies of the following ROs of the BIR, assigned at its National Investigation Division (NID), namely: (1) Mr. Rodrigo Dulay,[31] (2) Mr. Romy Carandang,[32] and (3) Mr. Gerrico Chico.[33]

On August 16, 2017, the prosecution filed a *Motion to Recall Witness Rodrigo Dulay* to testify on the *Preliminary Assessment Notice* (PAN), and *Formal Letter of Demand* (FLD).[34] Accused filed his *Opposition (to Prosecution's Motion to Recall Witness Rodrigo Dulay)* on August 22, 2017.[35]

In the meantime, the prosecution filed a *Motion for Issuance of Subpoena Duces Tecum/Ad Testificandum* on August 18, 2017,[36] praying that a *Subpoena Duces Tecum/Ad Testificandum* be issued against Ms. Lily T. Roxas and Atty. Maximo H. Simbulan V, or to any of their duly authorized representatives.

During the hearing held on August 23, 2017, the prosecution continued the cross-examination of RO Gerrico Chico; presented Ms. Vivian Halili, the Chief Revenue Officer III and OIC Chief of the Document Processing Division of the BIR at Revenue Region No. 5, Caloocan City; and recalled to the witness stand, Mr. Rodrigo Dulay. In the same hearing, the Court granted the prosecution's *Motion for Issuance of Subpoena Duces Tecum/Ad Testificandum.* Thus, subpoenas were eventually issued to Ms. Lily T. Roxas and Atty.

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[30] Docket – Vol. I (CTA Crim. Case No. O-572), pp. 450 to 454.
[31] Minutes of the hearing held on, and Order dated, July 17, 2017, Docket – Vol. I (CTA Crim. Case No. O-572), pp. 463 to 464.
[32] Minutes of the hearing held on, and Order dated, July 17, 2017, Docket – Vol. I (CTA Crim. Case No. O-572), pp. 463 to 464.
[33] Minutes of the hearing held on, and Order dated, August 9, 2017, Docket – Vol. I (CTA Crim. Case No. O-572), pp. 465 to 466; Minutes of the hearing held on, and Order dated, August 14, 2017, Docket – Vol. I (CTA Crim. Case No. O-572), pp. 468 to 470.
[34] Docket – Vol. I (CTA Crim. Case No. O-572), pp. 471 to 473.
[35] Docket – Vol. I (CTA Crim. Case No. O-572), pp. 493 to 496.
[36] Docket – Vol. I (CTA Crim. Case No. O-572), pp. 488 to 492.

Maximo H. Simbulan V, or to any of their duly authorized representatives.[37]

On September 11, 2017, the accused filed a *Very Urgent Motion for Partial Reconsideration of the Order of 23 August 2017*, praying that the prosecution's *Motion for Issuance of Subpoena Duces Tecum/Ad Testificandum* be denied and/or the *Subpoena* be recalled on the grounds that the prosecution did not specify what documents are to be produced by Ms. Roxas and Mr. Simbulan V; and that the information\documents sought to be produced are related to its bank accounts with BDO Unibank, Inc. (BDO) and Citibank, N.A. (Citibank), thus, the disclosure of the said information is prohibited by Republic Act (RA) Nos. 1405 and 8791.[38] On the other hand, the prosecution filed its *Comment (Re: Accused's Very Urgent Motion for Partial Reconsideration of the Order of 23 August 2017)* on September 29, 2017.[39]

In the interim, the prosecution filed a *Manifestation with Motion for Issuance of Subpoena Duces Tecum/Ad Testificandum* on September 15, 2017.[40] Accused filed an *Opposition (to Prosecution's Motion for Issuance of Subpoena Duces Tecum Ad Testificandun to BDO and Citibank Officers/Documents)* on September 25, 2017.[41] Thus, in the Resolution dated October 5, 2017,[42] the Court: (1) denied the accused's *Very Urgent Motion for Partial Reconsideration of the Order of 23 August 2017*; (2) noted and granted the prosecution's *Manifestation and Motion for Issuance of Subpoena Duces Tecum/Ad Testificandum*; and (3) set the presentation of Ms. Lily T. Roxas and Atty. Maximo H. Simbulan V, and stated the documents which they will respectively bring.

At the hearing held on January 17, 2018, the prosecution presented Ms. Lily T. Roxas (First Vice President or the Department Head of Credit Card Accounting of BDO), and Atty. Maximo H. Simbulan V (Senior Vice President and Country Tax Counsel of Citibank). In view of the absence of the accused and his counsel, their right to cross-examine the said witnesses was deemed waived, upon motion of the Special Prosecutor.[43]

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[37] Minutes of the hearing held on, and Order dated, August 23, 2017, Docket – Vol. I (CTA Crim. Case No. O-572), pp. 497 to 499.
[38] Docket – Vol. I (CTA Crim. Case No. O-572), pp. 511 to 517.
[39] Docket – Vol. I (CTA Crim. Case No. O-572), pp. 536 to 539.
[40] Docket – Vol. I (CTA Crim. Case No. O-572), pp. 518 to 523.
[41] Docket – Vol. I (CTA Crim. Case No. O-572), pp. 525 to 535.
[42] Docket – Vol. I (CTA Crim. Case No. O-572), pp. 543 to 547.
[43] Minutes of the hearing held on, and Order dated, January 17, 2018, Docket – Vol. II (CTA Crim. Case No. O-572), pp. 592 to 593.

On February 1, 2018, the prosecution filed its *Formal Offer of Evidence.*[44] No comment was, however, filed thereon by the accused.[45] In the Resolution dated March 16, 2018,[46] the Court admitted the prosecution's Exhibits, *except* for Exhibit "P-5", for failure to present the original for comparison.

Subsequently, on March 16, 2018, accused filed an *Urgent Omnibus Motion (1) for Reconsideration of the Order 17 January 2018; or, in the Alternative, to Re-open Proceedings Only to Allow Accused's Counsel to Cross-examine Witness Ms. Lily T. Roxas and Atty. Maximo H. Simbulan V. and, (2) to Temporarily Suspend Other Proceedings Until After the Final Resolution of Preceding Motion (for Reconsideration, etc.).*[47] The prosecution later filed its *Comment (Re: Accused's Urgent Omnibus Motion).*[48]

The accused filed a *Motion for Reconsideration (of the Resolution dated March 16, 2018)* on March 23, 2018.[49] For its part, the prosecution filed its *Comment (Re: Accused's Motion for Reconsideration of the Resolution dated March 16, 2018)* on May 15, 2018.[50] However, the Court denied both the accused's *Urgent Omnibus Motion* and *Motion for Reconsideration (of the Resolution dated March 16, 2018),* in its Resolution dated July 11, 2018,[51] for lack of merit.

Meanwhile, the prosecution filed a *Motion to Admit Formal Offer of Evidence* on May 15, 2018,[52] praying for the admission of the attached two (2) documents: Exhibit "P-19" – PAN, and Exhibit "P-20" – *Final Assessment Notice* (FAN)/FLD. No comment was, however, filed thereon by the accused.[53] Thus, in the Resolution dated October 2, 2018,[54] the Court: (1) granted the prosecution's *Motion to Admit Formal Offer of Evidence*; (2) admitted the *Formal Offer of Evidence*; and (3) gave the accused a period of fifteen (15)

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[44] Docket – Vol. II (CTA Crim. Case No. O-572), pp. 594 to 607.
[45] Records Verification Report dated February 26, 2018 issued by the Judicial Records Division of this Court, Docket – Vol. II (CTA Crim. Case No. O-572), p. 717.
[46] Docket – Vol. II (CTA Crim. Case No. O-572), pp. 719 to 720.
[47] Docket – Vol. II (CTA Crim. Case No. O-572), pp. 721 to 727.
[48] Docket – Vol. II (CTA Crim. Case No. O-572), pp. 736 to 739.
[49] Docket – Vol. II (CTA Crim. Case No. O-572), pp. 741 to 744.
[50] Docket – Vol. II (CTA Crim. Case No. O-572), pp. 766 to 768.
[51] Docket – Vol. II (CTA Crim. Case No. O-572), pp. 790 to 794.
[52] Docket – Vol. II (CTA Crim. Case No. O-572), pp. 769 to 772.
[53] Records Verification Report dated August 7, 2018 issued by the Judicial Records Division of this Court, Docket – Vol. II (CTA Crim. Case No. O-572), p. 797.
[54] Docket – Vol. II (CTA Crim. Case No. O-572), pp. 801 to 804.

days from notice hereof within which to file his comment on the prosecution's *Formal offer of Evidence*. However, no comment was filed by accused on the prosecution's *Formal Offer of Evidence*.[55]

In the Resolution dated November 22, 2018,[56] the Court admitted Exhibits "P-19" and "P-20", as part of prosecution's evidence, and set the initial presentation of evidence for the accused.

Respondent likewise presented his testimonial evidence. He offered the testimonies of the following individuals, namely: (1) Lourdes G. De Las Alas,[57] the accused's Secretary; and (2) Atty. Salvador B. Britanico,[58] counsel of the accused.

Due to several postponements of the hearing caused by the accused,[59] the presentation of Mr. Emmanuel Miranda, accused's accountant, was deemed waived during the hearing held on July 29, 2019.[60]

As such, accused filed his *Motion for Partial Reconsideration (of the Order Dated July 29, 2019)* on August 9, 2019,[61] praying that the portion of the Order of July 29, 2019 considering as waived the presentation of Mr. Miranda as witness for the defense be reconsidered. However, the same *Motion for Partial Reconsideration* was denied in open court at the hearing held on August 14, 2019.[62]

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[55] Records Verification Report dated October 30, 2018 issued by the Judicial Records Division of this Court, Docket – Vol. II (CTA Crim. Case No. O-572), p. 805.
[56] Docket – Vol. II (CTA Crim. Case No. O-572), p. 807.
[57] Judicial Affidavit of Lourdes De Las Alas, Docket – Vol. II (CTA Crim. Case No. O-572), pp. 817 to 822; Minutes of the hearing held on, and Order dated, January 30, 2019, Docket – Vol. II (CTA Crim. Case No. O-572), pp. 830 to 831.
[58] Judicial Affidavit of Salvador B. Britanico, Docket – Vol. II (CTA Crim. Case No. O-572), pp. 859 to 863; Minutes of the hearing held on, and Order dated, August 14, 2019, Docket – Vol. II (CTA Crim. Case No. O-572), pp. 872 to 873.
[59] Accused's *Urgent Ex-Parte Motion to Reset the Hearing of 23 January 2019* filed on January 22, 2019, Docket – Vol. II (CTA Crim. Case No. O-572), pp. 808 to 811; Accused's *Manifestation* filed on January 30, 2019, Docket – Vol. II (CTA Crim. Case No. O-572), pp. 823 to 825; Accused's *Ex-Parte Motion to Reset the Hearing of 13 March 2019*, filed on March 12, 2019, Docket – Vol. II (CTA Crim. Case No. O-572), pp. 832 to 834; and, Accused's *Urgent Motion to Reset the Hearing of 6 May 2019* filed on May 3, 2019, Docket – Vol. II (CTA Crim. Case No. O-572), pp. 842 to 844.
[60] Minutes of the hearing held on, and Order dated, July 29, 2019, 2019, Docket – Vol. II (CTA Crim. Case No. O-572), pp. 854 to 855.
[61] Docket – Vol. II (CTA Crim. Case No. O-572), pp. 856 to 858.
[62] Minutes of the hearing held on, and Order dated, August 14, 2019, Docket – Vol. II (CTA Crim. Case No. O-572), pp. 872 to 873.

On September 9, 2019, the Court granted the consolidation of CTA Crim. Case No. O–573 and CTA Crim. Case No. O-610, with CTA Crim. Case No. O-572, the case bearing the lowest docket number.[63]

CTA Crim. Case No. O-573:

On June 15, 2016, an *Information* was filed charging the accused of willful failure to supply correct and accurate information in his ITR for taxable year 2013, in violation of Section 255 of the NIRC of 1997, as amended.[64]

The instant case was initially raffled to the Third Division of this Court.

In the Resolution dated September 9, 2016,[65] the Court found probable cause and ordered for the issuance of a warrant of arrest against the accused. The *Warrant of Arrest* dated September 13, 2016 was then issued against the accused.[66]

The accused voluntarily appeared before the Court on September 28, 2016, and posted the required cash bond in the amount of ₱20,000.00.[67]

During the arraignment on October 19, 2016, the accused, with the assistance of his counsel, entered a plea of "Not Guilty" to the crime charged. Thus, the Court initially set the Preliminary Conference and the Pre-Trial Conference on December 6, 2016 and January 25, 2017, respectively.[68] Subsequently, Preliminary Conferences were held on December 6, 2016[69] and February 21, 2017[70], while the Pre-Trial Conference was held on May 10, 2017.[71]

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[63] Resolution dated September 9, 2019, Docket – Vol. II (CTA Crim. Case No. O-572), pp. 882 to 883.
[64] Docket – Vol. 1 (CTA Crim. Case No. O-573), pp. 6 to 7.
[65] Resolution dated September 9, 2016, Docket – Vol. 1 (CTA Crim. Case No. O-573), pp. 390 to 391.
[66] Docket – Vol. 1 (CTA Crim. Case No. O-573), pp. 392 to 393.
[67] Resolution dated September 28, 2016, Docket – Vol. 1 (CTA Crim. Case No. O-573), p. 395.
[68] Minutes of the hearing held on, and Order dated, October 19, 2016, Docket – Vol. 1 (CTA Crim. Case No. O-573), pp. 405, and 408 to 409, respectively.
[69] Minutes of Preliminary Conference held on December 6, 2016, Docket – Vol. 1 (CTA Crim. Case No. O-573), pp. 415 to 417.
[70] Minutes of Preliminary Conference held on February 21, 2017, Docket – Vol. 1 (CTA Crim. Case No. O-573), pp. 427 to 431.
[71] Minutes of the hearing held on, and Order dated, May 10, 2017, Docket – Vol. 1 (CTA Crim. Case No. O-573), pp. 481 and 498 to 499, respectively.

On March 31, 2017, the prosecution filed its *Pre-Trial Brief*,[72] while the accused's *Pre-Trial Brief* was submitted on April 5, 2017.[73] Thereafter, the Pre-Trial Order dated June 21, 2017 was issued,[74] incorporating therein the stipulations of facts entered into by the parties, to wit:

"A. Facts:

1. Republic Act No. 1125, as amended, otherwise known as 'An Act Creating the Court of Tax Appeals' grants exclusive original jurisdiction to the Honorable Court over all criminal offenses arising from violation of the provisions of the National Internal Revenue Code of 1997 (NIRC of 1997).

2. The accused Alexander R. Garcia is the person charged in the present case.

3. Accused is registered taxpayer of Revenue District Office (RDO) No. 27, Caloocan City with Tax Identification Number (TIN) 101-409-172.

4. Accused's registered address is 129 Asuncion Street, Morning Breeze Subdivision, Brgy. 84 Zone 8, Caloocan City.

5. Accused is a dentist by profession.

6. Accused is operating under the business name 'Sacred Heart Dental Center' with business address at 129 Asuncion Street, Morning Breeze Subdivision, Brgy. 84 Zone 8, Caloocan City.

7. Accused filed his Income Tax Returns (ITR) for taxable year 2013.

8. Accused declared in his 2013 ITR a Total Gross income of One Million Eighty Nine Thousand Six Hundred Pesos (P1,089,600.00) for taxable year 2013.

9. Accused declared in his 2013 ITR a Total Allowable Itemized deductions of Eight Hundred Seventy Five Thousand Two Hundred Seventy Pesos (P875,270.00) for taxable year 2013."

Trial then proceeded.

[72] Docket – Vol. 1 (CTA Crim. Case No. O-573), pp. 446 to 453.
[73] Docket – Vol. 1 (CTA Crim. Case No. O-573), pp. 465 to 467.
[74] Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 531 to 538.

During trial, the prosecution presented its testimonial and documentary evidence. The prosecution offered the testimonies of the following ROs, namely: (1) Mr. Rodrigo Dulay,[75] (2) Mr. Romy Carandang,[76] and (3) Mr. Gerrico Chico.[77]

On August 18, 2017, the prosecution filed a *Motion for Issuance of Subpoena Duces Tecum/Ad Testificandum*, praying that *Subpoena Duces Tecum/Ad Testificandum* be issued against Ms. Lily T. Roxas and Atty. Maximo H. Simbulan V, or to any of their duly authorized representative.[78] The accused filed an *Opposition (to Prosecution's Motion for Issuance of Subpoena Duces Tecum/Ad Testificandum dated August 18, 2017)* on September 11, 2017.[79] Thereafter, in the Resolution dated October 10, 2017,[80] the Court partially granted the prosecution's motion and directed the issuance of a *Subpoena Duces Tecum/Ad Testificandum* for the said witnesses.

The prosecution then presented the following additional witnesses, namely: (1) Ms. Lily T. Roxas,[81] the First Vice President of the Credit Card Accounting of the BDO; (2) Mr. Maximo H. Simbulan V,[82] Senior Vice President and Country Tax Counsel of Citibank Philippines; and (3) Ms. Vivian E. Halili,[83] Chief Revenue Officer III of the Document Processing Division of the BIR.

On March 23, 2018, the prosecution filed a *Motion to Recall (Gerrico Chico)*.[84] No comment was filed thereon by the accused.[85] Said *Motion to Recall* was granted by the Court in its Resolution dated April 20, 2018.[86] At the hearing held on June 6, 2018,[87] RO

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[75] Minutes of the hearing held on June 7, 2017, Docket – Vol. 1 (CTA Crim. Case No. O-573), p. 502; Order dated June 7, 2017, Docket – Vol. 2 (CTA Crim. Case No. O-573), p. 503.
[76] Minutes of the hearing held on, and Order dated, July 12, 2017, Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 539 to 540.
[77] Minutes of the hearing held on, and Order dated, August 9, 2017, Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 558, and 594 to 595, respectively; Minutes of the hearing held on, and Order dated, June 6, 2018, Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 746 to 748.
[78] Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 596 to 599.
[79] Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 612 to 617.
[80] Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 627 to 631.
[81] Minutes of the hearing held on, and Order dated, December 6, 2017, Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 650 to 651; Minutes of the hearing held on, and Order dated, January 17, 2018, Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 696 to 697.
[82] Minutes of the hearing held on, and Order dated, January 17, 2018, Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 696 to 697.
[83] Minutes of the hearing held on, and Order dated, March 21, 2018, Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 721 to 722.
[84] Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 733 to 735.
[85] Records Verification Report dated April 16, 2018, issued by the Judicial Records Division of this Court, Docket – Vol. 2 (CTA Crim. Case No. O-573), p. 736.
[86] Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 739 to 740.
[87] Minutes of the hearing held on, and Order dated, June 6, 2018, Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 746 to 748.

Chico was recalled to the witness stand, but his testimony was dispensed with in view of the parties' stipulation on the existence and authenticity of the documents that he is to present.

Subsequently, the prosecution filed its *Formal Offer of Evidence* on July 16, 2018.[88] The accused filed his *Comments/Opposition (Re: Prosecution's Formal Offer of Evidence)* on August 2, 2018.[89] In the Resolution dated August 31, 2018,[90] the Court admitted the prosecution's exhibits, *except* for Exhibits "P-9" and "P-10", for failure to identify the same.

Thereafter, the accused filed an *Urgent Motion to Consolidate Cases* on August 27, 2019,[91] praying for the consolidation of CTA Crim. Case Nos. O-610 and No. O-573. However, during the hearing held on August 28, 2019, the accused's counsel moved for the consolidation of CTA Crim. Case Nos. O-573 and O-610, with CTA Crim. Case No. O-572, which was granted by the Court, subject to the conformity of the Second Division of this Court.[92]

<u>CTA Crim. Case No. O-610</u>:

On August 31, 2016, an *Information* was filed against the accused.[93] The case was initially raffled to the First Division of this Court.

After a careful consideration of the allegations in the *Information* and the attachments thereto, the Court found the existence of probable cause for the issuance of a warrant of arrest against accused, in its Resolution dated October 14, 2016.[94] Thus, the *Warrant of Arrest* dated October 20, 2016 was issued.[95]

On November 2, 2016, with the assistance of counsel *de parte*, the accused voluntarily appeared before this Court and posted a cash bail bond in the amount of ₱20,000.00 for his provisional liberty.[96]

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[88] Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 750 to 766.
[89] Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 904 to 908.
[90] Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 912 to 913.
[91] Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 997 to 999.
[92] Minutes of the hearing held on, and Order dated, August 28, 2019, Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 1000, and 1006 to 1007, respectively.
[93] Docket –Vol. I (CTA Crim. Case No. O-610), pp. 6 to 7.
[94] Docket –Vol. I (CTA Crim. Case No. O-610), pp. 394 to 396.
[95] Docket –Vol. I (CTA Crim. Case No. O-610), p. 397.
[96] Resolution dated November 2, 2016, Docket –Vol. I (CTA Crim. Case No. O-610), pp. 411 to 412.

The prosecution then filed on February 15, 2017, a *Motion to Admit Attached Amended Information*, with the attached *Amended Information*.[97] In the Resolution dated February 22, 2017,[98] the Court granted the said *Motion* and admitted the said *Amended Information*.

During the arraignment on May 10, 2017, the accused, duly assisted by his counsel *de parte*, pleaded "NOT GUILTY" to the crime charged and admitted that he is the same person being referred to in the *Amended Information*. The Court initially set the Preliminary Conference and the Pre-Trial on July 26, 2017 and August 16, 2017, respectively.[99] The Preliminary Conferences were held on July 26, 2017[100] and September 6, 2017,[101] while the Pre-Trial Conference was held on September 28, 2017.[102]

The *Accused's Pre-Trial Brief* was filed on May 10, 2017,[103] while the prosecution's *Pre-Trial Brief* and *Amended Pre-Trial Brief* were respectively submitted on August 15, 2017[104] and September 6, 2017.[105] The Court then issued the Pre-Trial Order dated November 21, 2017,[106] deeming the termination of the Pre-Trial and incorporating therein the following stipulated facts:

"**A. Facts:**

1. Republic Act No. 1125, as amended, otherwise known as 'An Act Creating the Court of Tax Appeals' grants exclusive original jurisdiction to the Honorable Court over all criminal offenses arising from violation of the provisions of the NIRC;

2. The accused is the same person named and charged in the Information subject of this case;

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[97] Docket –Vol. I (CTA Crim. Case No. O-610), pp. 423 to 429.
[98] Docket –Vol. I (CTA Crim. Case No. O-610), pp. 432 to 433.
[99] Minutes of the hearing held on, and Order dated, May 10, 2017, Docket – Vol. I (CTA Crim. Case No. O-610), pp. 439 to 442.
[100] Minutes of the Preliminary Conference held on July 26, 2017, Docket – Vol. I (CTA Crim. Case No. O-610), pp. 449 to 451.
[101] Minutes of the Preliminary Conference held on September 6, 2017, Docket – Vol. I (CTA Crim. Case No. O-610), pp. 576 to 577.
[102] Minutes of the hearing held on, and Order dated, September 28, 2017, Docket – Vol. II (CTA Crim. Case No. O-610), pp. 613 to 618.
[103] Docket –Vol. I (CTA Crim. Case No. O-610), pp. 436 to 438.
[104] Docket –Vol. I (CTA Crim. Case No. O-610), pp. 567 to 573.
[105] Docket – Vol. II (CTA Crim. Case No. O-610), pp. 604 to 610.
[106] Docket – Vol. II (CTA Crim. Case No. O-610), pp. 652 to 659.

3. The accused is a registered taxpayer of Revenue District Office (RDO) No. 27, Caloocan City with Tax Identification Number (TIN) 101-409-172;

4. Alexander Eduardo Reyes Garcia is the same Alexander R. Garcia, who is accused in this case;

5. Accused is a dentist by profession;

6. Accused is operating under the business name 'Sacred Heart Dental Center' with business address at 129 Asuncion Street, Morning Breezed Subdivision, Brgy. 84 Zone 8, Caloocan City;

7. Accused filed his Income Tax Returns (ITR) for taxable year 2012."

As trial ensued, petitioner presented its documentary and testimonial evidence. Petitioner offered the testimonies of the following ROs, namely: Mr. Romy P. Carandang,[107] and Mr. Gerrico Chico.[108]

On April 11, 2018, the prosecution filed a *Manifestation with Motion for Issuance of Subpoena Duces Tecum/Ad Testificandum*,[109] praying that Subpoena Duces Tecum/Ad Testificandum be issued against Ms. Lily T. Roxas and Atty. Maximo H. Simbulan V, or to any of their duly authorized representative. The prosecution likewise filed a *Manifestation (Re: Plaintiff's Manifestation with Motion for Issuance of Subpoena Duces Tecum/Ad Testificandum* on April 12, 2018,[110] stating therein the new address of Ms. Roxas. Thus, in the Resolution dated April 17, 2018,[111] the Court noted and granted the above stated *Manifestations* and *Motions* filed by the prosecution.

During the hearing held on May 2, 2018, the prosecution called to the witness stand, Atty. Mary Ann B. Del Prado-Arañas, in lieu of the supposed witness, Ms. Lily T. Roxas. Thereafter, the Court: (1) gave the prosecution a period of ten (10) days, or until May 12, 2018, within which to file its *Formal Offer of Evidence*; (2) gave the accused a period of ten (10) days from receipt thereof to file his comment thereto; (3) noted the manifestation of defense counsel

[107] Minutes of the hearing held on, and Order dated, November 22, 2017, Docket – Vol. II (CTA Crim. Case No. O-610), pp. 660 to 663.
[108] Order dated January 31, 2018, Docket – Vol. II (CTA Crim. Case No. O-610), pp. 686 to 687.
[109] Docket – Vol. II (CTA Crim. Case No. O-610), pp. 692 to 695.
[110] Docket – Vol. II (CTA Crim. Case No. O-610), pp. 696 to 697.
[111] Docket – Vol. II (CTA Crim. Case No. O-610), pp. 699 to 700.

that he will not file a *Demurrer to Evidence*; and (4) set the presentation of defense evidence on certain dates.[112]

On May 15, 2018, the prosecution filed its *Formal Offer of Evidence*.[113] The accused filed his *Comments/Opposition (Re: Prosecution's Formal Offer of Evidence)* on June 1, 2018.[114] In the Resolution dated July 27, 2018,[115] the Court admitted the prosecution's Exhibits.

During the hearing held on August 1, 2018, the accused offered the testimony of his Secretary, Ms. Lourdes De Las Alas.[116]

In the Order dated September 26, 2018,[117] the instant case was transferred to Third Division of this Court.

On August 27, 2019, the accused filed an *Urgent Motion to Consolidate Cases*,[118] which was granted by the Court at the hearing held on August 28, 2019, subject to the conformity of the Second Division of this Court.[119]

<u>After consolidation of the three (3) cases</u>:

After the consolidation of the instant cases on September 9, 2019,[120] the defense continued the presentation of its testimonial evidence.

During the hearing held on September 11, 2019,[121] the defense presented Dr. Alexander R. Garcia,[122] the accused himself, on the witness stand. In the same hearing, the accused's counsel moved for continuance on October 9, 2019 for the presentation of its last

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[112] Order dated May 2, 2018, Docket – Vol. II (CTA Crim. Case No. O-610), pp. 722 to 723.
[113] Docket – Vol. II (CTA Crim. Case No. O-610), pp. 730 to 744.
[114] Docket – Vol. II (CTA Crim. Case No. O-610), pp. 754 to 759.
[115] Docket – Vol. II (CTA Crim. Case No. O-610), pp. 773 to 774.
[116] Exhibit "A-4", Docket – Vol. II (CTA Crim. Case No. O-610), pp. 779 to 784; Minutes of the hearing held on, and Order dated, August 1, 2018, Docket – Vol. II (CTA Crim. Case No. O-610), pp. 775 to 777.
[117] Docket – Vol. II (CTA Crim. Case No. O-610), p. 792.
[118] Docket – Vol. II (CTA Crim. Case No. O-610), pp. 831 to 833.
[119] Minutes of the hearing held on, and Order dated August 28, 2019, Docket – Vol. II (CTA Crim. Case No. O-610), pp. 834 to 835.
[120] Resolution dated September 9, 2019, Docket – Vol. II (CTA Crim. Case No. O-572), pp. 882 to 883.
[121] Minutes of the hearing held on, and Order dated, September 11, 2019, Docket – Vol. II (CTA Crim. Case No. O-572), pp. 890 to 891.
[122] Exhibit "A-4", Docket – Vol. II (CTA Crim. Case No. O-572), pp. 884 to 889.

witness, Emmanuel Miranda. The Special Prosecutor objected to the said motion on the ground that the testimony of the said witness was already declared waived by the Court in its Order dated July 29, 2019. However, in the interest of justice, accused's motion for the continuance was granted and, thus, set the presentation of Mr. Miranda on October 9, 2019.

On October 8, 2019, accused filed an *Urgent Ex-Parte Alternative Motions to Suspend Proceeding until BIR Deputy Commissioner Misajon and/or BIR Commissioner Cesar R. Dulay would have Acted on the Proposed Amicable Settlement; or, Alternatively, to Reset the Hearing of October 9, 2019 to October 30 and/or November 6, 2019.*[123]

During the hearing held on October 9, 2019, the Court: (1) denied for lack of merit the said *Urgent Ex-Parte Alternative Motions* of the accused; (2) ruled that the presentation of further evidence for the testimony of Mr. Emmanuel T. Miranda is deemed waived; (3) granted the accused a period of five (5) days from the said hearing within which to file his *Formal Offer of Evidence*; (4) granted the prosecution a period of five (5) days within which to file its Comment thereto; (5) granted the parties a period of thirty (30) days from the receipt of the Court's Resolution on accused's *Formal Offer of Evidence* to submit their respective memorandum; and (6) noted Atty. Britanico's *Manifestation* that he intends to take action against this Order of the Court.[124]

On October 16, 2019, the accused filed an *Alternative Motions for Reconsideration of the Order of October 9, 2019 or to Dismiss the Case with Urgent Ex-Parte Motion to Temporarily Suspend Other Proceedings.*[125] In addition, on October 22, 2019, the accused filed an *Urgent Motion to Admit the Amended Alternative Motions for Reconsideration of the Order of October 9, 2019 or Motion to Dismiss with Urgent Ex-Parte Motion to Suspend Other Proceedings,* with attached *Amended Alternative Motions for Reconsideration of the Order of October 9, 2019 or to Dismiss the Case with Urgent Ex-Parte Motion to Temporarily Suspend Other Proceedings.*[126]

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[123] Docket – Vol. II (CTA Crim. Case No. O-572), pp. 896 to 899.
[124] Minutes of the hearing held on, and Order dated, October 9, 2019, Docket – Vol. II (CTA Crim. Case No. O-572), pp. 902 to 904.
[125] Docket – Vol. II (CTA Crim. Case No. O-572), pp. 907 to 915.
[126] Docket – Vol. II (CTA Crim. Case No. O-572), pp. 936 to 945.

At the hearing held on October 24, 2019, the Court granted both parties a period of ten (10) days within which to file their respective memorandum on the aforementioned motions filed by the accused.[127] In compliance, the *Memorandum for the Plaintiff (Re: (1) Accused's Amended Alternative Motions for Reconsideration of the Order of October 9, 2019 or to Dismiss the Case with Urgent Ex-Parte Motion to Temporarily Suspend Other Proceedings (2) Urgent Motion to Admit the Amended Alternative Motions for Reconsideration of the Order of October 9, 2019 or Motion to Dismiss with Urgent Ex-Parte Motion to Suspend Other Proceedings)* was filed on November 4, 2019;[128] while the *Accused's Memorandum* was posted on November 11, 2019.[129]

In the Resolution dated December 6, 2019,[130] the Court: (a) denied, for lack of merit, the accused's (1) *Alternative Motions for Reconsideration of the Order of October 9, 2019 or to Dismiss the Case with Urgent Ex-Parte Motion to Temporarily Suspend Other Proceedings filed on October 14, 2019*; and (2) *Urgent Motion to Admit the Amended Alternative Motions for Reconsideration of the Order of October 9, 2019 or Motion to Dismiss with Urgent Ex-Parte Motion to Suspend Other Proceedings submitted on October 22, 2019*; (b) gave the accused a period of five (5) days from notice within which to file his *Formal Offer of Evidence*; (c) gave the prosecution an equal period of five (5) days from notice to file its comment on accused's *Formal Offer of Evidence*; and (d) granted both parties a period of thirty (30) days upon receipt of the Court's action on the incident to file their respective memorandum.

On January 14, 2020, accused filed a *Manifestation with Ex-Parte Motion to Suspend Proceedings*,[131] praying, among others, to temporarily hold in abeyance any further proceedings in these cases at least until after the expiration of the sixty (60)-day period to file a *Petition for Certiorari* under Rule 65, or until the said Petition has been finally resolved by the Supreme Court. The prosecution posted its *Comment/Opposition (to Accused's Manifestation with Ex-Parte Motion to Suspend Proceedings dated January 11, 2020)* on February 3, 2020.[132]

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[127] Minutes of the hearing held on, and Order dated, October 24, 2019, Docket – Vol. II (CTA Crim. Case No. O-572), pp. 946 to 947.
[128] Docket – Vol. II (CTA Crim. Case No. O-572), pp. 949 to 954.
[129] Docket – Vol. II (CTA Crim. Case No. O-572), pp. 962 to 987.
[130] Docket – Vol. II (CTA Crim. Case No. O-572), pp. 990 to 997.
[131] Docket – Vol. II (CTA Crim. Case No. O-572), pp. 998 to 1002.
[132] Docket – Vol. II (CTA Crim. Case No. O-572), pp. 1006 to 1009.

In the Resolution dated February 14, 2020,[133] the Court: (1) noted the accused's *Manifestation*; (2) denied the accused's *Ex-Parte Motion to Suspend Proceedings*, for lack of merit; and (3) gave the accused a period of five (5) days from receipt thereof within which to file his *Formal Offer of Evidence.*

Nonetheless, records show that no *Formal Offer of Evidence* was filed by the accused in the instant consolidated cases.[134] Thus, in the Resolution dated June 22, 2020,[135] the Court gave parties a period of thirty (30) days to file their respective memorandum, after which, the case shall be submitted for decision.

On July 30, 2020, the *Memorandum (For the Plaintiff)* was filed,[136] while no memorandum was submitted by the accused.[137]

Thereafter, on August 12, 2020, the accused filed a *Motion to Suspend Further Proceedings (Re: Resolution of June 22, 2020) with Alternative Motions to Hear it on Monday, 17 August 2020 or to Give the Prosecution Time to File its Comments Thereto and the Accused to File His Reply within Seven (7) Days from Receipt of the Comments.*[138]

In the Resolution dated September 16, 2020,[139] the Court ordered the prosecution to file its comment on the said *Motion* and noted the accused's filing of *Petition for Certiorari* before the Supreme Court. The prosecution then posted its *Compliance with Comment (Re: Accused's Motion to Suspend Further Proceedings)* on October 5, 2020.[140] However, the Court denied the aforementioned *Motion to Suspend Further Proceedings* and submitted the instant cases for decision, in its Resolution dated November 16, 2020.[141]

Undeterred, the accused filed a *Motion for Reconsideration (of the Resolution dated November 16, 20202)* on December 10, 2020, praying for the reconsideration of the Resolution dated November 16,

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[133] Docket – Vol. II (CTA Crim. Case No. O-572), pp. 1013 to 1015.
[134] Records Verification Report dated June 2, 2020 issued by the Judicial Records Division of this Court, Docket – Vol. III (CTA Crim. Case No. O-572), p. 1018.
[135] Docket – Vol. III (CTA Crim. Case No. O-572), p. 1020.
[136] Docket – Vol. III CTA Crim. Case No. O-572), pp. 1021 to 1043.
[137] Records Verification Report dated August 11, 2020 issued by the Judicial Records Division of this Court, Docket – Vol. III (CTA Crim. Case No. O-572), p. 1045.
[138] Docket – Vol. III (CTA Crim. Case No. O-572), pp. 1047 to 1053.
[139] Docket – Vol. III (CTA Crim. Case No. O-572), p. 1060.
[140] Docket – Vol. III (CTA Crim. Case No. O-572), pp. 1213 to 1219.
[141] Docket – Vol. III (CTA Crim. Case No. O-572), pp. 1221 to 1225.

2020; and to suspend, meanwhile, further proceedings in these cases until after the Supreme Court would have resolved with finality the Petition for certiorari filed on August 9, 2020.

The said *Motion for Reconsideration* was denied for lack of merit by the Court, in its Resolution promulgated on January 7, 2021, submitting anew the case for decision.

EVIDENCE FOR THE PROSECUTION

To establish the culpability of the accused, the prosecution presented seven (7) witnesses, namely: (1) Mr. Rodrigo Dulay; (2) Mr. Romy P. Carandang; (3) Mr. Gerrico A. Chico; (4) Ms. Vivian E. Halili; (5) Ms. Lily Roxas; (6) Mr. Maximo H. Simbulan V; and (7) Atty. Mary Ann B. Del Prado-Arañas.

Below is a summary of the testimonies of the prosecution's witnesses during their direct examination, cross-examination and/or responses to clarificatory questions posed by the Court, *viz.*:

<u>1. Testimony of Rodrigo Dulay</u>:[142]

Mr. Rodrigo Dulay, RO IV assigned at the NID of the BIR, testified that part of his duties and functions are as follows: (1) to conduct audit and investigation of books of accounts and other accounting records of the taxpayers for internal revenue tax purposes; (2) to submit the corresponding report on the result of the audit and investigation; (3) to recommend criminal prosecution for violations of the provisions of the NIRC; and (4) to perform other functions that may be assigned to him by his superior in accordance with the law.

RO Dulay mentioned that the instant criminal case was filed against the accused pursuant to the two (2) Resolutions issued by the DOJ.[143] 𝓃

[142] Transcript of Stenographic Notes (TSN) taken at the hearing held on July 17, 2017 (CTA Crim. Case No. O-572), pp. 5 to 14 *vis-à-vis* TSN taken at the hearing held on June 7, 2017, pp. 9 to 21, Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 507 to 524.

[143] Exhibit "P-1", Docket – Vol. I (CTA Crim. Case No. O-572), pp. 8 to 12; Exhibit "P-2", Docket – Vol. II (CTA Crim. Case No. O-572), pp. 608 to 610.

RO Dulay further testified that he is the GS of the NID that investigated the tax liabilities of the accused. His group, composed of himself, Jericho Chico, Romy Carandang and Mercedita Dizon, was tasked to conduct a preliminary investigation against the accused pursuant to the NID Memo Assignment No. KJH/SCD2014-05-30-0334 dated May 30, 2014.[144] As such, they profiled the accused by accessing the BIR Integrated Tax System, from which the following information were obtained, to wit: the accused is registered in Revenue District Office (RDO) No. 27, Caloocan City, with assigned Tax Identification Number, pursuant to the BIR Registration Print-out;[145] and that the accused is engaged in the practice of dentistry under the business name Sacred Heart Dental Clinic based on the Certification[146] issued by the Department of Trade and Industry.

When RO Dulay was recalled to the witness stand on August 23, 2017 hearing, he declared that his group had executed a *Joint Complaint Affidavit*[147] and *Joint Reply Affidavit*[148] before the DOJ. He also identified the PAN dated September 8, 2016[149] and FAN/FLD dated July 5, 2017[150] issued against the accused. He further testified that his group member personally served the PAN and FAN/FLD to the accused's registered business address and the same were both received by the accused's Administrative Officer, Ms. Lourdes De La Alas, on March 1, 2017 and August 14, 2017, respectively. He also testified that there was no reply filed thereon by the accused.

<u>2. Testimony of Romy P. Carandang:</u>[151]

RO Romy P. Carandang declared that his current position is RO II at RDO 53B, Muntinlupa City.[152] He also testified that he was previously assigned at NID, National Office from July 2009 up to August 9, 2017. *fr*

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[144] Exhibit "P-14", Docket – Vol. II (CTA Crim. Case No. O-572), p. 706; Exhibit "P-16", Docket – Vol. 2 (CTA Crim. Case No. O-573), p. 873.
[145] Exhibit "P-7", Docket – Vol. II (CTA Crim. Case No. O-572), p. 686; Exhibit "P-7", Docket – Vol. 2 (CTA Crim. Case No. O-573), p. 845.
[146] Exhibit "P-6", Docket – Vol. II (CTA Crim. Case No. O-572), p. 685.
[147] Exhibit "P-4", Docket – Vol. II (CTA Crim. Case No. O-572), pp. 614 to 626.
[148] Exhibit "P-5", Docket – Vol. 1 (CTA Crim. Case No. O-573), pp. 69 to 81.
[149] Exhibit "P-19", Docket – Vol. II (CTA Crim. Case No. O-572), pp. 773 to 779
[150] Exhibit "P-20", Docket – Vol. II (CTA Crim. Case No. O-572), pp. 780 to 786.
[151] TSN taken at the hearing held on July 17, 2017 (CTA Crim. Case No. O-572), pp. 14 to 31 *vis-à-vis* TSN taken at the hearing held on July 12, 2017, pp. 5 to 16, Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 545 to 556 *vis-à-vis* TSN taken at the hearing held on November 22, 2017 (CTA Crim. Case No. O-610), pp. 4 to 23.
[152] TSN taken at the hearing held on November 22, 2017 (CTA Crim. Case No. O-610), p. 7.

Ro Carandang further declared that he was part of the group that conducted a preliminary investigation against the accused. He discussed the procedures undertaken by them in accomplishing the said task. According to him, his group "profiled" the accused to know the basic information about him. Thereafter, they sent *Access Letter* dated July 15, 2014[153] addressed to RDO No. 27-Caloocan City and *Access Letter* dated January 16, 2017[154] addressed to the Chief Document Processing Division of Revenue Region No. 5, Caloocan City. In response, the said offices furnished them with copies of accused's ITRs and Financial Statements for taxable years 2011, 2012 and 2013. They then compared the accused's ITRs with the data or document from the BIR Information Systems Development and Operation Service, and found out that he has a substantial underdeclaration of income for the said taxable years. Consequently, his group recommended the issuance of a LOA.

Thus, an *LOA* dated August 14, 2014[155] was issued and the same was received by accused's consultant, whose last name he cannot read.

Upon clarificatory question of the Court, RO Carandang testified that he cannot confirm the actual source of income that was not declared in the accused's ITR.[156]

When RO Carandang was asked if had seen the attachments of the ITRs such as specific receipts or items stated in the ITRs, he answered that he had not seen the documents pertaining to the ITRs, but he saw the financial statements attached with the ITRs.[157]

<u>3. Testimony of Gerrico A. Chico</u>:[158]

RO Gerrico Chico declared that he is presently holding the position of RO II assigned at VAT Audit Section, Assessment Division

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[153] Exhibit "P-15", Docket – Vol. II (CTA Crim. Case No. O-572), p. 707; Exhibit "P-17", Docket – Vol. 2 (CTA Crim. Case No. O-573), p. 874.
[154] Exhibit "P-17", Docket – Vol. I (CTA Crim. Case No. O-610), p. 602.
[155] Exhibit "P-12", Docket – Vol. II (CTA Crim. Case No. O-572), p. 692; Exhibit "P-14", Docket – Vol. 2 (CTA Crim. Case No. O-573), p. 851.
[156] TSN taken at the hearing held on November 22, 2017 (CTA Crim. Case No. O-610), p. 23.
[157] TSN taken at the hearing held on July 17, 2017 (CTA Crim. Case No. O-572), pp. 24 to 25.
[158] TSN taken at the hearing held on August 14, 2017 (CTA Crim. Case No. O-572), pp. 12 to 27 *vis-à-vis* TSN taken at the hearing held on August 23, 2017 (CTA Crim. Case No. O-572), pp. 32 to 35 *vis-à-vis* TSN taken at the hearing held on August 9, 2017, pp. 3 to 31, Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 561 to 589 *vis-à-vis* TSN taken at the hearing held on January 31, 2018 (CTA Case No. O-610), pp. 7 to 61; Minutes of the hearing held on, and Order dated, August 9, 2017, Docket – Vol. I (CTA Crim. Case No. O-572), pp. 6 to 16.

of Revenue Region No. 8, Makati City. But prior to such appointment, he was previously assigned at the NID, National Office.[159] He stated that his group was prompted to conduct a preliminary investigation against the accused for the period from January 1, 2011 to December 31, 2013, pursuant to the *NID Memo Assignment*[160] and *LOA*[161].

When his group profiled the accused, they learned that the latter is a registered taxpayer of RDO No. 27.[162] They also found out that he is a Dentist by profession and is currently operating under the trade name Sacred Heart Dental Center based on his DTI Registration.[163] Thereafter, his group sent separate *Access Letters* both dated July 14, 2014 to BDO[164] and Citibank[165] for them certify and confirm the payments that they made to the accused as shown in the BIR Information System Development and Operation Service of ISDOS.

Thereafter, when they compared the accused's ITRs for taxable years 2011, 2012 and 2013 with the three (3) Certifications issued by the BDO, all dated July 17, 2014, and Citibank's Certification dated July 18, 2014, they discovered that he deliberately failed to supply correct and accurate information in the said ITRs.

In view thereof, his group recommended the filing of criminal charges against the accused in their *Joint Complaint Affidavit* dated August 28, 2014[166] filed with the DOJ, pursuant to the authorization given by then CIR Kim S. Jacinto-Henares in her letter dated August 28, 2014[167] addressed to the Secretary of Justice. His group likewise filed their *Joint Reply Affidavit* with the DOJ.[168] Subsequently, the DOJ issued two (2) Resolutions recommending the filing of the criminal Information against the accused.[169]

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159 TSN taken at the hearing held on January 31, 2018 (CTA Crim. Case No. O-610), pp. 10 to 11.
160 Exhibit "P-10", Docket – Vol. I (CTA Crim. Case No. O-610), p. 463.
161 Exhibit "P-11", Docket – Vol. I (CTA Crim. Case No. O-610), p. 464.
162 Exhibit "P-7", Docket – Vol. I (CTA Crim. Case No. O-610), p. 459.
163 Exhibit "P-6", Docket – Vol. II (CTA Crim. Case No. O-610), p. 458.
164 Exhibit "P-13", Docket – Vol. I (CTA Crim. Case No. O-610), p. 580.
165 Exhibit "P-14", Docket – Vol. I (CTA Crim. Case No. O-610), p. 581.
166 "P-4", Docket – Vol. II (CTA Crim. Case No. O-572), pp. 614 to 626; Exhibit "P-4", Docket – Vol. II (CTA Crim. Case No. O-610), pp. 484 to 496.
167 Exhibit "P-3", Docket – Vol. II (CTA Crim. Case No. O-572), pp. 611 to 613; Exhibit "P3", Docket – Vol. II (CTA Crim. Case No. O-610), pp. 481 to 483.
168 "P-5", Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 69 to 81.
169 Exhibits "P-1" and "P-2", Docket – Vol. I (CTA Crim. Case No. O-610), pp. 14 to18 and 455 to 457, respectively.

Upon clarificatory question of the Court, RO Chico admitted that that there is still no final determination of the accused's tax liability when the *Information* was filed before the Court.[170]

When RO Chico was asked by the Court if he have copies of the creditable withholding tax returns, he responded, "No, we relied on the certifications issued."[171] He further stated that they did not check those returns as they merely relied on the summary of all the income payments pertaining to the accused as stated in the Information Systems Development and Operations Service data. RO Chico likewise testified that, in computing the accused's tax deficiencies for taxable years 2011, 2012 and 2013, his group recognized the allowable deduction and personal exemption declared in his ITRs.

RO Chico added that he personally served the PAN[172] and FAN/FLD[173] at accused's registered business address.[174] He also stated that he is not aware if the accused filed any protest to the said assessment notices as he was already transferred to BIR VAT Audit Section in Makati. When he was, again, asked if he had any knowledge as to how the said banks arrived with the figures reflected in the Certifications, he answered, "x x x no I don't have."[175]

RO Chico also admitted that he has no personal knowledge if there was an application filed by the BIR to examine the bank records of the accused or to obtain information covered by the Bank Secrecy Law.[176]

<u>4. Testimony of Vivian E. Halili</u>:[177]

Ms. Vivian E. Halili, the OIC Chief of the Document Processing Division of the BIR at Revenue Region No. V, Caloocan City, declared that part of her duties and functions are: (1) to safe keep all original

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[170] TSN taken at the hearing held on January 31, 2018 (CTA Crim. Case No. O-610), p. 61.
[171] TSN taken at the hearing held on August 14, 2017 (CTA Crim. Case No. O-572), p. 20.
[172] Exhibit "P-19", Docket – Vol. II (CTA Crim. Case No. O-572), pp. 773 to 779; Exhibit "P-22", Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 884 to 890; Exhibit "P-15", Docket – Vol. I (CTA Crim. Case No. O-610), pp. 582 to 588.
[173] Exhibit "P-20", Docket – Vol. II (CTA Crim. Case No. O-572), pp. 780 to 786; Exhibit "P-23", Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 891 to 903; Exhibit "P-16", Docket – Vol. I (CTA Crim. Case No. O-610), pp. 589 to 601.
[174] TSN taken at the hearing held on August 23, 2017 (CTA Crim. Case No. O-572), pp. 32 to 35.
[175] TSN taken at the hearing held on January 31, 2018 (CTA Crim. Case No. O-610), pp. 40 to 41.
[176] TSN taken at the hearing held on August 23, 2017 (CTA Crim. Case No. O-572), p. 6.
[177] TSN taken at the hearing held on August 23, 2017 (CTA Crim. Case No. O-572), pp. 13 and 18 *vis-à-vis* TSN taken at the hearing held on March 21, 2018, pp. 4 to 7, Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 726 to 729.

returns and attachments filed under the jurisdiction of Revenue Region V; (2) to ensure effective storage and retrieval of tax returns; and (3) to ensure the availability of tax returns upon request of Revenue District Offices or National Office of the BIR. She identified the certified trued copy of the accused's ITR for taxable year 2011,[178] which she issued pursuant to the Access Letter dated January 16, 2017.[179]

However, for CTA Crim. Case Nos. O-573[180] and O-610, Ms. Halili's testimony was dispensed with, as the parties specifically stipulated the existence and due execution of the following documents: ITRs for taxable years 2012[181] and 2013[182]; and Access Letter dated January 16, 2017.[183]

5. Testimony of Ms. Lily Roxas:[184]

Ms. Lily Roxas, the First Vice President of Credit Card Accounting of BDO testified that she is in-charge of bookkeeping and reconciliation of the credit card transactions of the bank, as well as the withholding of taxes from the total sales of the accredited merchants of the bank. She further testified that she issued three (3) *Certifications* in these cases, all dated July 17, 2014,[185] pursuant

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[178] Exhibit "P-13", Docket – Vol. II (CTA Crim. Case No. O-572), pp. 693 to 695.
[179] Exhibit "P-18", Docket – Vol. II (CTA Crim. Case No. O-572), p. 716.
[180] Minutes of the hearing held on, and Order dated, March 21, 2018, Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 721 to 722.
[181] Exhibit "P-12", Docket – Vol. I (CTA Crim. Case No. O-610), pp. 465 to 478.
[182] Exhibit "P-15", Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 852 to 872.
[183] Exhibit "P-18", Docket – Vol. II (CTA Crim. Case No. O-572), p. 716; Exhibit "P-20", Docket – Vol. 2 (CTA Crim. Case No. O-573), p. 883; Exhibit "P-17", Docket – Vol. I (CTA Crim. Case No. O-610), p. 602.
[184] TSN taken at the hearing held on December 6, 2017, pp. 3 to 18, Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 655 to 692 *vis-à-vis* TSN taken at the hearing held on January 17, 2018, pp. 3 to 8, Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 700 to 705.
[185]

Certification dated July 17, 2014 issued by the Banco De Oro through Rogel A. Raya and Lily T. Roxas confirming the withholding tax for the year 2013.	Exhibit "P-8", Docket – Vol. II (CTA Crim. Case No. O-572) p. 687; Exhibit "P-8", Docket – Vol. 2 (CTA Crim. Case No. O-573), p. 846.
Certification dated July 17, 2014 issued by the Banco De Oro through Rogel A. Raya and Lily T. Roxas confirming the withholding tax for the year 2012	Exhibit "P-9", Docket – Vol. II (CTA Crim. Case No. O-572), p. 688; Exhibit "P-8", Docket – Vol. 2 (CTA Crim. Case No. O-573), p. 847; Exhibit "P-8", Docket – Vol. I (CTA Crim. Case No. O-610), p. 460
Certification dated July 17, 2014 issued by the Banco De Oro through Rogel A. Raya and Lily T. Roxas confirming the withholding tax for the year 2011	Exhibit "P-10", Docket – Vol. II (CTA Crim. Case No. O-572), p. 689; Exhibit "P-10", Docket – Vol. 1 (CTA Crim. Case No. O-573), p. 848.

to the BIR's letter dated July 14, 2014,[186] requesting the BDO to issue a certification as to the amount of income payments on taxes withheld on a quarterly basis that were made for the account of the accused. Attached to the said letter of the BIR are the following: 2011, 2012, and 2013 Alpha Lists sourced from BIR Form No. 1604E. She also mentioned that the accused is one of their accredited merchants or one who avails the products or services of BDO. She explained that the BDO authorized their accredited merchants to accept credit card payments in their business establishments. As such, the BDO has records of all sales of their accredited merchants and the bank is required to withhold taxes on these sales. She also mentioned that the BDO submits monthly report through BIR Form No. 1601E and annual report using BIR Form No. 1604E summarizing therein the following: sales of each merchant, the tax base and the amount withheld for each merchant.

When Ms. Roxas was asked if she was able to examine accused's deposits, savings, checking or any of the latter's bank accounts, she answered in the negative as she has no access to the accounts of their clients.

6. Testimony of Mr. Maximo H. Simbulan V:[187]

Mr. Maximo H. Simbulan V, the Senior Vice President Country Tax Counsel of Citibank Philippines Branch, testified that he is primarily responsible for all tax compliance and other tax related requirements of Citibank. He stated that sometime in July 2014, his office received a *letter request*[188] from the BIR requesting for the issuance of a certification on certain income payments that the bank made to the accused who is one of their accredited merchants under the trade name Sacred Heart Dental Center for taxable years 2011, 2012 and 2013. Attached to the said letter request are relevant portions of the Alpha List that the Citibank filed with the BIR for the relevant taxable years. He explained that the said Alpha List contains a summary listing of all income payments that the Citibank made for a given period – detailing names of the income payees or recipients, the TIN of those payees, the amount of income payments that the

[186] Exhibit "P-16", Docket – Vol. II (CTA Crim. Case No. O-572), pp. 708 to 711; Exhibit "P-18", Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 875 to 878; Exhibit "P-13", Docket – Vol. I (CTA Crim. Case No. O-610), p. 580.
[187] TSN taken at the hearing held on January 8, 2018, pp. 9 to 21, Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 706 to 718 *vis-à-vis* TSN taken at the hearing held on January 17, 2018, (CTA Crim. Case No. O-572), pp. 13 to 20.
[188] Exhibit "P-17", Docket – Vol. II (CTA Crim. Case No. O-572), pp. 712 to 715; Exhibit "P-19", Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 879 to 882; Exhibit "P-14", Docket – Vol. I (CTA Crim. Case No. O-610), p. 581.

Citibank made, and the corresponding creditable withholding taxes that the bank imposed on those payments for the relevant period. Thus, pursuant to the BIR's letter request, he issued a *Certification*[189] containing the income payments and the corresponding taxes withheld from the accused. And in the course of issuing the said Certification, he testified that he did not examine the accused's deposit, savings, checking or any of the latter's bank accounts since he has no access to the deposit accounts of their clients and the same were, accordingly, not necessary for purposes of preparing the said Certification.

When he was asked by this Court as to nature of the income payments involved in these cases, he answered, credit card sales – the gross payment that the bank made to the said merchant. As such, their bank imposed a tax of 1.1% on the said sales.[190]

7. Testimony of Atty. Mary Ann B. Del Prado-Arañas:[191]

Atty. Mary Ann B. Del Prado- Arañas testified that she is the in-house counsel of Banco de Oro Inc. and that Ms. Lily Roxas authorized her to testify on her behalf in identifying the Certification dated July 17, 2014 that the latter issued with the BIR.

Moreover, in a bid to establish the guilt of the accused beyond reasonable doubt, the prosecution presented the following documentary evidence which have been admitted by the three Divisions of the Court,[192] to wit:

1. Resolution dated October 15, 2015 of the DOJ;[193]
2. Resolution dated June 22, 2016 of the DOJ;[194]
3. Referral Letter dated August 28, 2014 signed by

[189] Exhibit "P-11", Docket – Vol. II (CTA Crim. Case No. O-572), pp. 690 to 691; Exhibit "P-3", Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 849 to 850; Exhibit "P-9", Docket – Vol. I (CTA Crim. Case No. O-610), pp. 461 to 462.

[190] TSN taken at the hearing held on January 17, 2018 (CTA Crim. Case No. O-572), p. 20.

[191] TSN taken at the hearing held on May 2, 2018 (CTA Crim. Case No. O-610), pp. 4 to 16.

[192] Resolution dated March 16, 2018, issued by the Second Division of the Court, Docket – Vol. II (CTA Crim. Case No. O-572), pp. 719 to 720; Resolution dated August 31, 2018, issued by the Third Division of this Court, Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 912 to 913; Resolution dated July 27, 2018, issued by the First Division of this Court, Docket – Vol. II (CTA Crim. Case No. O-610), pp. 773 to 774.

[193] Exhibit "P-1", Docket – Vol. I (CTA Crim. Case No. O-572), pp. 8 to 12; Exhibit "P-1", Docket – Vol. 1 (CTA Crim. Case No. O-573), pp. 373 to 377; Exhibit "P-1", Docket – Vol. I (CTA Crim. Case No. O-610), pp. 14 to18.

[194] Exhibit "P-2", Docket – Vol. II (CTA Crim. Case No. O-572), pp. 608 to 610; Exhibit "P-2", Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 767 to 769; Exhibit "P-2", Docket – Vol. I (CTA Crim. Case No. O-610), pp. 455 to 457.

the Commissioner of Internal Revenue;[195]

4. Joint Complaint-Affidavit dated August 28, 2014 with attachments;[196]
5. Computation of Deficiency Income Tax for taxable year 2013;[197]
6. Joint Reply-Affidavit dated April 24, 2015;[198]
7. Certification dated August 12, 2014 issued by the Department of Trade and Industry through Gregory L. Domingo;[199]
8. Certified Integrated Tax System (ITS) Print-out of Mr. Alexander Eduardo Reyes Garcia's BIR Registration;[200]
9. Certification dated July 17, 2014 issued by the Banco De Oro through Rogel A. Raya and Lily T. Roxas confirming the withholding tax for the year 2013;[201]
10. Certification dated July 17, 2014 issued by the Banco De Oro through Rogel A. Raya and Lily T. Roxas confirming the withholding tax for the year 2012;[202]
11. Certification dated July 17, 2014 issued by the Banco De Oro through Rogel A. Raya and Lily T. Roxas confirming the withholding tax for the year 2011;[203]
12. Certification dated July 18, 2014 issued by the Citibank N.A. through Atty. Maximo H. Simbulan V certifying its quarterly payments to Mr. Alexander

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[195] Exhibit "P-3", Docket – Vol. II (CTA Crim. Case No. O-572), pp. 611 to 613; Exhibit "P-3", Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 770 to 772; Exhibit "P-3", Docket – Vol. I (CTA Crim. Case No. O-610), pp. 481 to 483; Exhibit "P-4", Docket – Vol. I (CTA Crim. Case No. O-610), pp. 483 to 496.

[196] Exhibit "P-4", Docket – Vol. II (CTA Crim. Case No. O-572), pp. 614 to 626; Exhibit "P-4", Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 773 to 785; Exhibit "P-4", Docket – Vol. I (CTA Crim. Case No. O-610), pp. 484 to 496.

[197] Exhibit "P-4"-a, Docket – Vol. II (CTA Crim. Case No. O-572), pp. 620 to 621; Exhibit "P-4-a", Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 778 to 779; Exhibit "P-4-a", Docket – Vol. I (CTA Crim. Case No. O-610), pp. 489 to 490.

[198] Exhibit "P-5", Docket – Vol. 1 (CTA Crim. Case No. O-573), pp. 69 to 81.

[199] Exhibit "P-6", Docket – Vol. II (CTA Crim. Case No. O-572), p. 685; Exhibit "P-6", Docket – Vol. 2 (CTA Crim. Case No. O-573), p. 844; Exhibit "P-6", Docket – Vol. I (CTA Crim. Case No. O-610), p. 458.

[200] Exhibit "P-7", Docket – Vol. II (CTA Crim. Case No. O-572), p. 686; Exhibit "P-7", Docket – Vol. 2 (CTA Crim. Case No. O-573), p. 845; Exhibit "P-7", Docket – Vol. I (CTA Crim. Case No. O-610), p. 459.

[201] Exhibit "P-8", Docket – Vol. II (CTA Crim. Case No. O-572), p. 687; Exhibit "P-8", Docket – Vol. 2 (CTA Crim. Case No. O-573), p. 846.

[202] Exhibit "P-9", Docket – Vol. II (CTA Crim. Case No. O-572,), p. 688; Exhibit "P-8", Docket – Vol. I (CTA Crim. Case No. O-610), p. 460.

[203] Exhibit "P-10", CTA Crim. Case No. O-572, Docket – Vol. II, p. 689.

Eduardo Reyes Garcia;[204]
13. Letter of Authority dated August 14, 2014;[205]
14. Annual Income Tax Return for taxable year 2011 with attached Financial Statements; [206]
15. Annual Income Tax Return for taxable year 2012 with attached Financial Statements;[207]
16. Annual Income Tax Return for taxable year 2013 with attached Financial Statements;[208]
17. NID Memo Assignment No. KJH/SCD 2014-05-30-0334 dated May 30, 2014;[209]
18. Access Letter dated July 15, 2014, addressed to Rebe D. Detablan, Revenue District Officer of RDO No. 27 – Caloocan City;[210]
19. Access Letter dated July 14, 2014, addressed to the President of BDO Unibank, Inc.;[211]
20. Access Letter dated July 14, 2014, addressed to the President of Citibank, N.A.;[212]
21. Access Letter dated January 16, 2017 addressed to Vivian E. Halili, Chief, Document Processing Division, Revenue Region No. 5 – Caloocan City[213]
22. PAN dated September 8, 2016;[214] and
23. FLD dated July 5, 2017.[215]

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[204] Exhibit "P-11", Docket – Vol. II (CTA Crim. Case No. O-572), pp. 690 to 691; Exhibit "P-11", Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 849 to 850; Exhibit "P-9", Docket – Vol. I (CTA Crim. Case No. O-610), pp. 461 to 462.
[205] Exhibit "P-12", Docket – Vol. II (CTA Crim. Case No. O-572), p. 692; Exhibit "P-14", Docket – Vol. 2 (CTA Crim. Case No. O-573), p. 851; Exhibit "P-11", Docket – Vol. I (CTA Crim. Case No. O-610), p. 464.
[206] Exhibit "P-13", Docket – Vol. II (CTA Crim. Case No. O-572), pp. 693 to 705.
[207] Exhibit "P-12", Docket – Vol. I (CTA Crim. Case No. O-610), pp. 465 to 478.
[208] Exhibit "P-15", Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 852 to 872.
[209] Exhibit "P-14", Docket – Vol. II (CTA Crim. Case No. O-572), p. 706; Exhibit "P-16", Docket – Vol. 2 (CTA Crim. Case No. O-573), p. 873; Exhibit "P-10", Docket – Vol. I (CTA Crim. Case No. O-610), p. 463.
[210] Exhibit "P-17", Docket – Vol. 2 (CTA Crim. Case No. O-573), p. 874; Exhibit "P-15", Docket – Vol. II (CTA Crim. Case No. O-572), p. 707; Exhibit "P-18", Docket – Vol. I (CTA Crim. Case No. O-610), p. 603.
[211] Exhibit "P-16", Docket – Vol. II (CTA Crim. Case No. O-572), pp. 708 to 711; Exhibit "P-18", Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 875 to 878; Exhibit "P-13", Docket – Vol. I (CTA Crim. Case No. O-610), p. 580.
[212] Exhibit "P-17", Docket – Vol. II (CTA Crim. Case No. O-572), pp. 712 to 715; Exhibit "P-19", Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 879 to 882; Exhibit "P-14", Docket – Vol. I (CTA Crim. Case No. O-610), p. 581.
[213] Exhibit "P-18", Docket – Vol. II (CTA Crim. Case No. O-572), p. 716; Exhibit "P-20", Docket – Vol. 2 (CTA Crim. Case No. O-573), p. 883; Exhibit "P-17", Docket – Vol. I (CTA Crim. Case No. O-610), p. 602.
[214] Exhibit "P-19", Docket – Vol. II (CTA Crim. Case No. O-572), pp. 773 to 779; Exhibit "P-22", Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 884 to 890; Exhibit "P-15", Docket – Vol. I (CTA Crim. Case No. O-610), pp. 582 to 588.
[215] Exhibit "P-20", Docket – Vol. II (CTA Crim. Case No. O-572), pp. 780 to 786; Exhibit "P-23", Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 891 to 903; Exhibit "P-16", Docket – Vol. I (CTA Crim. Case No. O-610), pp. 589 to 601.

EVIDENCE FOR THE ACCUSED

To counter the foregoing evidence of the prosecution, three (3) witnesses were presented by the defense, namely: (1) Ms. Lourdes G. De Las Alas; (2) Atty. Salvador B. Britanico; and (3) Dr. Alexander R. Garcia, the accused himself.

Their testimonies during their direct examination, cross-examination and responses to clarificatory questions are summarized as follows:

1. Testimony of Lourdes G. De Las Alas:[216]

Ms. Lourdes G. De Las Alas, accused's Secretary, testified by way of Judicial Affidavit that she has been the Secretary of the accused for more than ten (10) years. According to her, it is the staff of the Sacred Heart Dental Clinic who has physical custody of the records of the operation of the dental clinic. She also mentioned that it was Mr. Emmanuel Miranda, the accused's accountant, who prepared the subject ITRs. She continued that, in preparing the said returns, she was instructed by the accused to collate the necessary papers for the same and hand them over to Mr. Emmanuel Miranda's Assistant, Ms. Claire Miranda, who would drop by to their clinic to get the said documents. She further attested that the accused did not examine anymore the records which she forwarded to Ms. Claire Miranda as he trusted his own staff on the said matter.

On cross-examination, Ms. De Las Alas was not able to show any documentary evidence proving the following: (1) that she is the Secretary of the accused; (2) that Mr. Emmanuel Miranda is the accused's Accountant; (3) that Ms. Claire Miranda is the Assistant of Mr. Miranda; (4) that the subject ITRs were indeed prepared by Mr. Miranda; and (5) that the accused has a heart problem and underwent angioplasty. She further testified that the accused had five (5) staff during the subject taxable years and that they all tried to help lighten his job by doing things by themselves. On re-direct examination, she testified that Ms. Claire Miranda visited their clinic once a month, and that the latter is the niece of Mr. Emmanuel Miranda.[217]

[216] Exhibit "A-4", Docket – Vol. II (CTA Crim. Case No. O-610), pp. 779 to 784; Judicial Affidavit of Lourdes De Las Alas, Docket – Vol. II (CTA Crim. Case No. O-572), pp. 817 to 822; TSN taken at the hearing held on August 1, 2018 (CTA Crim. Case No. O-610), pp. 17 to 25.
[217] TSN taken at the hearing held on August 1, 2018 (CTA Crim. Case No. O-610), pp. 16 to 25.

2. Testimony of Atty. Salvador B. Britanico:[218]

Atty. Salvador B. Britanico, counsel of the accused, testified by way of Judicial Affidavit, that he initially entered as collaborating counsel of Atty. Rafael J. Bautista in the instant cases. However, the latter opted to withdrew and, thus, he was left as the sole counsel of the accused. Based on the interview conducted by him with the accused, he learned from the latter it is the accused's accountant, Mr. Miranda, who had been preparing his Income Tax Returns. He also mentioned that the pertinent papers used by his accountant in computing the tax due for the government had been furnished by the accused's Secretary, Ms. De Las Alas. Thereafter, said documents were forwarded by Ms. De Las Alas to the Secretary of Mr. Miranda, Ms. Claire Miranda. He also claimed that the accused told him that he had no participation in the preparation of his Income Tax Returns other than affixing his signature therein on the ground that the accused trusted his Secretary De Las Alas and his Accountant Miranda that they would be preparing correctly his Income Tax Returns.

Atty. Britanico further testified that when he informed the accused of the possible technical reason for the dismissal of the instant cases, particularly, the filing of the *Joint Complaint-Affidavit* with the DOJ and the filing of *Informations* before the Court, prior to the issuance of the FAN/FLD, accused told him that he would rather settle and pay his tax liabilities after the same has been correctly determined. Thus, he advised the accused to pursue the latter's plan of requesting his accountant to re-compute his income tax liabilities, which the accused did. Thus, Atty. Britanico submitted a letter-proposal for settlement dated July 19, 2019 on the basis of Mr. Miranda's revised computation.

Atty. Britanico likewise confirmed that all his answers in his Judicial Affidavit were based on what the accused has told him.[219]

3. Testimony of Dr. Alexander R. Garcia:[220]

[218] Judicial Affidavit of Salvador B. Britanico, Docket – Vol. II (CTA Crim. Case No. 0-572), pp. 859 to 863; TSN taken at the hearing held on August 14, 2019 (CTA Crim. Case No. O-572), pp. 8 to 10.
[219] TSN taken at the hearing held on August 14, 2019 (CTA Crim. Case No. O-572), p. 10.
[220] Exhibit "A-4", Docket – Vol. II (CTA Crim. Case No. O-572), pp. 884 to 889; TSN taken at the hearing held on September 11, 2019 (CTA Crim. Case No. O-572), pp. 6 to 10.

Dr. Alexander R. Garcia, the accused himself, testified by way of Judicial Affidavit, that he is a Dentist by profession, and that he owns Sacred Heart Dental Center with business address at 129 Asuncion St., Morning Breeze Subdivision, Caloocan City. He claimed that he yearly filed his ITRs and paid the corresponding taxes thereon. He said that it is his staff who personally managed and kept the records of the operation of his dental clinic. He further testified that it is his secretary who collates the necessary papers for the preparation of his ITRs and, thereafter, turn over the same to the secretary of his accountant, Ms. Claire Miranda. He likewise claimed that he did not check the documents that had been forwarded to Ms. Miranda as he trusted his Staff on the said matter. He also stated that he is not familiar in the preparation of his financial statements as he has no background in accounting. Thus, he entrusted the preparation of the same to his accountant, Mr. Emmanuel Miranda. Accused continued that, although his counsel told him that there is a legal reason for the dismissal of the crime charged against him, he is more willing to settle and pay his tax liabilities after the same has been correctly determined. Thus, he asked his accountant to re-compute his income tax liabilities. After which, he submitted the revised computation prepared by his accountant to his counsel, Atty. Britanico who, in turn, forwarded the letter proposal for settlement, with the revised computation, to BIR Deputy Commissioner Alfredo V. Misajon.

Accused confirmed that his Secretary and Accountant had been working with him for more than ten (10) years. He also confirmed that he had over-all supervision of his staff. When the accused was asked if the subject ITRs failed to reflect the correct amount of income and taxes, he answered, "Yes, I am willing to pay the deficiency." He also confirmed the receipt of the subject FAN.[221]

Notably, no *Formal Offer of Evidence* was filed by the accused in the instant consolidated cases.[222]

ARGUMENTS OF THE PARTIES

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[221] TSN taken at the hearing held on September 11, 2019 (CTA Crim. Case No. O-572), pp. 6 to 7.

[222] Records Verification Report dated June 2, 2020 issued by the Judicial Records Division of this Court, Docket – Vol. III (CTA Crim. Case No. O-572), p. 1018.

Prosecution's arguments:

The prosecution mainly argues in its *Memorandum* that the accused who is a dentist by profession and who owns Sacred Heart Dental Center is required to declare all his income for each taxable year. As such, he is expected to supply correct and accurate information in his ITR as required under Section 74 (A) of the NIRC of 1997, as amended. However, based on the data gathered, the declared income of the accused in the subject ITRs amounted only to ₱891,0100.00 for taxable year 2011, ₱999,300.00 for taxable year 2012, and ₱1,089,600.00 for taxable year 2013, which were way lower than the amounts of gross payments/income received by the accused as reflected in the Certifications issued by the BDO and Citibank, particularly, in the amounts of ₱14,188,994.00, ₱10,648,564.00, and ₱17,611,300.00, for taxable years 2011, 2012, and 2013, respectively.

The prosecution likewise argues that the accused cannot be permitted to invoke an excuse that it was his accountant who prepared the ITRs, thus, negating the element of willfulness on his part, as the amounts in these cases involved millions of pesos.

Moreover, the prosecution insists that failure on the part of the accused to declare in the subject ITRs the entire amount of gross income that he actually received for taxable years 2011, 2012 and 2013, is tantamount to a willful failure to supply correct and accurate information provided under Section 255 of the NIRC of 1997, as amended.

The prosecution further claims that the violation committed by the accused under the NIRC of 1997, as amended, which is a special law, cannot be overcome by a show of good faith.

Lastly, the prosecution claims that there was no violation of the Bank Secrecy Law in the instant consolidated cases as there was no information relating to accused's bank deposit that have been divulged in the Certifications issued by the said banks.

Accused's counter-arguments:

In the *Memorandum* filed in support of his *Alternative Motions for Reconsideration of the Order of October 9, 2019 or to Dismiss the*

Case with Urgent Ex-Parte Motion to Temporarily Suspend Other Proceedings and Urgent Motion to Admit the Amended Alternative Motions for Reconsideration of the Order of October 9, 2019 or Motion to Dismiss with Urgent Ex-Parte Motion to Suspend Other Proceedings, the accused denies the charges filed against him as he did not wilfully and intentionally act to defraud the government of the taxes due to it. He claims that the alleged deficiencies, if any, in his tax payments were occasioned by the unintentional lapses by his Secretary in gathering the pertinent papers which have been used by his Accountant in computing his tax due in the subject ITRs and, in turn, relied on by accused.

The accused further claims that the instant cases should be dismissed as the same were filed prior to the issuance of the PAN and FAN/FLD, which for him is a transgression of his right to substantial and procedural right due process.

Finally, accused argues that the BIR violated RA No. 1405 by illegally obtaining an information related to his bank deposits in filing the instant criminal cases.

THE COURT'S RULING

The accused was not deprived of his constitutional right to due process.

To recall, the accused claims that the instant cases should be dismissed as the same were filed prior to the issuance of the PAN and FAN/FLD, which, accordingly, is a transgression of his right to due process.

The Court does not agree.

In enforcing the collection of unpaid taxes, Section 205, in relation to Section 222(a), both of the NIRC of 1997, provides for two (2) remedies. One is through summary administrative remedies (*i.e.,* distraint and/or levy) and the other is through judicial remedies (*i.e.,* filing of criminal or civil action against the erring taxpayer). Said Sections respectively read as follows: *gr*

Section 205, NIRC of 1997:

"SEC. 205. *Remedies for the Collection of Delinquent Taxes.* — **The civil remedies for the collection of internal revenue taxes, fees or charges, and any increment thereto resulting from delinquency shall be:**

(a) By distraint of goods, chattels or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts, and interest in and rights to personal property, and by levy upon real property and interest in or rights to real property; and

(b) **By** civil or **criminal action.**

Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes: xxx." *(Emphases added)*

Section 222, NIRC of 1997:

"SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —

(a) In the case of a false and fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or **a proceeding in court for the collection of such tax may be filed without assessment,** at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof." *(Emphasis added)*

In *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*,[223] the Supreme Court had the occasion to explain in detail the difference between the above-stated remedies in this wise:

"The Tax Code provides two types of remedies to enforce the collection of unpaid taxes, to wit: (a) **summary administrative remedies**, such as the distraint and/or levy of taxpayer's property; and/or (b) **judicial remedies**, such as the filing of a criminal or civil action against the erring taxpayer.

Verily, pursuant to the lifeblood doctrine, the Court has allowed tax authorities ample discretion to avail themselves of the most expeditious way **to collect the taxes, including summary processes**, with as little interference as possible. However, the

[223] G.R. Nos. 197945 and G.R. Nos. 204119-20, July 9, 2018.

> Court, at the same time, has not hesitated to strike down these processes in cases wherein tax authorities disregarded due process. **The BIR's power to collect taxes must yield to the fundamental rule that no person shall be deprived of his/her property without due process of law. The rule is that taxes must be collected reasonably and in accordance with the prescribed procedure.**
>
> **In the normal course of tax administration and enforcement, the BIR must first make an assessment then enforce the collection of the amounts so assessed.** 'An assessment is not an action or proceeding for the collection of taxes. x x x **It is a step preliminary**, but essential to warrant distraint, if still feasible, and, also, to establish a cause for judicial action.' **The BIR may summarily enforce collection only when it has accorded the taxpayer administrative due process, which vitally includes the issuance of a valid assessment**. A valid assessment sufficiently informs the taxpayer in writing of the legal and factual bases of the said assessment, **thereby allowing the taxpayer to effectively protest the assessment and adduce supporting evidence in its behalf.**
>
> xxx xxx xxx
>
> **Unlike summary administrative remedies, the government's power to enforce the collection through judicial action is not conditioned upon a previous valid assessment.** Sections 318[224] and 319(a)[225] of the 1977 NIRC expressly allowed the institution of court proceedings for collection of taxes without assessment within five years from the filing of the tax return and 10 years from the discovery of falsity, fraud, or omission, respectively.
>
> **A judicial action for the collection of a tax is begun: (a) by the filing of a complaint with the court of competent jurisdiction, or (b) where the assessment is appealed to the Court of Tax Appeals, by filing an answer to the taxpayer's petition for review wherein payment of the tax is prayed for.**"

It is clear from the foregoing that if the BIR opted to enforce collection through summary administrative remedies, it must first comply with the due process requirements laid down in Section 228 of the 1997 NIRC in issuing assessment notices. Noncompliance therewith is tantamount to the denial of taxpayer's right to due process and, thus, effectively voiding the assessment/s issued against the latter. **But if the BIR decided to enforce the collection of unpaid tax through judicial action, particularly**

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[224] Now Section 203 of the NIRC of 1997.
[225] Now Section 222(a) of the NIRC of 1997.

through the filing of a criminal charge before the DOJ, <u>an assessment is not necessary</u>.[226]

Moreover, there is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution under the NIRC of 1997, as held by the Court in *Ungab vs. Cusi, Jr., et al.,*[227] to wit:

> "xxx. What is involved here is not the collection of taxes where the assessment of the Commissioner of Internal Revenue may be reviewed by the Court of Tax Appeals, but a criminal prosecution for violations of the National Internal Revenue Code which is within the cognizance of courts of first instance. **While there can be no civil action to enforce collection before the assessment procedures provided in the Code have been followed, there is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution under the Code.**" *(Emphasis added)*

Thus, the filing of complaint before the DOJ prior to the issuance of the LOA, PAN and FAN/FLD, did not violate the accused's right to due process. After all, the accused has still the opportunity to be heard and deny the charges filed against him through the filing of counter-affidavit and evidence before the prosecutor who will later on decide if there exists a probable cause for purpose of filing an *Information* before the appropriate court.

Elements of the crime charged.

Having settled the foregoing matter, the Court shall now determine whether the accused failed to supply correct and accurate information in his ITRs for taxable years 2010, 2011 and 2012, pursuant to Section 255 of the NIRC of 1997, which reads as follows:

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

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[226] *Adamson, et al., vs. Court of Appeals,* G.R. Nos. 120935 and 124557, May 21, 2009.
[227] G.R. Nos. L-41919-24, May 30, 1980.

> withhold or remit taxes withheld, or refund excess taxes withheld on compensation, **at the time or times required by law or rules and regulations** shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.
>
> xxx xxx xxx." *(Emphases Supplied)*

Based on the foregoing provision, for one to be convicted for the offense of willful failure to supply correct and accurate information, it necessitates the concurrence of the following elements, to wit:

1. The accused is a person required under the NIRC or rules and regulations to supply correct and accurate information;
2. The accused failed to supply correct and accurate information at the time or times required by law or rules and regulations; and
3. Such failure to supply correct and accurate information is willful.

The accused is required under the NIRC of 1997, as amended, to supply correct and accurate information in his annual ITRs; and has failed to do so, at the time required by law.

Under Sections 24 and 51 of the NIRC of 1997, as amended, a resident citizen who is engaged in the practice of a profession within the Philippines is obligated to file an income tax return on his income from all sources, regardless of the amount of his gross income. The pertinent portions of the said provisions read as follows:

> "SEC. 24. *Income Tax Rates.* —
>
> (A) *Rates of Income Tax on Individual Citizen and Individual Resident Alien of the Philippines.* —
>
> (1) An income tax is hereby imposed: ȷr

(a) On the taxable income defined in Section 31 of this Code, other than income subject to tax under Subsections (B), (C) and (D) of this Section, derived for each taxable year from all sources within and without the Philippines by every individual citizen of the Philippines residing therein."

"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

(C) *When to File.* —

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

xxx xxx xxx."

As a corollary thereto, Section 32 of the NIRC of 1997 defines gross income as *"all income derived from whatever source, including but not limited to xxx (2) gross income derived from the conduct of trade or business or the exercise of a profession, xxx."* Moreover, and relative to the above-quoted Section 24(1)(a), Section 31 of the NIRC of 1997 reads:

"SEC. 31. *Taxable Income Defined.* — The term 'taxable income' means the pertinent items of gross income specified in this Code, less the deductions and/or personal and additional exemptions, if any, authorized for such types of income by this Code or other special laws."

Based on the foregoing provisions, it is clear that a taxpayer is duty bound to declare his or her income from all sources, including, but not limited to, the conduct of business or the exercise of profession, via the filing of an income tax return on or before the 15th day of April each year covering the said income for the preceding taxable year.

In this case, it is undisputed that the accused is a dentist by profession, and is operating under the business name "Sacred Heart Dental Center", with address at 129 Asuncion Street, Morning Breeze Subdivision, Brgy. 84 Zone 8, Caloocan City.[228] Thus, with these circumstances and pursuant to the above-quoted provisions of the NIRC of 1997, as amended, **the accused is duty bound to declare his income from all sources, including, but not limited to the income derived from his dental clinic.** As such, the accused is a person required under the NIRC to supply a correct and accurate information about all his income earned in every taxable year. Correspondingly, the *first* element for the commission of the subject offense was established in this case.

Moreover, records show that the concerned ROs resorted to third-party information when they conducted their preliminary investigation against the accused. This was done by sending Access Letters to BDO[229] and Citibank, N.A.[230], for them to issue a certification as to the amount of income payments that they made and taxes withheld by them on a quarterly basis on the account of the accused for the concerned taxable years.[231]

In response, BDO's First Vice President of Credit Card Accounting, Ms. Lily Roxas, issued three (3) *Certifications* for taxable years 2011, 2012, and 2013,[232] while Citibank, N.A.'s Senior Vice

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[228] Exhibit "P-6", Docket – Vol. II (CTA Crim. Case No. O-572), p. 685; Exhibit "P-6", Docket – Vol. 2 (CTA Crim. Case No. O-573), p. 844; Exhibit "P-6", Docket – Vol. I (CTA Crim. Case No. O-610), p. 458; Exhibit "P-7", Docket – Vol. II (CTA Crim. Case No. O-572), p. 686; Exhibit "P-7", Docket – Vol. 2 (CTA Crim. Case No. O-573), p. 845; Exhibit "P-7", Docket – Vol. I (CTA Crim. Case No. O-610), p. 459. Refer also to Par. 5, Pre-Trial Order dated June 21, 2017, Docket – Vol. 1 (CTA Crim. Case No. O-573), p. 532; Par. 5, Pre-Trial Order dated November 21, 2017, Docket – Vol. II (CTA Crim. Case No. O-610), p. 653.

[229] Exhibit "P-16", Docket – Vol. II (CTA Crim. Case No. O-572), pp. 708 to 711; Exhibit "P-18", Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 875 to 878; Exhibit "P-13", Docket – Vol. I (CTA Crim. Case No. O-610), p. 580.

[230] Exhibit "P-17", Docket – Vol. II (CTA Crim. Case No. O-572), pp. 712 to 715; Exhibit "P-19", Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 879 to 882; Exhibit "P-14", Docket – Vol. I (CTA Crim. Case No. O-610), p. 581.

[231] Par. 6, Exhibit "P-4", Docket – Vol. II (CTA Crim. Case No. O-572), p. 616.

[232]

CERTIFICATION	**TAXABLE YEAR**	**EXHIBIT REFERENCE**
BDO Certification dated July 17, 2014	2013	Exhibit "P-8", Docket – Vol. II (CTA Crim. Case No. O-572), p. 687; Exhibit "P-8", Docket – Vol. 2 (CTA Crim. Case No. O-573), p. 846.

President Country Tax Counsel Maximo H. Simbulan V sent a *reply letter*,[233] for the same three (3) taxable years (collectively referred to hereafter as "Certifications").

The issuers of the said Certifications were even presented by the prosecution to identify the same and to testify on the matters stated therein. Ms. Roxas declared that the accused is one of the accredited merchants of BDO and, thus, authorized to accept credit card payments in his business.[234] She also amply explained her basis in issuing the subject certifications in this wise:

> "JUSTICE LIBAN
> Okay, what is the basis of that certification?
>
> x x x x
>
> MS. ROXAS
> Your Honors, we have a system in our bank which records all the credit card transactions of each merchant. So every month, we are required to submit to BIR the, for each transaction, we withhold .5% from each sale. So the total sales for the month, we report it to BIR based on 1601e the total taxes that withheld, that the bank withheld from the total sales of all our merchants and then we submit an alpha list of all these merchants to BIR.
>
> JUSTICE LIBAN
> Is that a monthly thing? x x x
>
> MS. ROXAS
> Yes, your Honor, a monthly one and then we are required to submit an annual list also, summarizing all the transactions for the year of each merchant.
>
> JUSTICE LIBAN
> That is only for the credit card used, for the credit cards?
>
> MS. ROXAS
> That form only includes all the taxes that the bank withheld, not only for credit card transactions, even for suppliers, we withhold

BDO Certification dated July 17, 2014	2012	Exhibit "P-9", Docket – Vol. II (CTA Crim. Case No. O-572), p. 688; Exhibit "P-8", Docket – Vol. 2 (CTA Crim. Case No. O-573), p. 847; Exhibit "P-8", Docket – Vol. I (CTA Crim. Case No. O-610), p. 460.
BDO Certification dated July 17, 2014	2011	Exhibit "P-10", Docket – Vol. II (CTA Crim. Case No. O-572), p. 689; Exhibit "P-10", Docket – Vol. 1 (CTA Crim. Case No. O-573), p. 848.

[233] Exhibit "P-11", Docket – Vol. II (CTA Crim. Case No. O-572), pp. 690 to 691; Exhibit "P-11", Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 849 to 850; Exhibit "P-9", Docket – Vol. I (CTA Crim. Case No. O-610), pp. 461 to 462.

[234] TSN taken at the hearing held on January 17, 2018 (CTA Crim. Case No. O-572), p. 10.

> taxes. If we pay, suppliers, we withhold final taxes. All the taxes that the bank withheld. x x x." [235]

On the other hand, Atty. Simbulan identified the nature of income payments payment that the accused received from the Citibank, N.A., viz:

> "JUSTICE CASTAÑEDA:
> What is the nature of the income payments?
>
> ATTY. SIMBULAN:
> It's payment to a merchant in a gross payment about a credit card company to its merchants. So imposed a tax of 1.1%
>
> JUSTICE CASTAÑEDA:
> What is the nature of the income payments? What kind of income is that?
>
> ATTY. SIMBULAN:
> Credit Card sales, Your Honors. It's a gross payment that we made to said merchant as credit card company."[236]

Thus, after comparing the Service Income/Receipts declared per ITR/FS vis-à-vis the income payments reflected in the said Certifications, the determined underdeclaration of income for the subject taxable years were summarized by the prosecution, as shown below:

	2011	2012	2013
Service Income/Receipts per ITR/FS	₱ 891,000.00	₱ 999,300.00	₱ 1,089,600.00
Income Payments per Third Party Information			
BDO Unibank, Inc.	3,296,284.00	3,133,446.00	1,844,560.00
Citibank, N.A.	10,892,710.00	7,515,118.00	15,766,740.00
Total	14,188,994.00	10,648,564.00	17,611,300.00
Discrepancy	₱ 13,297,994.00	₱ 9,649,246.00	₱16,521,700.00
Percentage of Underdeclaration	1492%	966%	1516%[237]

By just looking at the foregoing table, the huge disparity between the Service Income/Receipts per ITR/FS declared in his ITRs vis-à-vis the income payments reflected in the said Certifications was glaring enough. Thus, there is a manifest showing that accused had underdeclared his income for the subject taxable years.

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[235] TSN dated December 6, 2017, pp. 35 to 36, Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 687 to 688.
[236] TSN dated January 17, 2018 (CTA Crim. Case No. O-572), p. 20.
[237] Par. 8, Exhibit "P-4", Docket – Vol. II (CTA Crim. Case No. O-572), p. 617.

Moreover, no less than the accused himself categorically admitted that he failed to reflect the correct and accurate amount of income taxes in the subject returns. Relevant portions of his testimony are herein quoted for ready reference, to wit:

> "PROS. TORTOLES:
>
> **Do you admit, Mr. Garcia that the income tax returns which you identified awhile ago failed to reflect the correct amount of income and taxes that is why you are willing to pay whatever deficiency will be**?
>
> WITNESS:
>
> **Yes, I am willing to pay the deficiency.**
>
> PROS. TORTOLES:
>
> **And you admit that income tax returns contain in correct amount of taxes?**
>
> ATTY. BRITANICO:
>
> That's admitted, You Honors. Actually, precisely, he states that he has this proposal.... (interrupted)
>
> JUSTICE CASTAÑEDA:
>
> Let the witness answer.
>
> PROS. TORTOLES:
>
> Do you confirm?
>
> WITNESS:
>
> **Yes.**"[238] *(Emphases added)*

Such admission of the accused in open court is a judicial admission,[239] and thus, binding upon the accused, pursuant to Section 4, Rule 129 of the Revised Rules of Court which states:

> "Sec. 4. *Judicial admissions.* — An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made."

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[238] TSN dated September 11, 2019 (CTA Crim. Case No. O-572), pp. 9 to 10.
[239] *People vs. Lacson*, G.R. No. 149453, October 7, 2003.

In fine, with the foregoing evidence presented by the prosecution and admission made by the accused himself, it cannot be denied that he, indeed, failed to supply correct and accurate information in the subject ITRs.

Considering that the accused failed to declare the income payments reflected in the above-stated Certifications issued by the representatives of BDO and Citibank, N.A., when he filed his ITRs for taxable years 2011, 2012, and 2013, on April 16, 2012,[240] April 12, 2013,[241] and April 14, 2014,[242] respectively, in accordance with Section 51(C)(1) of the NIRC of 1997, the *second* element of the crime has been sufficiently proven in these consolidated cases.

The accused's failure to supply correct and accurate information was willful.

Having satisfied the first two elements, it is now crucial for the Court to ascertain whether the accused willfully and intentionally failed to supply correct and accurate information in his ITRs for taxable years 2011, 2012 and 2013.

The term "willful" is defined in Black's Law Dictionary[243] as one *"done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose to either to disobey or to disregard the law."* Inasmuch as the third element involves a "state of mind" of the erring taxpayer, the same need not be established by direct evidence, but may be inferred from the circumstances attendant in each case.

Citing the case of *Antonio Planteras, Jr. vs. People,*[244] the Supreme Court in the case of *People vs. Sanota y Sarmiento, et al.,*[245] had the occasion to expound how the finding of guilt in criminal cases may be established by circumstantial evidence in this wise:

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[240] Exhibit "P-13", Docket – Vol. II (CTA Crim. Case No. O-572), pp. 693 to 705.
[241] Exhibit "P-12", Docket – Vol. I (CTA Crim. Case No. O-610), pp. 465 to 478.
[242] Exhibit "P-15", Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 852 to 872.
[243] Black's Law Dictionary, 5th ed., p. 1434, cited in *People of the Philippines vs. Kintanar,* CTA EB Crim. Case No. 006 (CTA Crim. Case No. O-033 and 0-034), December 3, 2010.
[244] G.R. No. 238889, October 3, 2018.
[245] G.R. No. 233659, December 10, 2019.

> "A number of circumstantial evidence may be so credible to establish a fact from which it may be inferred, beyond reasonable doubt, that the elements of a crime exist and that the accused is its perpetrator. There is no requirement in our jurisdiction that only direct evidence may convict. After all, evidence is always a matter of reasonable inference from any fact that may be proven by the prosecution provided the inference is logical and beyond reasonable doubt.
>
> Rule 113, Section 4 of the Rules on Evidence provides three (3) requisites that should be established to sustain a conviction based on circumstantial evidence:
>
>> Section 4. Circumstantial evidence, when sufficient. — Circumstantial evidence is sufficient for conviction if:
>>
>> (a) There is more than one circumstance;
>>
>> (b) The facts from which the inferences are derived are proven; and
>>
>> (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.
>
> The commission of a crime, the identity of the perpetrator, and the finding of guilt may all be established by circumstantial evidence. The circumstances must be considered as a whole and should create an unbroken chain leading to the conclusion that the accused authored the crime.
>
> The determination of whether circumstantial evidence is sufficient to support a finding of guilt is a qualitative test not a quantitative one. The proven circumstances must be 'consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt."

Based on the foregoing jurisprudential pronouncements, 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.[246]

The following circumstances fortify the prosecution's finding that the accused willfully failed to supply correct and accurate information in the subject ITRs. *gr*

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[246] *People vs. Judy Anne Santos y Lumagui*, CTA Crim. Case No. O-012, January 16, 2013.

For one, the accused did not only fail to dispute the existence of the aforementioned income payments made by the said banks, he even went further and confirmed its veracity when he expressly admitted in his *Very Urgent Motion for Partial Reconsideration of the Order of 23 August 2017,*[247] filed before the Second Division of this Court, that he is, indeed, authorized by the said banks to accept payments for the services that he rendered or for the materials/supplies that he provided to his patients through credit card, in this wise:

(a) The Accused during the period material to the case maintained bank accounts with the Banco de Oro (BDO) and in Citibank (CTB), namely:

(1) BDO Account No. 600105377; and
(2) Citibank Account No. 1400610750.

(b) **He was accredited/authorized by both Banks to accept payments through Credit Cards they issued to their Clients for the services/materials provided to the patients by Sacred Heart Dental Clinic of which the Accused in the Owner.**

For purposes of processing the Credit Cards, Sacred Heart was issued similar ID Merchant No. 777-8999000114 by both Banks.

(c) The payments to Sacred Heart by the Patients, though their respective Credit Cards were deposited to the Bank Account of Sacred Heart to the Issuers Bank, respectively.

(d) The Banks charged fees from the deposits of Sacred Heart Dental Clinic, the Merchant/Service Provider." *(Emphases ours)*

Such statements, again, constitute judicial admissions and, thus, binding upon the accused.

Nevertheless, accused insists that the said Certifications pertain to his bank accounts which cannot be disclosed under Republic Act

[247] Docket – Vol. I (CTA Crim. Case No. O-572), pp. 511 to 517.

(RA) No. 1405, as amended, (Law on Secrecy of Bank Deposits) and RA No. 8791 (General Banking Laws).

The Court is not convinced.

Suffice to it state that the foregoing issue has already been resolved by the Second and Third Divisions of this Court in their respective Resolutions dated July 11, 2018[248] and October 10, 2017.[249] Pertinent portions of the said Resolutions respectively read as follows:

July 11, 2018 Resolution of the Second Division:

"Basic is the rule that withholding taxes is the liability of the payor or the withholding agent. Consequently, BDO and Citibank complied to BIR's request by issuing the corresponding certificates based on its record of income payments made to the accused and not based on his deposit.

Section 2 of the Republic Act No. 1405 mandates that 'all deposits of whatever nature with banks or banking institution in the Philippines including investments in bonds issued by the Government of the Philippines, its political subdivisions and its instrumentalities, are hereby considered as of an absolutely confidential in nature and may not be examined, inquired or looked into by any person, government official, bureau or office, except upon written permission of the depositor, or in cases of impeachment, or upon order of a competent court in cases of bribery or dereliction of duty of public officials, or in cases where the money deposited or invested is the subject matter of the litigation.'

Thus, in the instant case, the Court finds no violation of Bank Secrecy Law on the part of the prosecution when it offered certifications from BDO and Citibank, as said documents merely reflect the income payments made to accused and the corresponding withholding taxes. Clearly, contrary to the allegations of the accused, the amounts indicated in the certifications do not pertain to his bank deposits."

October 10, 2017 Resolution of the Third Division:

"xxx. For one, the accounts of the Accused with BDO Unibank and Citibank do not pertain to a bank deposit. A bank deposit is defined as a contractual relationship ensuing from the delivery, by one known as the depositor of money, funds or even

[248] Docket – Vol. II (CTA Crim. Case No. O-572), pp. 790 to 794.
[249] Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 627 to 631.

things into the possession of the bank, which receives the same upon agreement to pay, repay or return, upon the order or demand of the depositor, the money, funds, or equivalent amount. On the contrary, the contract between the merchants/service establishment (in this case, the Accused under the trade name of Scared Heart Dental Center) is a financing activity, specifically that of discounting of receivables.

Moreover, the Certifications issued by BDO Unibank and Citibank pertain to their withholding tax liability under Section 2.57.2(L) of BIR Revenue Regulation No. 2-98, which may be found in the banks' Monthly Alphalist of Payees for taxable year years 2011, 2012 and 2013. Undeniably, the information requested pertains to the subject matter of the litigation – the correct taxes of the Accused."

For another, the Court cannot simply close its eyes to the fact that the receipt of the aforementioned income payments may be inferred from the same statement made by the accused in his separate *Comments/Opposition (Re: Prosecution's Formal Offer of Evidence* filed before the Third[250] and First[251] Divisions of this Court, thus:

"First: The alleged 'actual amount of gross income/sales received by the accused, from the credit card transactions' of BDO and CITIBANK are incorrect in that the alleged 'gross income/sales' of the Accused included substantial amounts which were NOT, in fact, incomes of the Accused, but funds held by him in trust to be paid to the Hotels for the accommodations/transportations of his tourist-patients."

It can thus be inferred from the foregoing that the accused was, in effect, admitting the receipt of the said income payments (gross income/sales) from the said banks and, at the same time, claiming that the same included substantial amounts which were merely held by him in trust for the benefit of his so-called "tourist patients".

It must, however, be noted that not a single document or affidavit of a witness who had personal knowledge of such fact was presented by the defense to support the foregoing statement. And even if this Court were to accept such claim, the said income statements should nonetheless have been reported or included in his

[250] Docket – Vol. 2 (CTA Crim. Case No. O-573), p. 905.
[251] Docket – Vol. II (CTA Crim. Case No. O-610), p. 754.

financial statements for the subject taxable years when the same were received by accused.

Moreover, in attempting to justify the underdeclaration, the accused stated in his *Memorandum* that the alleged deficiencies in his tax payments, were occasioned by the unintentional lapses by his office secretary in gathering the pertinent papers which were made the bases of his accountant in computing the tax due in his ITRS for taxable years 2011, 2012 and 2013 and, in turn, relied on by him.[252]

However, nowhere from the quoted testimony below of Ms. De Las Alas or of the accused himself was there even a hint that there was a lapse on the part of Ms. De Las Alas in forwarding the necessary documents for the preparation of the accused's ITRs. Their respective testimonies are hereunder quoted for ready reference, to wit:

Ms. De Las Alas' testimony:

"Q.2.8: How were the records or documents necessary for the preparation of the ITR for 2011 given to the Office of Accountant Miranda?
A-2.8: His assistant Ms. Clare comes to the office to get the records, Sir. I gave them to her.

Q-2.9: Why were you the one who gave the records to Ms. Claire?
A-2.9: I was instructed, Sir, by Dr. Garcia to collate the necessary papers and to deliver them to Ms. Claire Miranda when she comes.

Q-2.10: Where did you get the records you collated?
A-2.10: From my own file and that of the Staff of the Clinic, Sir.

Q-2.11: Did Dr. Garcia examine the records before you gave them to Ms. Clare Miranda?
A-2.11: No, Sir.

Q-2.12: Do you know why he did not examine anymore the records?
A-2.12: He trusted me, the Staff in the Dental Clinic and Accountant Miranda, Sir. Besides, at that time and until now, Dr. Garcia has been having heart problem such that he underwent Angioplasty. We, therefore, tried to help lighten his job by doing things by

[252] Par. 2.4, Statement of the Case, Accused's Memorandum, Docket – Vol. II (CTA Crim. Case No. O-572), p. 963.

ourselves as much as possible."[253]

The accused's testimony:

"Q-2.14: How were the records or documents necessary for the preparation of the ITR for 2011 given to Accountant Miranda?
A-2.14: Accountant Miranda's assistant Ms. Claire Miranda will come to the office to get the records, Sir. Then, Ms. Lourdes de las Alas and the staff of the clinic turn-over the records of operation to Ms. Claire.

Q-2.15: Was there any occasion that you personally gave the records of your dental operations to Ms. Claire Miranda?
A-2.15 Not once, Sir. I relied on my administrative staff and secretary to do the work. My standing instruction is for Ms. De las Alas and my staff to collate the necessary papers and to deliver them to Ms. Claire Miranda when she comes.

Q-2.16: Did you examine the records before Ms. De las Alas will give them to Ms. Claire Miranda?
A-2.16: No, Sir.

Q-2.17: Why did you not examine anymore the records?
A-2.17: I trusted and I relied on Ms. De las Alas and the Staff in the Dental Clinic and Accountant Miranda, Sir. Besides, at that time and until now, I have been having a heart problem such that I underwent Angioplasty. Ms. De las Alas and my staff in the Dental Clinic tried to help lighten my job by doing things by themselves as much as possible. Also, Sir, I am not familiar in the preparation of financial statements and I have no background in accounting.

Q-2.18: Did you inquire from Ms. De las Alas whether she delivered the documents to the Assistant of Accountant Miranda?
A-2.18: Yes, Sir. I did."[254]

The excuse proffered by the accused is unworthy of belief as the same is in stark contrast with his previous statement in his Counter Affidavit filed before the DOJ, whereby he mentioned that he specifically hired an accountant to handle the accounting and tax matters as he had little knowledge of the same. As such, he insists

[253] Q-2.8 & A-2.8 to Q-2.13 & A-2.13, Judicial Affidavit of Lourdes De Las Alas, Docket – Vol. I (CTA Crim. Case No. O-572), p. 819.
[254] Q-2.14 & A-2.14 to Q-2.18 & A-2.18, Judicial Affidavit of Alexander R. Garcia, Docket – Vol. I (CTA Crim. Case No. O-572), pp. 886 to 887.

that whatever charges he may be accused of, are results of his inadvertence and lack of knowledge of the law, and not because of fraud or any malicious intent on his part.[255]

The same argument was raised by the accused in his *Rejoinder-Affidavit* submitted with the DOJ where he emphasized that he relied on his accountant's expertise and representations. Thus, whatever charges he may be accused of, is just a mere result of maximum trust, with no intent to defraud nor any malicious intent nor bad faith on his part to evade, if any his tax obligations.[256]

To Our mind, such sudden change of position or theory is nothing but a lame excuse and a mere after-thought conceived after the accused failed to present his accountant, as his right to present the latter was waived twice by the Court due to several non-appearances and constant requests for postponements of the defense.[257]

Furthermore, granting that he did rely on his secretary, still, he himself had to sign the ITR just the same before filing, and in the normal course of things, he should have read the contents thereof including its attachments before affixing his signature on the same. Such being the case, the mere fact that the accused signed the following documents certainly proves that he has read the same and has taken full responsibility for all information and representations contained therein, *viz.*:

1. The subject ITRs for taxable years 2011[258], 2012[259] and 2013,[260] were declared under the penalty of perjury; and

2. The Statements of Management's Responsibility attached to the Financial Statements of the accused for taxable years 2011,[261] 2012[262] and 2013[263] showed that he assumed full responsibility of the contents of the

[255] Par. 8, Counter-Affidavit, Docket – Vol. I (CTA Crim. Case No. O-572), p. 92.
[256] Pars. 10 and 21, Accused's Rejoinder-Affidavit, Docket – Vol. I (CTA Crim. Case No. O-572), pp. 19 and 25.
[257] Minutes of the hearing held on, and Order dated, July 29, 2019, 2019, Docket – Vol. II (CTA Crim. Case No. O-572), pp. 854 to 855; Minutes of the hearing held on, and Order dated, October 9, 2019, Docket – Vol. II (CTA Crim. Case No. O-572), pp. 902 to 904.
[258] Exhibit "P-13", Docket – Vol. II (CTA Crim. Case No. O-572), pp. 693 to 697.
[259] Exhibit "P-12", Docket – Vol. I (CTA Crim. Case No. O-610), pp. 465 to 470.
[260] Exhibit "P-15", Docket – Vol. 2 (CTA Crim. Case No. O-573), pp. 852 to 863.
[261] Docket – Vol. II (CTA Crim. Case No. O-572), p. 699.
[262] Docket – Vol. I (CTA Crim. Case No. O-610), p. 472.
[263] Docket – Vol. II (CTA Crim. Case No. O-573), p. 865.

report. Pertinent portions of the 2011 Statements of Management's Responsibility, which are the stated verbatim for 2012 and 2013, are herein quoted for ready reference, to wit:

> **"STATEMENT OF MANAGEMENT'S RESPONSIBILITY FOR ANNUAL TAX RETURN'**
>
> **The Management of SACRED HEART DENTAL CENTER is responsible for all information and representation contained in the Annual Income Tax Return** for the year ended December 31, 2011. **Management is likewise responsible for all information and representations contained in the financial statements accompanying the Annual Income Tax Return covering the same period.** Furthermore, the Management is responsible for all information and representation contained in all the other tax returns filed for the reporting period, including, but not limited to the value added tax and/or percentage tax returns, withholding tax returns, documentary stamp tax returns, and any and all other tax returns.
>
> In this regard, the Management affirms that the attached audited financial statements for the year ended December 31, 2011 and the accompanying Annual Tax Return are in accordance with the books and records of SACRED HEART DENTAL CENTER, complete and correct in all material respects." *(Emphases supplied)*

As such, the Court cannot accept this blanket denial of responsibility on the part of the accused. Certainly, inadvertence on the part of the secretary and accountant could have been corrected had he checked the documents collated by his secretary before handing over the same to the assistant of his accountant; and had he verified the details allegedly supplied by his accountant in the subject returns and financial statements before signing the same. Such failure on the part of the accused indicates his evident lack of concern and intentional disregard of his tax responsibilities to the government as he avoided every opportunity to learn or acquire the knowledge relating to his legal duty to file a correct income tax returns. The "deliberate ignorance" or "conscious avoidance" on his part in ensuring the accuracy of the information provided in the subject income tax returns and Financial Statements would justly characterize the same as willful, within the contemplation of Section 255 of the NIRC of 1997. ge

In addition, it is noteworthy that the repeated and deliberate significant underdeclarations of income for three (3) consecutive years is a clear indication of the propensity of the accused not to supply correct and accurate information on his income tax returns to the damage and prejudice of the Government.

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

The accused's income tax liability.

Section 205 of the NIRC of 1997 provides, in part, as follows:

> "SEC. 205. *Remedies for the Collection of Delinquent Taxes.* – xxx
>
> xxx xxx xxx
>
> **The judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case as finally decided by the Commissioner.**" *(Emphasis added)*

Based on the foregoing provision, in case of a finding of guilt on the part of the accused, this Court is mandated not only to impose the penalty for the offense, but also must order the payment of taxes subject of the criminal case, as finally decided by the Commissioner of Internal Revenue.

In this case, as finally decided by the Commissioner of Internal Revenue, the accused's income tax liabilities, including increments thereto, in the aggregate amount of **₱29,706,593.06**, are shown in the *Formal Letter of Demand* dated July 5, 2017 and *Audit Result/Assessment Notices* attached thereto, to wit:

	2011	2012	2013	Total
Basic Income Tax	₱5,275,947.60	₱3,076,190.76	₱4,239,880.30	₱12,592,018.66
Surcharge	2,637,973.80	1,538,095.38	2,119,940.15	6,296,009.33
Interest	3,564,516.93	2,693,563.20	4,560,484.94	10,818,565.07
Total	₱11,478,438.33	₱7,307,849.34	₱10,920,305.39	**₱29,706,593.06**

During the proceedings of these consolidated cases, it is noteworthy that the accused has expressed his willingness to pay his deficiency income tax liabilities, as he confirms that the subject income tax returns contain incorrect amount of taxes.[264] Thus, We see no hindrance in imposing the said aggregate amount of **₱29,706,593.06** against the accused, as computed above.

WHEREFORE, in light of the foregoing considerations, the Court finds the accused, Alexander R. Garcia, **GUILTY BEYOND REASONABLE DOUBT** on three (3) counts of violation of Section 255 of the NIRC of 1997, for taxable years 2011, 2012, and 2013. For each of the consolidated criminal cases, he is hereby sentenced to an indeterminate penalty of one (1) year, as minimum, to two (2) years as maximum term of imprisonment, and is **ORDERED TO PAY** a fine in the amount of ₱10,000.00, with subsidiary imprisonment in case he has no property with which to meet such fine, pursuant to Section 280 of the NIRC of 1997.

Moreover, the accused **ORDERED TO PAY** the Bureau of Internal Revenue the aggregate amount of **₱29,706,593.06**, representing his deficiency income tax liabilities, including increments thereto, for taxable years 2011, 2012, and 2013.

SO ORDERED.

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

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

[264] TSN at the hearing held on September 11, 2019 (CTA Crim. Case No. O-572), at pp. 9 to 10.

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.
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 cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice