REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

BENJAMIN G. KINTANAR,
Respondent,

CTA CRIM CASE NO. 0-031 & 0-032

Present:

BAUTISTA, *Chairperson*
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

SEP 27 2010
DBFernando, 1:30 p.m.

x- x

DECISION

COTANGCO-MANALASTAS, J.:

THE CASE

Before this Court are two separate Informations charging accused Benjamin G. Kintanar with violation of Section 255 of Republic Act No. 8424, otherwise known as the "Tax Reform Act of 1997", as amended, for his alleged failure to file his income tax return for the taxable years 2000 and 2001.

The accusatory portion of the Informations read as follows:

Criminal Case No. O-031

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

CONTRARY TO LAW."

Criminal Case No. O-032

"That on or about the 16th day of April 2002, in Parañaque City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino citizen residing in the Philippines, who is engaged in business and earning income as distributor of Forever Living Products Philippines, Inc., with obligation under the law to file his Income Tax Return (ITR) for the taxable year 2001 on or before the 15th day of April 2002, did, then and there, willfully, unlawfully and feloniously fail to file his income tax return with the Bureau of Internal Revenue for the year 2001, to the damage and prejudice of the Government in the estimated amount of **P5,175,242.12**,[1] exclusive of penalties, surcharges and interest.'

CONTRARY TO LAW."

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

Accused voluntarily surrendered before the Second Division of the Court of Tax Appeals and posted the required surety bail bond for his provisional liberty in the total amount of P40,000.00 for both cases.[2]

On March 22, 2007, accused, by counsel, filed a Compliance and Motion to Defer Arraigment[3] seeking deferment of the arraignment until the Department of Justice (DOJ) has resolved the petition for review filed by the accused on September 25, 2006.

A Comment/Opposition[4] was filed by the People, through the Revenue Attorney on March 27, 2007. This Court granted the motion on April 2, 2007, arraignment was reset to May 21, 2007.

Upon arraignment[5], accused assisted by defense counsel *de parte*, Atty. Marie Michelle D. Muñoz, entered a plea of "NOT GUILTY" to both charges.

On June 14, 2007,[6] upon motion of the counsels for both parties, the two cases were ordered consolidated.

The Preliminary Conference[7] and Pre-trial[8] were held on May 30, 2007 and June 14, 2007, respectively. After the termination of the pre-trial, the case was set for the presentation of the parties' respective evidence.

Formal Offer of Evidence[9] was filed by the prosecution on June 12, 2008. The accused, through counsel, filed his Comment/Objection to

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[2] Docket pp. 38-87
[3] Docket pp. 100-101
[4] Docket, pp. 159-162
[5] Minutes of the hearing, May 21, 2007, Docket, p. 168; Resolution dated May 21, 2007, Docket, pp. 170-171,
[6] Minutes of the hearing, June 14, 2007, Docket, p. 179
[7] Minutes of Preliminary Conference, Docket, pp. 172-178
[8] Minutes of the hearing, June 14, 2007, Docket, p. 179
[9] Docket, pp. 473-512

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Plaintiff's Formal Offer of Evidence[10] on August 13, 2008. In a Resolution[11] promulgated on September 2, 2008, the Formal Offer of Evidence filed by the prosecution was ADMITTED subject to the Court's final evaluation and/or appreciation of their purposes, materiality, relevancy, and probative value to the issues involved in these cases.

Accused, after presentation of his evidence, filed, thru counsel, his Motion to Admit Formal Offer of Evidence[12] on August 20, 2009. Opposition (On the Accused's Motion to Admit Formal Offer of Evidence)[13] was filed by the plaintiff, by counsel, on October 6, 2009. A Resolution[14] was rendered on October 19, 2009 which GRANTED the Motion to Admit Formal Offer of Evidence and ordered prosecution to comment on the Formal Offer of Evidence of the Accused.

On December 2, 2009, a Resolution [15] was promulgated which ADMITTED Exhibits "1" to "29", inclusive all their sub-markings, EXCEPT Exhibits "12-D", "13-D", "14-D" and "15-D" for failure of the defense counsel to mark, identify, and submit the same to the Court. In the same Resolution, the Court noted that Exhibit "18" is a copy of BPI Check No. 1083979, and not a copy of BPI Check No. 1093979. The admitted exhibits are subject to the Court's final evaluation and/or appreciation of their purposes, materiality, relevancy, and probative value to the issues involved in this case. The parties

[10] Docket, pp. 845-854
[11] Docket, pp. 856-857
[12] Docket, pp. 1012-1031
[13] Docket, pp. 1085-1090
[14] Docket, pp. 1096-1097
[15] Docket, pp. 1113-1114

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were given thirty (30) days from receipt of notice to submit their simultaneous memoranda.

Accused Benjamin G. Kintanar, Jr., through counsel, filed his Memorandum[16] on January 18, 2010, while the prosecution submitted its Memorandum[17] on February 17, 2010.

On January 11, 2010 an Order[18] was issued transferring this case to the "Third Division" of the Court of Tax Appeals pursuant to CTA Administrative Circular No. 01-2010.

In a Resolution[19] promulgated on February 25, 2010 by the Third Division of the Court of Tax Appeals, the cases in caption were submitted for decision.

Evidence for the Prosecution

The prosecution presented six (6) witnesses to establish accused's culpability, namely: Mr. Simplicio V. Cabantac, Jr., Atty. Christina C. Barroga, Mr. Michael T. Cajandab, Ms. Annabelle Alacantara, Ms. Carmencita Flores and Mr. Romeo E. Naranjo. Thereafter, the prosecution rested its case with the admission of its evidence.[21]

1. Testimony of Simplicio V. Cabantac

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[16] Docket, pp. 1115-1130
[17] Docket, pp. 1150-1169
[18] Docket, pp. 1136
[19] Docket, pp. 1172
[21] Exhibits "A" to "JJ", Resolution dated September 2, 2008, Docket, pp. 856-857

Prosecution witness Simplicio V. Cabantac, Jr., the first witness for the prosecution, is 42 years old, married, residing at 25-G Mayaman St., UP Village, Quezon City, Revenue Officer IV, National Investigation Division, BIR.

During the hearing held on July 4, 2007, he affirmed the truthfulness of the allegations contained in his Affidavit[22] dated June 29, 2007 and likewise confirmed that the signature therein is his signature. Also, he attested that the documents presented to him during the said hearing were the very same documents he mentioned in his Affidavit, which documents were marked as Exhibits "A" to "J", "M", "N", "O", "P", "Q", "R", "S", "V", inclusive of their sub-markings.[23]

In his Affidavit, witness Cabantac, Jr. declared that he is a Revenue Officer assigned at the National Investigation Division (NID) of the Bureau of Internal Revenue (BIR) authorized, among other things, to investigate individuals and entities that may have committed violations of tax laws and recommend criminal prosecution of violators, to conduct preliminary investigation for the purpose of establishing prima facie evidence of fraud.

According to Cabantac, Jr., on the basis of the complaint referred to their office, regarding the alleged tax evasion scheme for non-filing of tax returns by spouses Benjamin G. Kintanar, Jr. and Gloria V. Kintanar, Access Letters dated July 18, 2002 (Exhibits "Q" to "Q-1") to Revenue District Officers of Revenue District Office (RDO) No. 52, Parañaque City and

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[22] Docket, pp. 180-184
[23] TSN dated July 4, 2007, pp. 9-18

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Revenue District Office (RDO) No. 43, Pasig City were issued by Amando R. Rosimo, Chief of Tax Fraud Division, indicating therein that the investigating team be furnished with the listed documents pertinent to the preliminary investigation. Access Letter dated July 19, 2002 (Exhibit "R") to Forever Living Products Philippines, Inc. (FLPPI) was also issued authorizing the investigating team to secure a certification as to the total income payments/commissions, and bonuses earned by spouses Benjamin G. Kintanar and Gloria V. Kintanar, together with the amount of taxes withheld for calendar years 1996 to 2001.

In response to the Access Letters, RDO No. 43, Pasig City issued a Certification dated August 19, 2002 together with attachments (Exhibits "S" to "S-1") that verification from the BIR-Integrated Tax System (ITS) and district records show that said spouses are not registered and have not filed any returns in its district; while RDO No. 52, Parañaque City issued a Certification dated September 17, 2002 that as per verification made from available records of its office, said spouses has no record on file for the years 1999 to 2001 (Exhibit "P"). On the other hand, Mr. Michael T. Cajandab, Comptroller of FLPPI sent a letter-reply dated January 20, 2003 (Exhibit M") indicating therein the total income payments they made to Mr. Kintanar for calendar years 1999, 2000 and 2001, to wit:

"Applicable Year	Amount of Income Payments	Amount of Tax Withheld
1999	12,047,634.30	1,204,763.43
2000	18,738,780.00	1,873,878.00
2001	27,767,655.58	2,776,765.56"

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Witness Cabantac, Jr. further stated that the result of the initial investigation revealed that spouses Benjamin G. Kintanar and Gloria V. Kintanar are distributors and independent contractors of FLPPI and is actually considered as the No. 1 distributor in the Philippines. Hence, on the basis of the said initial investigation, Letter of Authority (LOA) No. 00029663 dated March 28, 2003 (Exhibits "A" to "A-3") was issued against the spouses, authorizing the investigating team to examine the books of accounts and other accounting records for the period covering taxable years 1999-2002. The said LOA was allegedly received by Mr. Kintanar on April 3, 2003 as shown by his signature (Exhibit "A-3"). Despite receipt of the LOA, the spouses did not submit the required documents.

Consequently, a Second Request for the Presentation of Records dated April 21, 2003 (Exhibit "B") and Final Notice for presentation and/or production of the required records/documents dated May 5, 2003 (Exhibit "C") were served and allegedly received by the spouses. Upon failure of the spouses to present or submit the required documents, a Subpoena Duces Tecum dated June 11, 2003 (Exhibit D" to "D-2") was issued to them commanding them to appear before the Chief Prosecution Division in order to enforce compliance in the presentation of their books of accounts and other accounting and tax records. Again, the spouses did not comply

Mr. Cabantac, Jr. further narrated that on December 9, 2003, a Preliminary Assessment Notice (Exhibits "E" to "E-4") was issued against the spouses informing them that deficiency taxes were found due against them for

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taxable years 1999 to 2002 with the complete details of discrepancies, and giving them fifteen (15) days to explain the discrepancies found against them. As the spouses did not comply, they were considered in default.

Consequently, a Formal Letter of Demand dated February 26, 2004 (Exhibits "F" to "F-7") including Assessment Notices (Exhibits "G" to "G-7") were issued for the payment of deficiencies on taxes. Still, no payment of taxes was made by the spouses. Instead, accused Benjamin G. Kintanar, Jr. sent a Letter dated August 31, 2004 (Exhibits "H" to "H-3") protesting the deficiency assessments for lack of factual and legal basis, together with photocopies of his income tax returns for 2000, 2001 and 2002, and undertaking to submit additional documents within sixty (60) days therefrom. However, no documents were submitted. Hence, a Letter dated September 30, 2004, (Exhibits "I" to "I-1") was issued by Mr. Arnel SD. Guballa, Chief of the National Investigation Division, informing the spouses that no documents have yet been received by their office and that they have sixty (60) days from the date the protest was filed or until November 3, 2004 to submit their supporting documents otherwise, the assessment shall become final, executory and demandable.

Since there was no compliance by the spouses, a Final Decision on Disputed Assessment dated December 13, 2004 (Exhibits "J" to "J-5") was issued informing the spouses about the denial of their protest for non-submission of required documents within the sixty (60) day reglementary period. The spouses were also informed that the Integrated Tax System computerized records and certification from revenue district office of Parañaque do not reflect that they had filed and paid their taxes for taxable years 1999 to 2001; that they also failed to present original copies of their Income Tax Returns (ITRs) within the sixty (60) day period mandated by law.

On the basis of the data and documentary evidence gathered, the prosecution proceeded to compute the deficiency income taxes for taxable years 1999, 2000 and 2001, as follows:

> "a. For taxable year 1999, accused Benjamin G. Kintanar, Jr. earned income from Forever Living Products Philippines, Inc. in the amount of P12,047,634.30 but did not report the same to the prejudice of the government in the amount of P2,320,183.96, exclusive of interest, penalties and surcharges.
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> b. For taxable year 2000, accused Benjamin G. Kintanar, Jr. earned income from Forever Living Products Philippines, Inc. in the amount of P18,738,780.00 but did not report the same to the prejudice of the government in the amount of P3,475,090.86, exclusive of interest, penalties and surcharges.
>
> c. For taxable year 2001, accused Benjamin G. Kintanar, Jr. earned income from Forever Living Products Philippines, Inc. in the amount of P27,767,655.58 but did not report the same to the prejudice of the government in the amount of P5,172,519.25, exclusive of interest, penalties and surcharges."

<u>2. Testimony of Atty. Christina C. Barroga</u>

Second witness for the prosecution is Atty. Christina C. Barroga, married, a resident of Kingspoint Subdivision, Bagbag, Novaliches, Quezon City, the OIC, Assistant District Officer of the BIR RDO No. 52, Parañaque City.

At the hearing held on July 16, 2007, she identified and affirmed the truthfulness of the allegations contained in the Affidavit which she executed on

July 10, 2007 and that the signature therein is her signature.[24] Also, she avowed that the documents presented to her during the said hearing were the very same documents she mentioned in her Affidavit, which documents were marked as Exhibits "K", "L", "P", "Q", "Y", "AA".[25]

In her Affidavit[26], witness Atty. Barroga stated that as the second highest official of the BIR in the said district, she is authorized to issue certifications, when the Revenue District Officer is not available, regarding the status of taxpayers within their area of jurisdiction based on the computerized record kept on file in their office culled from the ITS. In line with the said authority, Atty. Barroga issued a Certification[27] on February 19, 2007 to the effect that accused Benjamin G. Kintanar, Jr., did not file Income Tax Return for the years 1999, 2000 and 2001. Said certification effectively corroborates the Certification[28] issued by the former Revenue District Officer Carmelita R. Bacod on September 17, 2002 in response to the request of the Tax Fraud Division reflected on the Access Letter dated July 18, 2002.

3. Testimony of Michael T. Cajandab

Third witness for the prosecution Michael T. Cajandab, 37 years old, married, resident of Block 12 Lot 16, Casimiro Townhomes, Phase IV, Las Piñas City, Metro Manila.

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[24] TSN dated July 16, 2007, pp. 5-9
[25] TSN dated July 16, 2007, pp. 9-13
[26] Docket, pp. 262-264
[27] Exhibit "K", Docket, p. 549
[28] Exhibit "P", Docket, p. 567

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He appeared at the hearing held on August 22, 2007 and testified that: he is the Comptroller of FLPPI; he executed an Affidavit[29] on August 16, 2007; he affirms that the signature therein is his signature.[30] Also, he confirmed that the documents presented to him during the said hearing were the very same documents he mentioned in his Affidavit, which documents were marked as Exhibits "CC", "DD", DD-1", "M", "R" "T", to "T-19".[31]

On cross-examination prosecution witness Cajandab confirmed that: the Alpha List marked as Exhibits "DD" and "DD-1", which is a reportorial requirement by the BIR containing the total amount of income payments made by their company to their distributors or independent contractors and the total amount of taxes for a particular year, was received by the BIR in the year 2001 as evidenced by the stamped received; he did not use any documents other than the alpha list and the bounced checks to determine the income payments made to the accused; he did not sign on the checks issued to accused Benjamin Kintanar and he is just familiar with the execution of these checks and the amount stated therein; the difference between the income payments, stated in his affidavit to have been made by the company to the accused for 2000, in the amount of Eighteen Million Seven Hundred Thirty Eight Thousand Seven Hundred Eighty (P18,738,780.00), and the total amount of checks marked as Exhibits "T" to "T-10", which is only Eight Million Nine Hundred Twenty Four Thousand Three Hundred Sixty Four and 62/100 (P8,924,364.62), could

[29] Docket, pp. 284-287
[30] TSN dated August 22, 2007, pp. 7-9
[31] TSN dated August 22, 2007, pp. 9-14

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be attributed to the 10% withholding tax and the fact that there are some checks that are missing, the checks might have already been disposed. Witness Cajandab merely affirmed the difference between the income payments, stated in his affidavit to have been made by the company to the accused for 2001, in the amount of Twenty Seven Million Seven Hundred Sixty Seven Thousand Six Hundred Fifty Five and 58/100 (P27,767,655.58), and the total amount of checks marked as Exhibits "T-11" to "T-19", which is only Ten Million Two Hundred Sixty Nine Thousand Five Hundred Forty One and 80/100 (P10,269,541.80).[32]

Witness Cajandab further testified on cross-examination that: he only knows that their company issued checks to accused Benjamin Kintanar, Jr., that and he cannot confirm whether these checks were deposited to his account or were encashed, that as far as as their company is concerned these checks were cleared in their bank accounts.[33]

In his Affidavit,[34] witness Cajandab stated that: as the Comptroller of FLPPI, he is in-charge of the accounting department of the company; upon receipt of the BIR Access Letter dated July 19, 2002 requesting for a certification as to the total income payments earned by spouses Benjamin G. Kintanar, Jr. and Gloria V. Kintanar for the calendar years 1996-2001, he checked the Alpha List, a reportorial requirement by the BIR containing the total amount of payments made by the company to its distributors and total

[32] TSN, August 22, 2007, pp. 14-25
[33] TSN, August 22, 2007. pp. 25-28
[34] Docket, pp. 285-287

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amount of taxes withheld for a particular year, and identified the various checks to prove the income payments made by FLPPI to accused; after verifying with their company's records, he issued a Letter-Reply[35] dated January 20, 2003 indicating that the total income payments made to the accused, were as follows:

"Applicable Year	Amount of Income Payments	Amount of Tax Withheld
1999	12,047,634.30	1,204,763.43
2000	18,738,780.00	1,873,878.00
2001	27,767,655.58	2,776,765.56"

4. Testimony of Anabelle Alcantara

Prosecution witness Anabelle Alcantara is 47 years old, married, residing at 4 P. Cruz, St., Barangka Ibaba, Mandaluyong City, Systems Analyst at the BIR-Office of the Assistant Commissioner for Information Systems Operations Service.

During the hearing held on November 5, 2007, she identified and affirmed the truthfulness of the allegations contained in the Affidavit which she executed on October 25, 2007 and that the signature therein is her signature.[36] Also, she acknowledged that the documents presented to her during the said hearing were the very same documents she mentioned in her Affidavit, which documents were marked as Exhibits "FF", "FF-1". She further testified that: the Certification[37] was signed for Alberto Pio de Roda, Assistant Commissioner for Information Systems Operation Service, by Victoria C. De Leon; the

[35] Exhibit "M", p. 551
[36] TSN dated November 5, 2007, pp. 7-10
[37] Exhibit "FF", p. 710

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signature appearing above the name of Mr. de Roda is the signature of her Head Revenue Executive Assistant, Victoria C. De Leon, she can identify the said signature because Ms. De Leon is the signatory of their certifications; the information contained in the Certification issued by their office were extracted from the ITS Database.[38]

In her Affidavit,[39] witness Alcantara stated that: she is a Systems Analyst of the BIR and her most important function is to verify all the information from the ITS based on the request of the BIR and other government agencies; she has personal knowledge that their office issued a Certification dated September 26, 2007, concerning a certain taxpayer named Benjamin G. Kintanar, Jr., signed by her Head Revenue Executive Assistant Victoria T. De Leon in behalf of Assistant Commissioner Alberto Pio De Roda which substantially states that based on the ITS accused Benjamin G. Kintanar, Jr. is a registered Professional Taxpayer, however, the BIR has no record of accused having filed his Income Tax Returns for the years 1999-2001.

5. Testimony of Carmencita Flores

Fifth witness for the prosecution is Carmencita Flores, 51 years old, married, with address at 3 Lualhati St., Armel 6 Subd. Sta. Lucia, Pasig City, that she is the Service Manager of Bank of the Philippine Islands (BPI) North Greenhills Branch.

At the hearing held on February 6, 2008, she testified that: as the Service Manager, she is the over-all in-charge of the bank operations; she was

[38] TSN dated November 5, 2007, pp. 10-13
[39] Docket, pp. 330-331

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commanded to appear before the court for the certification of the original and copies of documents pertaining to checks issued by FLPPI, with Account No. 2571008435, to the accused which were encashed, deposited and credited to the bank account of the accused, with Account No. 2575003489, and to bring bank statements of the accused for the years 2000 and 2001; she knows the accused Benjamin G. Kintanar, Jr. because he is one of the clients of their bank; pursuant to the subpoena, she brought the bank statements of the accused for the whole year of 2000 and 2001. The bank statements of the accused for 2000 and 2001 were marked as Exhibits "GG" and "HH", respectively.[40]

On February 20, 2008, prosecution witness Carmencita Flores was called to the witness stand for the continuation of her direct examination. She identified and affirmed that the affidavit shown to her is the same Affidavit which she executed on February 15, 2008 and that the signature therein is her signature.[41] Also, she avowed the veracity of her Affidavit and affirmed that the documents presented to her during the said hearing were the very same documents she mentioned in her Affidavit, which documents were marked as Exhibits "GG" and "HH".[42] Witness Flores further testified that: the checks (Exhibits "T" to "T-19) shown to her during the said hearing were the very same checks she mentioned in her affidavit that were encashed or deposited under the account name of the accused; based on the checks furnished by the prosecution, she checked their head office records to verify the details of the

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[40] TSN dated February 6, 2008, pp. 7-16
[41] TSN dated February 20, 2008, pp. 9-11
[42] TSN dated February 20, 2008, pp. 11-12

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said checks against the bank statements and also the corresponding deposit slip, if there are deposits made.[43]

On cross-examination, witness Carmencita Flores stated that: she was assigned as Service Manager in North Greenhills Branch on April 16, 2003; she was not yet assigned in the said branch when checks marked as Exhibits "T" and "T-19" were encashed and deposited and her verification is based on the documents she requested from their head office; she was not the one who prepared the bank statements of accused marked as Exhibits "GG" and "HH", it is their head office records section which prepares the bank statements of all the clients.[44]

On re-direct examination, witness Flores declared that: the documents she identified as the bank statements of the accused are actually bank records furnished to her by their head office. When asked what documentary procedure or steps she made to verify the correctness or accuracy of the entries appearing in the deposit column of the bank statements, she responded "*Based on the checks that you furnished me*" and that she requested from their head office copies of the checks, which were furnished to her by the prosecution during the previous hearing, the deposit slip, microfilm copies of those documents for verification and counterchecks said documents with the bank statements.[45]

[43] TSN dated February 20, 2008, pp. 9-20
[44] TSN dated February 20, 2008, pp. 20-31
[45] TSN dated February 20, 2008, pp. 32-36

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In her Affidavit,[46] witness Carmencita Flores swore that: she is the Service Manager of BPI North Greenhills Branch; she came to know Mr. Benjamin G. Kintanar, Jr. as a depositor of their branch; she confirms that the checks marked as Exhibit "T" to "T-19", which were encashed or deposited, appears in the bank statements.

6. Testimony of Romeo Naranjo

Last witness for the prosecution Romeo Naranjo is 57 years old, married, a resident of 307-C Bonaventure Gardens, P. Osmeña St. Makati City. He is the Revenue District Officer assigned at the Revenue District Office No. 40, Cubao, Quezon City.

Prosecution witness Naranjo was presented on the witness stand on June 11, 2008. He identified and affirmed that the Affidavit shown to him is the very same affidavit he executed on May 27, 2008, and that the signature therein is his signature. Likewise, he verified that: the documents presented to him during the said hearing were the very same documents he mentioned in his Affidavit, which documents were marked as Exhibits "S", "S-1", "S-2" and "Q-1"; that the signature in Exhibit "S", appearing above the name Romeo Naranjo, is his signature. Witness Naranjo alleged that he is familiar with the signature of Hilda G. Giron, thus, he affirmed that the signature in Exhibits "S-1" and "S-2", appearing above the name Hilda G. Giron, is the signature of

[46] Docket, pp. 351- 354

Ms. Giron. Finally, he affirmed and confirmed the veracity of the contents of his Affidavit.[47]

On cross-examination, witness Naranjo testified that: the verification of records made by him was limited to the records of BIR Pasig at that time, thus, it is possible that the subject taxpayer is registered in another district, that the records of a taxpayer can be found in another district other than Pasig when returns were filed with the other districts.[48]

In his Affidavit,[49] witness Romeo Naranjo declared that: he is the Revenue District Officer assigned at Revenue District Office No. 40, Cubao; prior to his assignment in the Revenue District Office of Cubao, Quezon City, he was assigned at the Revenue District Office No. 43, Pasig City; as the highest official in the Revenue District Office No. 43 of Pasig City, he is authorized to issue certifications regarding the status of taxpayers within their area of jurisdiction based on the BIR-ITS. He issued a Certification on August 19, 2002 (pre-marked as Exhibits "S", "S-1" and "S-2"), which essentially states that accused Benjamin G. Kintanar and spouse Gloria V. Kintanar have not filed any return in their office and that they are not registered in their district.

On June 12, 2008, the prosecution made a formal offer of documentary evidence as represented by the following marked exhibits.

Exhibits	Description
"A" to "A-	Letter of Authority No. 00029663 dated March 8, 2003

[47] TSN, June 11, 2008, pp. 6-10
[48] TSN, June 11, 2008, pp. 10-13
[49] Docket, pp. 394-395

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2"	
"A-3"	Signature of Accused
"B"	Second Request for Presentation of Records dated April 21, 2003
"C"	Final Notice dated May 5, 2003
"D" to "D-2"	*Subpoena Duces Tecum* dated June 11, 2003
"E" to "E-1"	Preliminary Assessment Notice
"E-2" to "E-4"	Attachments to the Preliminary Assessment Notice containing the Details of Discrepancies for Taxable Years 1999, 2000, 2001 and 2002
"F" to "F-2"	Formal Letter of Demand dated February 26, 2004
"F-3" to "F-5"	Attachments to the Formal Letter of Demand containing the Details of Discrepancies for Taxable Years 1999, 2000, 2001 and 2002
"F-6" & "F7"	BIR Post Office Registry Receipt dated August 2, 2004 and the Signature of the recipient
"G" to "G-7"	Assessment Notices Nos. ES-IT-1999-0083, ES-VAT-1999-0084, ES-IT-2000-0085, ES-VAT-2000-0086, ES-IT-2001-0087, ES-VAT-2001-0088, ES-IT-2002-0089 and ES-VAT-2002-0090
"H" to "H-3"	Letter of the accused dated August 31, 2004
"I"	Letter dated September 30, 2004
"I-1"	Signature of recipient
"J" to "J-2"	Final decision on Disputed Assessment dated December 13, 2004
"J-3" to "J-4"	Attachments to the Final Decision on Disputed Assessment denominated as Annex "A"
"J-5"	Signature of recipient
"K"	Certification dated February 19, 2007
"L"	Certificate of Registration dated January 1, 1996
"M"	Letter-Reply dated January 20, 2003
"N" to "N-10"	Letter dated June 3, 2005 issued by Guillermo C. Parayno, Commissioner of Internal Revenue addressed to Raul Gonzales, Secretary of Justice together with attaching Joint-Affidavit dated June 3, 2005
"N-11"	Signature of Revenue Officer Simplicio V. Cabantac, Jr.
"N-12"	Signature of Revenue Officer Aurelio Agustin Zamora
"N-13"	Signature of Revenue Officer Sixto C. Dy, Jr.
"O" to "O-3"	Reply-Affidavit dated August 1, 2005
"O-4" to	Signatures of Simplicio V. Cabantac, Jr., Aurelio

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"O-6"	Agustin T. Zamora and Sixto C. Dy, Jr.
"P"	Certification dated September 17, 2002
"Q" to "Q-1"	Access Letters dated July 18, 2002
"R"	Access Letter dated July 19, 2002
"S"	Certification of Revenue District Officer Romeo Naranjo
"S-1"	Certification of Gilda G. Hirang
"S-2"	Certification of Gilda G. Hirang
"T" to "T-19"	Bank of the Philippine Islands Checks
"T"	Bank of the Philippine Islands Check No. 0001129896 dated January 15, 2000
"T-1"	Bank of the Philippine Islands Check No. 0001139852 dated February 15, 2000
"T-2"	Bank of the Philippine Islands Check No. 0001171416 dated April 15, 2000
"T-3"	Bank of the Philippine Islands Check No. 0001183948 dated May 15, 2000
"T-4"	Bank of the Philippine Islands Check No. 0001194458 dated June 15, 2000
"T-5"	Bank of the Philippine Islands Check No. 0001205173 dated July 15, 2000
"T-6"	Bank of the Philippine Islands Check No. 0001216484 dated August 15, 2000
"T-7"	Bank of the Philippine Islands Check No. 0001229757 dated September 15, 2000
"T-8"	Bank of the Philippine Islands Check No. 0001244172 dated October 15, 2000
"T-9"	Bank of the Philippine Islands Check No. 0001258722 dated November 15, 2000
"T-10"	Bank of the Philippine Islands Check No. 0001273616 dated December 15, 2000
"T-11"	Bank of the Philippine Islands Check No. 0001289129 dated January 15, 2001
"T-12"	Bank of the Philippine Islands Check No. 0001305118 dated February 15, 2001
"T-13"	Bank of the Philippine Islands Check No. 0001321621 dated March 15, 2001
"T-14"	Bank of the Philippine Islands Check No. 0001338854 dated April 15, 2001
"T-15"	Bank of the Philippine Islands Check No. 0001374883 dated June 15, 2001
"T-16"	Bank of the Philippine Islands Check No. 0001411323 dated August 15, 2001

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"T-17"	Bank of the Philippine Islands Check No. 0001428221 dated September 15, 2001
"T-18"	Bank of the Philippine Islands Check No. 0001445125 dated October 15, 2001
"T-19"	Bank of the Philippine Islands Check No. 0001461251 dated November 15, 2001
"U"	Service Record dated March 9, 2007
"V"	Letter dated December 12, 2002
"W"	Affidavit of Plaintiff's witness, Simplicio V. Cabantac, Jr.
"W-1"	Signature of Simplicio V. Cabantac, Jr.
"X" to "X-2"	Affidavit of Plaintiff's witness, Christina C. Barroga
"X-3"	Signature of Christina C. Barroga
"Y"	Revenue Travel Assignment Order No. 5-2006
"Z"	Service Record dated June 5, 2007
"AA"	Statement of Actual Duties and Responsibilities of Christina C. Barroga
"BB"	Affidavit of Plaintiff's witness, Michael T. Cajandab
"BB-1"	Signature of Michael T. Cajandab
"CC"	Certification dated July 17, 2007
"DD"	Portion of the year 2000 Alpha List indicating the name of Accused
"DD-1"	Portion of the year 2001 Alpha List indicating the name of Accused
"EE"	Affidavit of Plaintiff's witness Anabelle Alcantara
"EE-1"	Signature of Anabelle Alcantara
"FF"	Certification dated September 26, 2007
"FF-1"	Signature of Alberto A. Pio De Roda
"GG"	Bank Statements of the Accused from January to December 2000
"HH"	Bank Statements of the Accused from January to December 2001
"II"	Affidavit of Plaintiff's witness Carmencita Flores
"II-1"	Signature of Carmencita Flores
"JJ"	Affidavit of Plaintiff's witness Romeo E. Naranjo
"JJ-1"	Signature of Romeo E. Naranjo

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Evidence for the Defense

On the other hand, the defense presented three (3) witnesses, the accused himself, Mr. Benjamin G. Kintanar, Ms. Jennifer K. Abad, and Ms. Marina C. Mendoza.

1. Testimony of Accused Benjamin G. Kintanar, Jr.

First witness for the prosecution, accused himself, Benjamin G. Kintanar, Jr., of legal age, married, resident of 145-A Saint Francis Street, Orando, Pasig City.

He appeared at the hearing held on November 12, 2008 and testified on direct examination that: he executed an Affidavit[50] on November 7, 2008 and thereby affirm the contents of the said Affidavit; the signature therein is his signature; he is an independent distributor of health and fitness products of FLPPI since the mid-90s but between the 2002 to middle of 2008 he left the said company but went back on September 2008. Also, he confirmed that the documents presented to him during the said hearing were the very same documents he mentioned in his Affidavit, which documents were marked as Exhibits "1" to "15".[51]

In his Affidavit, accused declared that: he, together with his wife, filed their ITRs for the years 2000 and 2001 (Exhibits "6" and "11") with the BIR RDO No. 40; that the said ITR was filed by Ms. Marina Mendoza, who used to be connected with the BIR, because he and his wife were not very aware and familiar with the process of filing the ITR and complying with the tax laws and

[50] Docket, pp. 896-902
[51] TSN, November 12, 2008, pp. 4-10

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regulations; that his total earned income for the year 2000 amounted to P11,053,918.61 while his tax due for the year 2000 amounted to P1,105,391.88 (Exhibit "6-C"); that the said income tax due was withheld from his income for the year 2000 by his employer FLPPI as evidenced by the copies of quarterly Certificates of Creditable Tax Withheld at Source issued by FLPPI (Exhibits "7" to "10") and was filed with BIR RDO No. 40 on March 23, 2001 (Exhibits "7-C", "8-C", "9-C" and "10-C"); that for the year 2001, accused likewise testified that he filed his ITR for the year 2001 with the assistance of Ms. Marina Mendoza because of the same reasons and that his total earned income for the year 2001 amounted to P14,404,899.23, while his tax due for the year 2001 amounted to P1,440,492.32 (Exhibit "11-C"); the accused pointed out that he paid his tax due since, as explained to him by Ms. Marina Mendoza, the tax withheld by FLPPI from his earnings were deemed payment of his tax, as evidenced by the Certificates of Creditable Tax Withheld at Source (Exhibits "12" to "15") issued on a quarterly basis by his employer FLPPI; that accused believe that the said certificates was filed by FLPPI with the BIR on April 5, 2002 as evidenced by the stamped received by the BIR (Exhibits "12-C", "13-C", "14-C" and "15-C"); that he engaged the services of Ms. Marina Mendoza for a consideration as evidenced by the checks he issued as payment (Exhibits "3" and "5").

On cross examination[52] accused Benjamin Kintanar, Jr. stated that: he is one of the top 10 dealers of FLPPI, and as such received commission income

[52] TSN, November 12, 2008, pp: 10-33

for taxable years 2000 and 2001; checks marked a Exhibits "T" to "T-18" are those he received from FLPPI and cleared by BPI North Greenhills Branch, his Account Number in BPI is 107003489; he received the said checks from Michael Cajandab, Accountant of FLPPI, and confirmed that for 2000 and 2001 he received commission income in the total amount of P18,738,780 and P27,767,655.58, respectively.

Further, accused testified that: he is a registered taxpayer in RDO Pasig since 1997 and for the purpose of preparing and filing of his ITR for 2000 and 2001, he hired Ms. Marina Mendoza but the signatures in the ITRs are his; he provided all the details including personal circumstances, but when he signed the ITR he failed to read all the contents; he paid his income tax with the BIR for 2000 and 2001, the tax due has been paid by offsetting it with the creditable tax withheld at source; he did not personally file his ITR and did not verify from the BIR if his ITRs were actually filed, but he obtained copies of the ITRs stamped received by the BIR.

Also, during the cross-examination accused confirmed that: he had been a resident of Orando, Pasig City from 1972 to 1997, then from 1997 he transferred to Merville, Parañaque up to 2003 or 2004, from 2004 he went back to Pasig up to the present; he agreed that, supposedly, his ITR should have been filed where he is registered; no ITRs were actually filed in Pasig and he did not verify from any district offices of the BIR if his ITR for 2001 and 2002 were actually filed; his ITRs for 2000 and 2001 reflected an address in Lagro Subdivision, Novaliches, Quezon City; he has never lived in said address.

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Counsel for the prosecution emphasized that the ITRs of accused for 2000 and 2001 bore the stamp of RDO, Cubao.

On re-direct examination accused Benjamin Kintanar, Jr. explained that: he did not verify whether the ITRs were actually filed for those years because Ms. Mendoza is a very close friend of his sister; the Certificates of Creditable Tax Withheld at Source were issued by Ms. Natalia Golez of FLPPI.[53]

2. Second witness for the defense Jennifer K. Abad

The second witness for the defense, averred in her affidavit that: the accused is her brother; that she personally knows that the accused filed his ITRs for the year 2000 and 2001; that she likewise engaged the services of Ms. Marina Mendoza, who used to work in the BIR, to assist her, together with his brother and sister, in the filing of their ITRs;

To corroborate the testimony of accused, the second witness Jennifer Abad, the accused's sister, further alleged that she knows Ms. Marina Mendoza because Ms. Mendoza is the mother of her friend, who also happens to be her downline in FLPPI; that in one of her conversation with her friend, they discussed the filing of their ITRs and the latter told her that she need not worry about it because her mother was an accountant and working in BIR; that eventually, Ms. Jennifer Abad met up with Ms. Marina Mendoza and they agreed that the latter will prepare and file the ITRs of Ms. Abad and her husband; that it was witness Jennifer Abad who introduced the accused and another sister to Ms. Marina Mendoza for the same purpose, that is, for the

[53] TSN, November 12, 2008, pp. 34-37

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preparation and filing of their ITRs from 1998; that from 1998 to 2002, she and her siblings engaged the services of Ms. Marina Mendoza and it was the latter who would remind them of the filing of their ITRs; that since communication between her and Ms. Marina Mendoza is more open and accessible, Ms. Mendoza would inform her of accused's filing, the documents he should give and his payment for her; that in 2002, Ms. Marina Mendoza stopped doing the preparation and filing of their ITRs since the BIR started investigating on his brother, the accused herein.

3. Witness Ms. Marina Medoza

The third and last witness for the defense, Ms. Marina Mendoza, is 68, widowed, and a resident of 445 Camia St., Mansanas Subdivision, Marilao, Bulacan.

Witness Ms. Mendoza, who turned out to be a hostile witness, in substance, testified that: she came to know the accused Benjamin G. Kintanar, Jr. around 2000, thru her daughter Jennifer Mendoza Delos Santos, who happens to know the sister of accused, Jennifer Abad, as they are "*mag-kumare*"; Jennifer Abad, sister of accused, recruited her daughter to join FLPPI around 1997 to 1999; that there was a time when the sister of the accused went to their house and during their conversation, she advised Ms. Abad on how to prepare an ITR; that Ms. Abad and the accused went to their house and asked her for advice with respect to preparing his ITR; that she told accused to secure a BIR Form 2316 (W2) from FLPPI if he will prepare his

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ITR, which the accused showed to her; she does not remember exactly when the accused asked for consultation, its either 1999 or 2000

Ms. Mendoza clarified and reiterated that she did not receive any compensation for the advice she provided the accused and her sister; she recalls having received a check issued in her name from both accused and his sister, but the said checks she received from accused are installment payments for jewelries that the accused purchased from her son-in-law, Mr. Dong Morenos; she confirmed that the checks shown to her by counsel were the checks she received from siblings Kintanar.

Ms. Mendoza likewise denied, when presented with Exhibits "6" and "11", that she was the one who prepared and filed the ITRs of the accused for the years 2000 and 2001, respectively; she admitted that she was a former employee of BIR and worked as a Revenue Enforcement Officer but she vehemently denied that she is acquainted to certain Revenue District Officers within the Philippines.

Lastly, Ms. Marina Mendoza vehemently denied involvement in the filing of the ITR of accused Benjamin G. Kintanar, Jr.

THE ISSUE

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

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THE RULING OF THE COURT

Accused, Benjamin G. Kintanar, is charged before this Court in these two (2) consolidated cases for failure to file his Income Tax Returns (ITRs) for taxable years 2000 and 2001 on his taxable income in the estimated amounts of P3,475,090.64 and P5,175,242.12, [54] respectively, exclusive of penalties, surcharges and interest, in violation of the first paragraph of *Section 255 of the National Internal Revenue Code (NIRC) of 1997*, as amended, 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 withhold or remit taxes withheld on compensation, **at the time or times required by law or rules and regulations** shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years." (emphasis supplied).

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

1) to pay estimated tax or taxes;
2) to make (file) a return;
3) to keep records; and

---

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

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4) to supply information.

To establish the offense of failure to make or file a return, the prosecution must prove three (3) essential elements beyond reasonable doubt, to wit:

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

It is basic that in all criminal prosecutions, the burden of proof is on the prosecution to establish the guilt of the accused beyond reasonable doubt. It has the duty to prove each and every element of the crime charged in the information to warrant a finding of guilt for the said crime or for any other crime necessarily included therein.[55]

The accused is required to make or file a return

As regards the first element, accused admitted that he is a registered taxpayer with Tax Identification Number 186-677-853 and that he earns income from selling Forever Living products.

The undisputed facts are admitted in the Pre-Trial Order dated July 4, 2007,[56] the relevant portions of which state:

> "II. Statement of the Facts
>
> A. Admitted
>
> 1. Accused Benjamin Gatpayat Kintanar, Jr. a.k.a. Jun Kintanar, Filipino citizen, of legal age,

[55] Leonila Batulanon vs. People of the Philippines, 502 SCRA 35, citing People vs. Caingat, 376 SCRA 387, 396
[56] Docket, pp. 246-254

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married to Gloria V. Kintanar, and a resident of the Philippines, is a registered taxpayer with Tax Identification Number 186-677-853.

2. On August 31, 2004, accused sent a Protest Letter together with a photocopy of his income tax returns for years 2000 to 2002."

In relation to his duty to pay taxes to the national government, he is likewise required to make or file an income tax return arising from his supposed income for taxable years 2000 and 2001. Accused Kintanar's duty to make/file a return is specifically mentioned in *Sections 51 and 74 of the NIRC of 1997, as amended,* the pertinent portions of which read:

"SEC. 51. Individual Return. —

(A) Requirements.

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

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

xxx xxx xxx

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

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

xxx xxx xxx

"SEC. 74. Declaration of Income Tax for individuals. —

(A) In General. – Except as otherwise provided in this Section, **every individual subject to income tax** under Sections 24 and 25(A) of this Title, who is receiving self-employment income, whether it constitutes the sole source of his income or in combination with salaries, wages and other

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> fixed or determinable income, **shall make and file a declaration of his estimated income for the current taxable year on or before April 15 of the same taxable year**. In general, self-employment income consists of the earnings derived by the individual from the practice of profession or conduct of trade or business carried on by him as a sole proprietor or by a partnership of which he is a member. Nonresident Filipino citizens, with respect to income from without the Philippines, and nonresident aliens not engaged in trade or business in the Philippines, are not required to render a declaration of estimated income tax. The declaration shall contain such pertinent information as the Secretary of Finance, upon recommendation of the Commissioner, may, by rules and regulations prescribe. An individual may make amendments of a declaration filed during the taxable year under the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner." (Emphasis Supplied)

Accused admitted that he is an independent distributor of health and fitness products of FLPPI, wherein he has been a consistent top distributor and from which he has been earning substantial amounts of income during taxable years 2000 and 2001. The prosecution, on the other hand, presented as its witness, Mr. Michael T. Cajandab, Comptroller of FLPPI, who testified that in verifying the income received by accused, he checked the Alpha List marked as Exhibits "DD" and "DD-1", which is a reportorial requirement by the BIR containing the total amount of income payments made by their company to their distributors or independent contractors and the total amount of taxes for a particular year, said Alpha List was received by the BIR in the year 2001 as evidenced by the stamped received. Upon verification, Mr. Cajandab sent a Letter-Reply[57] dated January 20, 2003 indicating the total income payments they made to Mr. Kintanar for calendar years 1999, 2000 and 2001. Morever

[57] Exhibit "M", p. 551

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Carmencita Flores, Service Manager of Bank of the Philippine Islands (BPI) North Greenhills Branch, testified and affirmed her affidavit which explicitly provides that she came to know Mr. Benjamin G. Kintanar, Jr. as a depositor of their branch and, after a review of the bank statements, she confirmed that the checks issued by FLPPI to accused as income payments, marked as Exhibit "T" to "T-19", were encashed or deposited under the account name of the accused.

In view of the fact that accused Benjamin Kintanar, Jr. is a resident and a citizen of the Philippines mandated under Section 51 of the NIRC of 1997 to file an income tax return; and the prosecution having properly established that said accused earned income, as an independent distributor of health and fitness products of FLPPI, accused qualifies under the first element and is therefore liable to file his annual income tax returns during the taxable years that he has been earning income within the Philippines, specifically during the taxable years 2000 and 2001.

The accused failed to make or file a return at the time required by law

Important to the determination of the presence of the second element is the determination of the proper venue for the filing of the income tax return and the period within which to file the same, which is provided in Section 51, Subsections (B) and (C)(1), to wit:

"**SEC. 51. Individual Return** –

xxx xxx xxx

(B) Where to File. - Except in cases where the Commissioner otherwise permits, the return shall be filed with an authorized agent bank, Revenue District Officer, Collection Agent or duly authorized Treasurer of the city or municipality in which such person has his **legal residence** or **principal place of business in the Philippines**, or if there be no legal residence or place of business in the Philippines, with the Office of the Commissioner.

(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 preceding taxable year.

xxx xxx xxx"

Records reveal that accused was registered as a taxpayer in Pasig City where he was a resident from 1972 to 1997, however from 1997 up to 2003 or 2004, accused admitted that he, together with his family, transferred to Merville, Parañaque City, then afterwards, they went back to Pasig City.

After a careful evaluation of the records at hand, this Court is satisfied and so holds that the prosecution satisfactorily laid down the pieces of evidence needed to prove that there is no record of filing of the required Income Tax Returns within the reglementary period, in any of the revenue districts of the Bureau of Internal Revenue, where accused resided, at specific points in time, prior to or during the taxable years 2000 and 2001.

Full credence is accorded by this Court to the Certification[58] issued, affirmed and testified to by Atty. Barroga, OIC, Assistant District Officer of the BIR RDO No. 52, Parañaque City, to the effect that accused Benjamin G. Kintanar, Jr., did not file his ITRs for the years 1999, 2000 and 2001. Said

[58] Exhibit "K", Docket, p. 549

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certification corroborates another Certification[59] issued by the former Revenue District Officer Carmelita R. Bacod on September 17, 2002 in response to the request of the Tax Fraud Division reflected on the Access Letter dated July 18, 2002. Likewise, the same weight is given to the Certification [60] issued, affirmed and testified to by Romeo Naranjo, assigned as Revenue District Officer of Revenue District Office No. 43, Pasig City, which essentially states that accused Benjamin G. Kintanar and spouse Gloria V. Kintanar have not filed any return in their office and that they are not registered in their district.

Above finding is fortified by another Certification[61] dated September 26, 2007, signed by Victoria T. De Leon, Head Revenue Executive Assistant of the Information Systems Operations Service of the BIR, in behalf of Assistant Commissioner Alberto Pio De Roda, which substantially states that based on the ITS of the BIR accused Benjamin G. Kintanar, Jr. is a registered Professional Taxpayer, however, BIR has no record of accused having filed his ITRs for the years 1999-2001.

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

We are not convinced. A careful examination of the ITRs presented by accused belies his claim, for the said ITRs are of doubtful authenticity,

[59] Exhibit "P", Docket, p. 567
[60] Exhibits "S", "S-1" and "S-2"
[61] Exhibit "FF", p. 710

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materially flawed with the following irregularities surrounding its existence, to wit:

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

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

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

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

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

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

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

<u>That the failure to make or file a return was willful</u>

Willful in tax crimes statutes means a voluntary, intentional violation of a known legal duty and bad faith or bad purpose need not be shown.[62]

According to Black's Law Dictionary, "the word "**willful**" or "**willfully**" when used in the definition of a crime, it has been said time and again, **means only intentionally or purposely** as distinguished from **accidentally or negligently** and does not require any actual impropriety; while on the other hand it has been stated with equal repetition and insistence that the requirement added by such a word is not satisfied unless there is a bad purpose or evil intent." Rolin M. Perkins & Ronald N. Boyce, Criminal Law 875-76

[62] Mertens (Law of Federal Income Taxation) Chapter 47.05, page 28, Volume 13, see U.S. v. Green, 757 F2d 116, 85-1 USTC 9178 (CA7 1985), in which the Court, citing U.S. v. Moore, 627 F2d 830 (CA 1980) and U.S. v. Verkuilen, 690 F2d 648, 82-2 USTC 9618 (CA7 1982), upheld the conviction of a tax protester for willful failure to file returns]

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(3rd ed. 1982)[63]. Further, Black's Law Dictionary defines "willfulness" as the **voluntary, intentional violation or disregard of a known legal duty.**

Therefore, in order to convict an accused for willful failure to file income tax returns, it must be shown that the accused had knowledge of his legal duty to file an income tax return, but nevertheless, he voluntarily, knowingly and intentionally failed to file the required returns.

This Court will now look into the factual circumstances of the case at bar.

For his defense, accused vehemently denied the charges against him for willful failure to file his income tax returns for taxable years 2000 and 2001. Accused claims that he hired Ms. Marina Mendoza, a former employee of the BIR and an accountant, to help him in the preparation and filing of his income tax return, and that he supplied all the data and documents she needed for its preparation. Having relied on Ms. Mendoza's knowledge on filing the ITR, accused in effect is saying that he did not willfully fail to comply with his legal duty to file the income tax returns.

On the other hand, Ms. Marina Mendoza vehemently denied that she has any involvement in the filing of the ITRs of accused Benjamin G. Kintanar, Jr. She admits having met the accused when accused and his sister, Ms. Jeniffer K. Abad went to the former's house, but she asserts that insofar as the preparation of accused ITRs is concerned, she merely gave him an advice on how to prepare an ITR. Further, Ms. Mendoza reiterated that she did not receive any

[63] Black's Law Dictionary, 8th ed., p. 1630

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compensation for the advices she had given the accused, and when asked about the checks she received from accused, she clarified that the checks constitute as installment payments for jewelries that the accused purchased from her son-in-law, Mr. Dong Morenos. Lastly, Ms. Mendoza firmly denied, upon being presented the ITRs of the accused for 2000 and 2001, having prepared the ITRs of the accused.

Accused had knowledge of his obligation to file his income tax return for his income earned as an independent distributor of FLPPI. This inference can be proved by the testimonies of the accused and Ms. Marina asserting that for the purpose of preparing and filing of his ITRs for 2000 and 2001, he hired Ms. Marina Mendoza but the signatures in the ITRs are his; he provided all the details including personal circumstances. Clearly he had knowledge of his obligation that is why he allegedly hired another person to file in his behalf.

Also, "**willfulness**" is a state of mind that may be inferred from the circumstances of the case.[64] Thus, proof of willfulness may be, and usually is, shown by circumstantial evidence alone.[65]

After a painstaking analysis of the testimonial and documentary evidence presented by the prosecution and the defense, the Court is of the well considered view and so holds that the attendant circumstances in this case, admitted and proven during the proceedings, satisfactorily proved the element of "**willfulness**" on this charge against the accused. Simply put, based on the

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[64] Black's Law dictionary, 6th Edition, p. 1599

[65] *United States v. Grumka*, 728 F.2d 791, 796 97 (6th Cir. 1984); United States v. Gleason, 726 F.2d 385, 388 (8th Cir. 1984); United States v. Marabelles, 724 F.2d 1374, 1379 (9th Cir. 1984).

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prevailing circumstances in this case, the accused knowingly, voluntarily and intentionally failed to file his income tax returns for the taxable years 2000 and 2001.

Records show that the Bureau of Internal Revenue sent at least three (3) notices to accused Benjamin Kintanar, Jr. for the examination of his books of accounts and other accounting records for all internal revenue taxes. First one was Letter of Authority (LOA) No. 00029663 dated March 28, 2003 (Exhibits "A" to "A-3") received by Mr. Kintanar on April 3, 2003 as shown by his signature (Exhibit "A-3"). Despite receipt of the LOA, the spouses did not submit the documents requested. Second Request for the Presentation of Records dated April 21, 2003 (Exhibit "B") and received on April 23, 2003, and then a Final Notice for presentation and/or production of the required records/documents dated May 5, 2003 (Exhibit "C") were served and allegedly received by the spouses. Upon failure of the spouses to present or submit the required documents, a Subpoena Duces Tecum dated June 11, 2003 (Exhibit D" to "D-2") was issued to them commanding them to appear before the Chief Prosecution Division in order to enforce compliance in the presentation of their books of accounts and other accounting and tax records. No response was received by the BIR from the spouses in any of these notices.

Consequently, a Formal Letter of Demand dated February 26, 2004 (Exhibits "F" to "F-7") including Assessment Notices (Exhibits "G" to "G-7") were issued for the payment of deficiencies on taxes. It was only at this point when accused Benjamin G. Kintanar, Jr. manifested a hint of concern or

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interest by sending a Letter dated August 31, 2004 (Exhibits "H" to "H-3") protesting the deficiency assessments for lack of factual and legal basis, together with photocopies of his income tax returns for 2000, 2001 and 2002, and undertaking to submit additional documents within sixty (60) days therefrom. On September 30, 2004 a Letter (Exhibits "I" to "I-1") was issued by Mr. Arnel SD. Guballa, Chief of the National Investigation Division, *reminding* the spouses that no documents have yet been received by their office and that they have sixty (60) days from the date the protest was filed or until November 3, 2004 to submit their supporting documents otherwise, the assessment shall become final, executory and demandable. However, despite said undertaking of accused to submit additional documents and reminder from Mr. Gubally, accused did not submit any document. Hence, a Final Decision on Disputed Assessment dated December 13, 2004 (Exhibits "J" to "J-5") was issued informing the spouses about the denial of their protest for non-submission of required documents within the sixty (60) day reglementary period.

Another circumstance which convinced this Court to infer the presence of "**willfulness**" on the part of the accused not to file his income tax returns is his admission that he signed the ITRs but failed to read all the contents, and that he did not personally file his ITR and did not verify from the BIR if his ITRs were actually filed.

Verily, all of the foregoing circumstances taken together, accused displayed his indifference towards the issue of his tax responsibilities to the

> deemed jointly instituted in the same proceeding. The filing of the criminal action shall necessarily carry with it the filing of the civil action. No right to reserve the filing of such civil action separately from the criminal action shall be allowed or recognized. (Rules of Court, Rule 111, sec. 1[a], par. 1a)

In this case, records reveal that the BIR sent a Formal Letter of Demand dated February 26, 2004 (Exhibits "F" to "F-7") including Assessment Notices (Exhibits "G" to "G-7"), which were received by the accused on August 10, 2004. Accused Benjamin G. Kintanar, Jr. protested the deficiency assessments, by sending a Letter dated August 31, 2004 (Exhibits "H" to "H-3"), for lack of factual and legal basis, together with photocopies of his income tax returns for 2000, 2001 and 2002, and undertaking to submit additional documents within sixty (60) days therefrom. On September 30, 2004 a Letter (Exhibits "I" to "I-1") was issued by Mr. Arnel SD. Guballa, Chief of the National Investigation Division, acknowledging receipt of the protest and *reminding* the spouses that no documents have yet been received by their office and that they have sixty (60) days from the date the protest was filed or until November 3, 2004 to submit their supporting documents otherwise, the assessment shall become final, executory and demandable. However, accused did not submit the documents. Hence, BIR issued a Final Decision on Disputed Assessment dated December 13, 2004 (Exhibits "J" to "J-5"), which was received by the accused on April 12, 2005, informing the spouses about the denial of their protest for non-submission of required documents within the sixty (60) day reglementary period.

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Section 228 of the NIRC of 1997 provides for the period and procedure of protesting assessment, *viz*:

> **SEC. 228.** ***Protesting of Assessment.*** - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
>
> xxx
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.
>
> **Within sixty (60) days from filing of the protest**, all relevant supporting **documents shall have been submitted**; **otherwise**, the **assessment shall become final**.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the **taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.**

The accused failed to prove that he has submitted any document in support of his protest within 60 days from the date of filing of his protest, or until November 3, 2004, thus, the assessments against accused became final pursuant to the above-quoted provision. Moreover, for failure of the accused to

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judicially appeal the Final Decision[66] within thirty (30) days from receipt thereof, the assessments had become final, executory and demandable. Accordingly, accused is barred from disputing the correctness of the subject assessments absent any proof of irregularities in the performance of duties, an assessment duly made by the Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favour of the correctness of tax assessments.[67]

Therefore, accused is hereby held liable to pay the assessed tax deficiencies for taxable years 2000 and 2001, in accordance with the subject assessments[68] issued against him, which had become final, executory and demandable, *to wit*:

TAXABLE YEAR	2000	2001
Total Income Tax Still Due	3,475,090.64	5,172,519.25[69]
Add: Surcharge	1,737,545.32	2,586,259.62
Interest 03/31/2004	3,038,966.76	2,971,612.31
TOTAL INCOME TAX DEFICIENCY	P8,251,602.72	P10,730,391.18

It is explicitly provided for under Section 255 of the NIRC of 1997, *as amended,* that, any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or

[66] Exhibits "J" to "J-4", pp544-548
[67] *Pp v. Gloria Kintanar*, CTA Crim Case Nos. 0-033 & 0-034 citing *Republic v. Court of Appeals*, G.R. No. L-38540, April 30, 1987.
[68] Exhibit "J-4", p. 548
[69] INDICATED THE CORRECT AMOUNT. The correct estimated amount is **"5,172,519.25"**. Note that in Exhibit "J-4" the *Total Income Tax Still Due* from Benjamin Kintanar for the taxable year 2001 is "**5,172,519.25**" and **NOT** "5,175,242.12" as erroneously provided for in the Information filed by the State Prosecutor. "Exhibit "J-4" is Annex "A" of the *Final Decision on Disputed Assessment* issued by Jose Mario C. Buñag, Deputy Commissioner of the Legal and Inspection Group of the BIR.

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supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, **upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.**

Taking into account that accused is not disqualified from the scope of the Indeterminate Sentence Law,[70] the same shall apply, and thus, the imposable penalty shall not exceed the maximum fixed by law, which is 10 years, and the minimum penalty shall not be less than 1 year, the minimum term prescribed by Section 255 of the NIRC of 1997.

Considering that the subject of this disposition involves two informations filed against accused, docketed as CTA Criminal Case Nos. 0-031 & 0-032, both for failure to file ITRs for the taxable years 2000 and 2001, respectively, the imposition of a fine of P10,000.00 for each information is proper, likewise, the imposition of indeterminate penalty of imprisonment of one (1) year as minimum, to two (2) years as maximum for each information is appropriate under the circumstances. Section 280 of the NIRC of 1997, as amended, provides for the imposition of subsidiary penalty in the event that

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[70] Section 1 and 2 of Act no. 4103 as amended by Act No. 4225 and Republic Act No. 4203

accused has no property with which to meet the fine imposed upon him by the court, or is unable to pay such fine.

WHEREFORE, premises considered, Court finds and so holds that:

1. In CTA Criminal Case No. 0-031, accused Benjamin G. Kintanar, Jr., is **GUILTY BEYOND REASONABLE DOUBT** of violation of Section 255 of the National Internal Revenue Code of 1997, *as amended*, and is hereby sentenced to suffer an indeterminate penalty of imprisonment of one (1) year as minimum, to two (2) years as maximum, and is **ORDERED** to pay a fine in the amount of P10,000.00, with subsidiary imprisonment in case accused has no property with which to meet the said fine, pursuant to Section 280 of the NIRC of 1997, *as amended*.

As regards civil liability, accused is hereby **ORDERED TO PAY** deficiency income tax for the taxable year 2000 in the amount of EIGHT MILLION TWO HUNDRED FIFTY ONE THOUSAND SIX HUNDRED TWO AND 72/100 PESOS (P8,251,602.72), inclusive of the surcharge and interest, plus 20% delinquency interest per annum from the total amount of P8,251,602.72, counted from April 12, 2005,[71] until fully paid, pursuant to Section 249(C)(3) of the NIRC of 1997, *as amended*; and

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[71] Exhibit "J-5", p. 544, date when the accused received the Final Decision on Disputed Assessment dated December 13, 2004 (Exhibit "J"

2. In CTA Criminal Case No. 0-032, accused Benjamin G. Kintanar, Jr., is **GUILTY BEYOND REASONABLE DOUBT** of violation of Section 255 of the National Internal Revenue Code of 1997, *as amended*, and is hereby sentenced to suffer an indeterminate penalty of imprisonment of one (1) year as minimum, to two (2) years as maximum, and is **ORDERED** to pay a fine in the amount of P10,000.00, with subsidiary imprisonment in case accused has no property with which to meet the said fine, pursuant to Section 280 of the NIRC of 1997, *as amended.*

As regards civil liability, accused is hereby **ORDERED TO PAY** deficiency income tax for the taxable year 2001 in the amount of TEN MILLION SEVEN HUNDRED THIRTY THOUSAND THREE HUNDRED NINETY ONE AND 18/100 PESOS (P10,730,391.18), inclusive of the surcharge and interest, plus 20% delinquency interest per annum from the total amount of P10,730,391.18, counted from April 12, 2005,[72] until fully paid, pursuant to Section 249(C)(3) of the NIRC of 1997, *as amended.*

No costs.

SO ORDERED.

AMELIA R. COTANGCO- MANALASTAS
Associate Justice

[72] Exhibit "J-5", p. 544, date when the accused received the Final Decision on Disputed Assessment dated December 13, 2004 (Exhibit "J"

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WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice

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