REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

PEOPLE OF THE PHILIPPINES, *Plaintiff,* -*versus*- **RITCHE S. BARRIGA,** *Accused.*	**CTA Crim. Case No. O-266** For: Violation of Section 255 of the NIRC of 1997, as amended
PEOPLE OF THE PHILIPPINES, *Plaintiff,* -*versus*- **RITCHE S. BARRIGA,** *Accused*	**CTA Crim. Case No. O-267** For: Violation of Section 255 of the NIRC of 1997, as amended
PEOPLE OF THE PHILIPPINES, *Plaintiff,* -*versus*- **RITCHE S. BARRIGA,** *Accused*	**CTA Crim. Case No. O-268** For: Violation of Section 255 of the NIRC of 1997, as amended
PEOPLE OF THE PHILIPPINES, *Plaintiff,* -*versus*- **RITCHE S. BARRIGA,** *Accused.*	**CTA Crim. Case No. O-269** For: Violation of Section 255 of the NIRC of 1997, as amended Members: **DEL ROSARIO, *P.J.***, *Chairperson* **FABON-VICTORINO**, *and* **MANAHAN**, JJ. Promulgated: JAN 2 1 2020 8:33 a.m.

x- x

D E C I S I O N

MANAHAN, *J.:*

These are consolidated cases[1] against the accused, Ritche S. Barriga, for alleged violations of Section 255 of the 1997 National Internal Revenue Code (NIRC), as amended, for failure to supply correct and accurate information in his annual Income Tax Return (ITR) and first, second and third quarterly Value Added Tax (VAT) Returns for taxable year 2009.

Antecedents

Indicted is Ritche S. Barriga under CTA Criminal Case Nos. O-266, O-267, O-268, and O-269 for violation of Section 255 of the 1997 NIRC, as amended, in his ITR and VAT Returns for taxable year 2009, allegedly committed as follows:

CTA Crim. Case No. O-266

> "That on or about April 27, 2010 at Panabo City, and within the jurisdiction of this Honorable Court, the above named accused, a registered taxpayer with the obligation to declare his income and to pay the corresponding taxes thereon, did then and there knowingly, willfully, and feloniously fail to supply correct and accurate information in his annual Income Tax Return (ITR) by stating merely that his gross sales income for taxable year 2009 amounted to Fourteen Million Five Hundred Eighty Three Thousand Nine Hundred Sixty Pesos and Sixty Six Centavos (P14,583,960.66), when in truth and in fact, his gross sales for taxable year 2009 totaled Seventy Two Million Eight Hundred Thirty Five Thousand Ninety Five Pesos and Ninety Nine Centavos (P72,835,095.99), to the damage and prejudice of the Government in the amount of **Eighteen Million Two Hundred Forty Five Thousand Three Hundred Six Pesos and Eighteen Centavos (P18,245,306.18)**, exclusive of surcharges, interest and penalties.
>
> **CONTRARY TO LAW**."

CTA Crim. Case No. O-267

> "That on or about April 27, 2009, at Panabo City and within the jurisdiction of this Honorable Court, the

[1] Docket, CTA Crim. Case No. O-266, Vol. 1, Resolution dated August 1, 2012, pp. 222-223.

above named accused, a Value Added Tax (VAT) registered taxpayer with the obligation to declare his actual sales on his quarterly VAT return and to pay the corresponding VAT thereon, did then and there knowingly, willfully and feloniously failed to supply correct and accurate information in his quarterly VAT return by stating that his actual first quarter 2009 sales amounted to merely Two Million Seven Hundred Twenty Four Thousand Two Hundred Seventeen Pesos and Sixty Eight Centavos (P2,724,217.68), when in truth and in fact, his actual first quarter of 2009 sales totaled to Eleven Million Two Hundred Seventy Seven Thousand Ninety Eight Pesos and Eighty One Centavos (P11,277,098.81) to the damage and prejudice of the Government in the amount of **One Million Twenty Six Thousand Three Hundred Three Hundred** [sic] **Forty Five Pesos and Seventy Four Centavos (P1,026,345.74)**, exclusive of penalties, costs and surcharges.

CONTRARY TO LAW."

CTA Crim. Case No. O-268

"That on or about July 28, 2009, at Panabo City, and within the jurisdiction of this Honorable Court, the above named accused, a Value Added Tax (VAT) registered taxpayer with the obligation to declare his actual sales on his quarterly VAT return and to pay the corresponding VAT thereon, did then and there knowingly, willfully and feloniously fail to supply correct and accurate information in his quarterly VAT Return by stating that his actual first quarter 2009 sales amounted to merely Three Million Eight Hundred Twenty Three Thousand Nine Hundred Fourty Six Pesos and Sixteen Centavos (P3,823,946.16), when in truth and in fact, his actual second quarter of 2009 sales totaled to Twenty Four Million Nine Hundred Seventy One Thousand Three Hundred Thirty Pesos and Forty Six Centavos (P24,330,330.46) to the damage and prejudice of the Government in the amount of **Two Million Five Hundred Thirty Seven Thousand Six Hundred Eighty Six Pesos and Twelve Centavos (P2,537,686.12)**, exclusive of penalties, costs and surcharges.

CONTRARY TO LAW." *On*

CTA Crim. Case No. O-269

> "That on or about October 23, 2009, at Panabo City, and within the jurisdiction of this Honorable Court, the above named accused, a Value Added Tax (VAT) registered taxpayer with the obligation to declare his actual sales on his quarterly VAT return and to pay the corresponding VAT thereon, did then and there knowingly, willfully and feloniously failed to supply correct and accurate information in his quarterly VAT return by stating that his actual third quarter 2009 sales amounted to merely Four Million Seventeen Thousand Two Hundred Sixty Three Pesos and Fifty Eight Centavos (P4,017,263.58), when in truth and in fact, his actual third quarter of 2009 sales totaled to Twenty Seven Million One Hundred Ninety Eight Thousand Two Hundred Twenty Four Pesos and Seventy Five Centavos (P27,198,224.75) to the damage and prejudice of the Government in the amount of **Two Million Six Hundred Thirty One Thousand Seven Hundred Fifteen Pesos and Thirty Four Centavos (P2,631,715.34)**, exclusive of penalties, costs and surcharges.
>
> **CONTRARY TO LAW.**"

The prosecution moved to amend the Information on July 18, 2012[2] for CTA Crim. Case No. O-268 which was granted and admitted[3] by this Court. The Amended Information stated the following:

CTA Crim. Case No. O-268[4]

> "That on or about July 28, 2009, at Panabo City, and within the jurisdiction of this Honorable Court, the above named accused, a Value Added Tax (VAT) registered taxpayer with the obligation to declare his actual sales on his quarterly VAT return and to pay the corresponding VAT thereon, did then and there knowingly, willfully and feloniously fail to supply correct and accurate information in his quarterly VAT Return

---

[2] Docket, CTA Crim. Case No. O-268, Motion to Admit Attached Amended Information, pp. 215-218.
[3] *Id.*, CTA Crim. Case No. O-266, Vol. 1, Resolution dated September 25, 2012, pp. 245-250.
[4] *Id.*, CTA Crim. Case No. O-268, Amended Information, pp. 219-220.

> by stating that his actual **second** quarter 2009 sales amounted to merely Three Million Eight Hundred Twenty Three Thousand Nine Hundred Fourty Six Pesos and Sixteen Centavos (P3,823,946.16), when in truth and in fact, his actual second quarter of 2009 sales totaled to Twenty Four Million Nine Hundred Seventy One Thousand Three Hundred Thirty Pesos and Forty Six Centavos **(Php24,971,330.46)** to the damage and prejudice of the Government in the amount of **Two Million Five Hundred Thirty Seven Thousand Six Hundred Eighty Six Pesos and Twelve Centavos (P2,537,686.12)**, exclusive of penalties, costs and surcharges.
>
> **CONTRARY TO LAW.**"

Finding probable cause against the accused, this Court issued Warrant of Arrest on March 29, 2012,[5] April 30, 2012,[6] April 11, 2012,[7] and May 21, 2012[8] for CTA Crim. Case Nos. O-266, O-267, O-268, and O-269, respectively.

Accused Barriga voluntarily appeared on May 2, 2012 for CTA Crim. Case Nos. O-266 in Regional Trial Court (RTC) Branch 34, Panabo City, and posted a cash bond for his provisional release[9], while accused voluntarily appeared in RTC Branch 4, Panabo City on May 6, 2012, May 16, 2012, and June 5, 2012, and posted cash bonds for CTA Crim. Case Nos. O-268, O-267, and 269, respectively.[10]

On August 1, 2012,[11] CTA Crim. Case Nos. O-268, O-267, and 269 were consolidated with Crim Case No. O-266 after accused moved for such consolidation.

Accused was arraigned on August 1, 2012[12] for CTA Crim. Nos. O-266, O-267, and O-269, and pleaded not guilty. On October 24, 2012,[13] accused was arraigned under CTA

---

[5] Docket, CTA Crim. Case No. O-266, Vol. 1, Warrant of Arrest, p. 167.
[6] *Id.*, CTA Crim. Case No. O-267, Warrant of Arrest, p. 174.
[7] *Id.*, CTA Crim. Case No. O-268, Warrant of Arrest, p. 172.
[8] *Id.*, CTA Crim. Case No. O-269, Warrant of Arrest, p. 211.
[9] *Id.*, CTA Crim No. O-266, Vol. 1, RTC-Branch 34 Order dated May 2, 2012, p. 169.
[10] *Id.*, CTA Crim No. O-267, Order dated May 16, 2012, p. 176; CTA Crim No. O-268, Order dated May 7, 2012, p. 175; CTA Crim No. O-269, Order dated June 5, 2012, p. 223.
[11] *Id.*, CTA Crim No. O-266, Vol. 1, Resolution dated August 1, 2012, p. 222.
[12] *Id.*, CTA Crim No. O-266, Vol. 1, Certificate of Arraignment dated August 1, 2012, p. 225; CTA Crim No. O-267, Certificate of Arraignment dated August 1, 2012, p. 226; and CTA Crim No. O-269, Minutes of Hearing dated August 1, 2012, p. 251.
[13] *Id.*, CTA Crim No. O-266, Vol. 1, Resolution dated October 24, 2012, pp. 460-461

Crim. Case No. O-268 and also pleaded not guilty, hence, the cases were set for preliminary conference and pre-trial conference

The preliminary conference[14] was held on November 7, 2012, November 21, 2012, and January 23, 2013 while the pre-trial conference[15] was held on January 30, 2013.

Plaintiff prosecuted the case and presented its witnesses on July 10, 2013[16], July 31, 2013[17], October 23, 2013[18], December 4, 2013[19], and February 12, 2014[20].

On June 30, 2014, plaintiff filed its Formal Offer of Evidence[21] with the following exhibits, to wit:

Exhibit	Document
A to A-2[22]	Letter of Authority and eLOA SN: eLA201000005567 dated September 7, 2010
B[23]	BIR Certificate of Registration (BIR Form 2303) of Richpack Plastic Manufacturing with OCN No. 2rc 0000357672 dated March 31, 2006
C[24]	DTI Certificate No. 0022860 of Richpack Plastic Manufacturing
D to D-3[25]	Annual Income Tax Return (ITR-BIR Form No. 1701) of Ritche S. Barriga with TIN 931-455-736-000 for taxable year 2009
E[26]	Certificate of Compensation Payment/ Tax Withheld (Form 2316) of Ritche S. Barriga for taxable year 2009
F to F-2[27]	Quarterly VAT Return (Form 2250Q) for 1st Quarter of taxable year 2009 of Richpack Plastic Manufacturing
G	Quarterly VAT Return (Form 2250Q) for 2nd Quarter of taxable year 2009 of Richpack Plastic Manufacturing

[14] Docket, CTA Crim No. O-266, Vol. 1, Minutes of Preliminary Conference dated November 7, 2012, p. 462; Minutes of Preliminary Conference dated November 21, 2012, p. 470; Minutes of Preliminary Conference dated January 23, 2013, p. 480.
[15] *Id.*, CTA Crim No. O-266, Vol. 1, Minutes of the Hearing dated January 30, 2013, pp. 520-522.
[16] *Id.*, CTA Crim No. O-266, Vol. 2, Minutes of the Hearing dated July 10, 2013, p. 642.
[17] *Id.*, CTA Crim No. O-266, Vol. 2, Minutes of the Hearing dated July 31, 2013, p. 823.
[18] *Id.*, CTA Crim No. O-266, Vol. 2, Minutes of the Hearing dated October 23, 2013, p. 882.
[19] *Id.*, CTA Crim No. O-266, Vol 2, Minutes of the Hearing dated December 4, 2013, p. 887.
[20] *Id.*, CTA Crim No. O-266, Vol 2, Minutes of the Hearing dated February 12, 2014, p. 891.
[21] *Id.*, CTA Crim No. O-266, Vol 3, pp. 956-969.
[22] *Id.*, CTA Crim No. O-266, Vol 1, Exhibits "A" to "A-2", pp. 254-256.
[23] *Id.*, CTA Crim No. O-266, Vol 1, Exhibit "B", p. 484.
[24] *Id.*, CTA Crim No. O-266, Vol 1, Exhibit "C", p. 485.
[25] *Id.*, CTA Crim No. O-266, Vol 1, Exhibits "D" to "D-3", pp. 259-261.
[26] *Id.*, CTA Crim No. O-266, Vol 1, Exhibit "E", p. 262.
[27] *Id.*, CTA Crim No. O-266, Vol 1, Exhibits "F" to "F-2", pp. 263-265.

H to H-1[28]	Quarterly VAT Return (Form 2250Q) for 3rd Quarter of taxable year 2009 of Richpack Plastic Manufacturing
I to I-1[29]	Quarterly VAT Return (Form 2250Q) for 4th Quarter of taxable year 2009 of Richpack Plastic Manufacturing
J[30]	Independent Auditor's Report signed by Corazon J. Balidio, CPA
J-1[31]	Income Statement of Richpack Plastic Manufacturing for the years ended December 31, 2009 & 2008
J-2[32]	Balance Sheet of Richpack Plastic Manufacturing for the years ended December 31, 2009 & 2008
J-3[33]	Statement of Cost of Goods Manufactured & Sold of Richpack Plastic Manufacturing for the years ended December 31, 2009 & 2008
J-4[34]	Statement of Cash Flow of Richpack Plastic Manufacturing for the years ended December 31, 2009 & 2008
J-5[35]	Inventory End Report [Raw Materials (Direct Materials)] of Richpack Plastic Manufacturing for the years ended December 31, 2009
J-6[36]	Inventory End Report (Finished Goods) of Richpack Plastic Manufacturing for the years ended December 31, 2009
J-7[37]	Schedule of VAT Payments of Richpack Plastic Manufacturing for the years ended December 31, 2009
J-8[38]	Schedule of Depreciation of Richpack Plastic Manufacturing for the years ended December 31, 2009
J-9[39]	Schedule of Taxes and Licenses of Richpack Plastic Manufacturing for the years ended December 31, 2009
K to K-1	Annual Information Return of Creditable Income Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax (Form 1604-E) for taxable year 2009 submitted to the BIR by STANFILCO (A Division of DOLE Philippines, Inc.
K-2	Portion of STANFILCO's Summary List of Payees which is an attachment to the Annual Information Return of Creditable Income Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax (Form 1604-E) pertaining to Richpack Plastic Manufacturing
L to L-3	Certificate of Creditable Tax Withheld at Source (Form 2307) prepared by STANFILCO showing the amount of tax withheld and amount of income payments made to Richpack Manufacturing for the first, second, third and fourth quarters of taxable year 2009

[28] *Id.*, CTA Crim No. O-266, Vol 1, Exhibits "H" to "H-1", pp. 267-268.
[29] *Id.*, CTA Crim No. O-266, Vol 1, Exhibits "I" to "I-1", pp. 269-270.
[30] *Id.*, CTA Crim No. O-266, Vol 1, Exhibit "J", p. 271.
[31] *Id.*, CTA Crim No. O-266, Vol 1, Exhibit "J-1", p. 272.
[32] *Id.*, CTA Crim No. O-266, Vol 1, Exhibit "J-2", p. 273.
[33] *Id.*, CTA Crim No. O-266, Vol 1, Exhibit "J-3", p. 274.
[34] *Id.*, CTA Crim No. O-266, Vol 1, Exhibit "J-4", p. 275.
[35] *Id.*, CTA Crim No. O-266, Vol 1, Exhibit "J-5", p. 276.
[36] *Id.*, CTA Crim No. O-266, Vol 1, Exhibit "J-6", p. 277.
[37] *Id.*, CTA Crim No. O-266, Vol 1, Exhibit "J-7", p. 278.
[38] *Id.*, CTA Crim No. O-266, Vol 1, Exhibit "J-8", p. 279.
[39] *Id.*, CTA Crim No. O-266, Vol 1, Exhibit "J-9", p. 280.

M to M-1	Annual Information Return of Creditable Income Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax (Form 1604-E) for taxable year 2009 submitted to the BIR by Lapanday Foods Corporation with attached portion of the Summary List of Payees pertaining to Richpack Plastic Manufacturing
N to N-3	Certificate of Creditable Tax Withheld at Source (Form 2307) prepared by Lapanday Foods Corporation showing the amount of tax withheld and amount of income payments made to Richpack Manufacturing for the first, second, third and fourth quarters of taxable year 2009
O to O-1	Annual Information Return of Creditable Income Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax (Form 1604-E) for taxable year 2009 submitted to the BIR by First Davao Consolidated Joint Venture with attached portion of the Summary List of Payees pertaining to Richpack Plastic Manufacturing
P to P-4	Certificate of Creditable Tax Withheld at Source (Form 2307) issued by First Davao Consolidated Joint Venture to Richpack Manufacturing for taxable year 2009 showing the total tax withheld by the latter from Richpack Plastic Manufacturing per quarter of taxable year 2009
Q to Q-4	Annual Information Return of Creditable Income Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax (Form 1604-E) for taxable year 2009 submitted to the BIR by Sumifru (Philippine) Corporation with attached portion of Summary List of Payees pertaining to Richpack Plastic Manufacturing
R to R-3	Certificate of Creditable Tax Withheld at Source (Form 2307) issued by Sumifru to Richpack Manufacturing for the 4 quarters 2009, showing the total tax withheld by the latter from Richpack Plastic Manufacturing per quarter of taxable year 2009
S to S-1	Summary of Findings by the Investigating Revenue Officers concerning Ritche S. Barriga of Richpack Manufacturing for taxable year 2009
T	Payment Form (Form [N]o. 0605) showing payment of Php10,000,000.00 made by Ritche S. Barriga for deficiency tax for taxable year 2009
V	Deposit Slip for Tax Payments Current Account No. 066-7066012212 dated April 07, 2011, showing payment of Php10,000,000.00 by Ritche Barriga
W to W-4	Amended Annual Income Tax Return of Ritche S. Barriga with attached Financial Statements
X to X-1[40]	Details of Discrepancy Deficiency Expanded Withholding Tax attested by RDO Manuel J. Trias, Jr. with attached Explanation to adjustment for Expanded Withholding Tax Liability of Ritche S. Barriga for taxable year 2009

[40] *Id.*, CTA Crim No. O-266, Vol 1, Exhibits "X" to "X-1", pp. 328-329.

Y[41]	Computation of Value Added Tax Still due per Investigation for period ended December 31, 2009 of Ritche S. Barriga for taxable year 2009
Z to Z-2[42]	Details of Discrepancy Deficiency Value Added Tax for 2009 with attached Explanation to Adjustment for Value Added Tax Liability of Ritche S. Barriga for taxable year 2009
AA to AA-2[43]	Details of Discrepancy Deficiency Income Tax for 2009 with attached Explanation to Adjustment for Income Tax Liability of Ritche S. Barriga for taxable year 2009
BB	Joint Complaint Affidavit Jenie Pearl Costaños, Mary Anne C. Lee, Elizabeth M. Garrido and Fe B. Namoc
CC	Counter-Affidavit of Ritche S. Barriga dated April 8, 2011
DD	Reply-Affidavit of Jenie Pearl Costaños, Mary Anne C. Lee, Elizabeth M. Garrido and Fe B. Namoc
EE	Motion to Re-open and Admit attached Computation Sheet filed on November 4, 2011
FF[44]	Preliminary Assessment Notice (PAN) with details of discrepancy dated June 27, 2011 issued to Mr. Ritche S. Barriga (TIN 931-455-736) for deficiency tax assessment for taxable year 2009
GG[45]	Letter from Ritche S. Barriga dated July 18, 2011 addressed to Assistant Regional Director Mr. Nuzar N. Balatero
HH[46]	Formal Letter of Demand with Final Assessment Notices (FAN) dated April 13, 2012 issued to Mr. Barriga for deficiency tax assessment for taxable year 2009 with attached Assessment Notices/Details of Assessment (Form 1708) and details of Discrepancies
II[47]	Payment Form (Form 1605) with attached Deposit Slip for Tax Payment for payment of Php401,938.87 only despite evidence to the effect that a finding of substantial under-declaration
JJ[48]	Payment Form (Form 1605) with attached Deposit Slip for Tax Payment for payment of Php35,823.48 expanded withholding tax assessment
KK[49]	Payment Form (Form 1605) with attached Deposit Slip for Tax Payment for payment of Php4,065,894.21 value-added tax assessment
LL[50]	Letter from Revenue District Officer, Manuel J. Trias, Jr. of RDO No. 115, Tagum City dated January 10, 2011 addressed to the General Manager of Sumifru Philippines, Inc. requesting for copies of Certificate of Creditable Tax Withheld at source (BIR Form No. 2307)

[41] *Id.*, CTA Crim No. O-266, Vol 1, Exhibit "Y", p. 330.
[42] *Id.*, CTA Crim No. O-266, Vol 1, Exhibit "Z" to "Z-2", pp. 331-332.
[43] *Id.*, CTA Crim No. O-266, Vol 1, Exhibit "AA" to "AA-2", pp. 334-336.
[44] *Id.*, CTA Crim No. O-266, Vol 1, Exhibit "FF", pp. 486-487.
[45] *Id.*, CTA Crim No. O-266, Vol 1, Exhibit "GG", pp. 488-492.
[46] *Id.*, CTA Crim No. O-266, Vol 1, Exhibit "HH", pp. 493-496.
[47] *Id.*, CTA Crim No. O-266, Vol 1, Exhibit "II", pp. 497-498.
[48] *Id.*, CTA Crim No. O-266, Vol 1, Exhibit "JJ", p. 499.
[49] *Id.*, CTA Crim No. O-266, Vol 1, Exhibit "KK", p. 501.
[50] *Id.*, CTA Crim No. O-266, Vol 1, Exhibit "LL", p. 502.

	for taxable year 2009 of their transaction with RICHPACK PLASTIC MANUFACTURING
MM[51]	Letter from Revenue District Officer, Manuel J. Trias, Jr. of RDO No. 115, Tagum City dated January 10, 2011 addressed to the General Manage[n]r of First Davao Consolidated-JVC requesting for copies of Certificate of Creditable Tax Withheld at source (BIR Form No. 2307) for taxable year 2009 of their transaction with RICHPACK PLASTIC MANUFACTURING
II to II-1[52]	Judicial Affidavit of Revenue Officer Jenie Pearl G. Costa
MM to MM-1[53]	Judicial Affidavit of Revenue Officer Mary Anne C. Lee
QQ to QQ-1[54]	Judicial Affidavit of Revenue Officer Fe B. Namoc

However, this Court denied the admission of plaintiff's Exhibits G, K to K-1, K-2, L to L-3, M to M-1, N to N-3, O to O-1, P to P-4, Q to Q-4, R to R-3, T, V, AA, BB, for failure to submit the duly-marked documents while Exhibits S to S-1, W to W-4, DD, and EE were also denied admission for its failure to submit the original or certified true copies thereof for comparison.[55] Exhibit CC was also not admitted for said document was not found in the records of the case.[56]

On October 27, 2014, accused filed a Motion for Leave of Court to File Demurrer[57] to Evidence after his counsel manifested[58] such during trial considering that the prosecution did not file any motion for reconsideration on the inadmissibility of plaintiff's exhibits in the preceding paragraph. This Court granted[59] said motion, hence, accused filed his Demurrer to Evidence on December 9, 2014[60], without comment[61] from the plaintiff despite due notice, which was admitted[62] by the Court on February 18, 2015.

---

[51] *Id.*, CTA Crim No. O-266, Vol 1, Exhibit "MM", p. 503.
[52] *Id.*, CTA Crim No. O-266, Vol 2, Exhibit "II", pp. 552-562.
[53] *Id.*, CTA Crim No. O-266, Vol 2, Exhibit "MM", pp. 715-723.
[54] *Id.*, CTA Crim No. O-266, Vol 2, Exhibits "QQ" to "QQ-1", pp. 831-835.
[55] Docket, CTA Crim. Case No. O-266, Vol. 3, Resolution dated August 6, 2014, pp. 977-978.
[56] *Id.*
[57] *Id.*, CTA Crim. No. O-266, Vol. 3, pp. 1076-1089.
[58] *Id.*, CTA Crim. No. O-266, Vol. 3, Page 3 of Transcript of Stenographic Notes during The Hearing on October 22, 2014, pp. 1075-c.
[59] *Id.*, CTA Crim. No. O-266, Vol. 3, Resolution dated November 18, 2014, pp. 1098-1099.
[60] *Id.*, CTA Crim. No. O-266, Vol. 3, Annex "A" of Accused's Manifestation and Motion, pp. 1103-1125.
[61] *Id.*, CTA Crim. No. O-266, Vol. 3, Records Verification dated January 9, 2015, p. 1127.
[62] *Id.*, CTA Crim. No. O-266, Vol. 3, Resolution dated February 18, 2015, pp. 1131-1132.

On July 2, 2015, this Court denied[63] said Demurrer to Evidence, hence, accused moved[64] for the reconsideration of such denial which was denied anew for lack of merit under Resolution[65] dated September 21, 2015.

On December 4, 2015, accused filed a Petition for Certiorari under Rule 65 of the Rules of Court before the CTA Court *En Banc* relative to said denials,[66] hence, he moved[67] for the suspension of the trial hearing for his initial presentation of evidence which the Court denied[68].

On April 27, 2016, the Court *En Banc* denied due course and dismissed[69] accused's Petition for Certiorari, hence, he filed a Petition for Certiorari[70] before the Supreme Court. However, the Supreme Court dismissed[71] such petition on October 3, 2016, hence, he moved for reconsideration of said dismissal but the former denied said motion with finality[72] on February 6, 2017.

Even with the filing of the accused of said petition to the Supreme Court, the trial of the case continued and the accused was called in the witness stand and gave his testimony.[73] Accused then presented his other witness.[74] On August 1, 2018, accused was recalled to the witness stand.[75]

On August 16, 2018, accused filed his Formal Offer of Evidence[76] without comment or opposition[77] from the prosecutors on the following exhibits, to wit:

---

[63] *Id.*, CTA Crim. No. O-266, Vol. 3, Resolution dated July 2, 2015, pp. 1136-1147.
[64] *Id.*, CTA Crim. No. O-266, Vol. 3, Motion for Reconsideration [Re Resolution dated 02 July 2015], pp. 1148-1159.
[65] *Id.*, CTA Crim. No. O-266, Vol. 3, pp. 1165-1169.
[66] *Id.*, CTA Crim. No. O-266, Vol. 3, Resolution dated January 14, 2016, pp 1190-1191.
[67] *Id.*, CTA Crim. No. O-266, Vol. 3, Motion to Suspend Hearing, pp. 1200-1207.
[68] *Id.*, CTA Crim. No. O-266, Vol. 3, Resolution dated August 15, 2016, pp. 1215-1217.
[69] *Id.*, CTA Crim. No. O-266, Vol. 3, Resolution dated April 27, 2016, pp. 1257-1274; Resolution dated July 28, 2016, pp. 1275-1281.
[70] *Id.*, CTA Crim. No. O-266, Vol. 3, pp. 1220-1254.
[71] *Id.*, CTA Crim. No. O-266, Vol. 4, SC Minute Resolution dated October 3, 2016, pp. 1505-1506.
[72] *Id.*, CTA Crim. No. O-266, Vol. 4, SC Minute Resolution dated February 6, 2017, p. 1574.
[73] *Id.*, CTA Crim. No. O-266, Vol. 3, Minutes of the Hearing dated June 1, 2016, p. 1195; Vol. 4, Minutes of the Hearing dated February 15, 2017, p. 1534.
[74] *Id.*, CTA Crim. No. O-266, Vol. 4, Minutes of the Hearing dated April 26, 2017, p. 1556; Minutes of the Hearing dated May 31, 2017, p. 1576;
[75] *Id.*, CTA Crim. No. O-266, Vol. 4, Minutes of the Hearing dated August 1, 2018, p. 1739.
[76] *Id.*, CTA Crim. No. O-266, Vol. 4, pp. 1741-1746.
[77] *Id.*, CTA Crim. No. O-266, Vol. 4, Resolution dated December 18, 2018, p. 1758.

Exhibit	Document
A-8 to A-8-a[78]	Letter dated 07 April 2011 addressed to Bureau of Internal Revenue (BIR) Deputy Commissioner Estela V. Sales
A-8-b[79]	Metrobank Deposit Slip for Tax Payments for the amount of Ten Million Pesos (Php10,000,000.00) dated April 7, 2011
A-8-c[80]	BIR Payment Form No. 0605 for the amount of Ten Million Pesos (Php10,000,000.00) dated April 7, 2011
A-11[81]	Letter from Atty. Hector Gerard C. Belisario, MD dated 14 December 2008
A-30 to A-30-a[82]	Judicial Affidavit of Ritche S. Barriga
A-31 to A-31-a[83]	Judicial Affidavit of Atty. Hector Gerard C. Belisario, MD
A-32 to A-32-a[84]	Judicial Affidavit of Atty. Abelardo L. Aportadera, Jr.
A-33 to A-33-a[85]	Judicial Affidavit of Ritche S. Barriga (Recall)
A-34 to A-34-d[86]	Letter dated 23 May 2012 addressed to the Accused from Mr. Manuel J. Trias, Jr., Revenue District Officer, Revenue District Office 112 Tagum City, with the subject "Amended Post Reporting Notice with attached Details of Discrepancy for Deficiency Income Tax, Deficiency Value Added Tax, for the period January 1, 2009 to December 1, 2009.
A-35 to A-35-a[87]	Letter dated 16 October 2012 addressed to the Accused from Mr. Glen A. Geraldino, OIC-Regional Director, Revenue Region No. 19 with the subject "Termination Letter"

Except for Exhibit A-11 which was not admitted for failure of the accused to submit the duly marked exhibit, all other exhibits were admitted by this Court.[88] Accused moved for the reconsideration[89] of the non-admission of Exhibit A-11 which was subsequently granted[90] by the Court and said exhibit was admitted, hence, the parties were ordered to submit their respective memoranda.

---

[78] *Id.*, CTA Crim. No. O-266, Vol. 4, pp. 1748-1749.
[79] *Id.*, CTA Crim. No. O-266, Vol. 4, p. 1750.
[80] *Id.*, CTA Crim. No. O-266, Vol. 4, p. 1751.
[81] *Id.*, CTA Crim. No. O-266, Vol. 4, p. 1822.
[82] *Id.*, CTA Crim. No. O-266, Vol. 3, pp. 981-989.
[83] *Id.*, CTA Crim. No. O-266, Vol. 4, pp. 1548-1553.
[84] *Id.*, CTA Crim. No. O-266, Vol. 4, pp. 1563-1568.
[85] *Id.*, CTA Crim. No. O-266, Vol. 4, pp. 1716-1721.
[86] *Id.*, CTA Crim. No. O-266, Vol. 4, pp. 1723-1726.
[87] *Id.*, CTA Crim. No. O-266, Vol. 4, p. 1731.
[88] *Id.*, CTA Crim. No. O-266, Vol. 4, Resolution dated December 18, 2018, pp. 1758-1759.
[89] *Id.*, CTA Crim. No. O-266, Vol. 4, Motion for Reconsideration, pp. 1760-1772.
[90] *Id.*, CTA Crim. No. O-266, Vol. 4, Resolution dated August 1, 2019, pp. 1825-1827.

Plaintiff submitted its Memorandum[91] on February 8, 2019 while the accused submitted his Memorandum[92] on October 14, 2019 after the Court admitted accused's Exhibit A-11, hence, the case was deemed submitted for decision[93].

Issues[94]

The following are the issues raised in the instant case:

1. Whether or not accused is guilty of violating Section 255 of the 1997 National Internal Revenue Code (NIRC), as amended; and

2. Whether or not accused is liable for the alleged deficiency income and value-added tax for taxable year 2009.

Ruling of the Court

Accused Barriga, under CTA Crim Case Nos. O-266, O-267, O-268, and O-269, was charged under Section 255 of the 1997 NIRC, as amended, for failure to supply correct and accurate information in his ITR and VAT Returns (1st, 2nd, 3rd quarters) for taxable year 2009, the provision is quoted below:

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

---

[91] *Id.*, CTA Crim. No. O-266, Vol. 4, pp. 1778-1802.
[92] *Id.*, CTA Crim. No. O-266, Vol. 4, pp. 1871-1911.
[93] *Id.*, CTA Crim. No. O-266, Vol. 4, Resolution dated October 23, 2019, p. 1917.
[94] *Id.*, CTA Crim. Case No. O-266, Vol. 1, Pre-Trial Order dated March 22, 2013, p. 527.

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

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

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

3. Such failure was **willful**.

On the first element of the offense under Section 255 of the 1997 NIRC, as amended, the prosecution presented accused's BIR Certificate of Registration (BIR Form 2303) with OCN No. 2rc 0000357672 dated March 31, 2006 and Department of Trade and Industry (DTI) Certificate No. 0022860 to prove that the accused is the sole proprietor of Richpack Plastic Manufacturing, hence, is therefore required to supply correct and accurate information pursuant to the provisions of the 1997 NIRC, as amended. Thus, the prosecution had proven and established the first element of the offense under Section 255.

On the second element of the offense, the prosecution alleged that accused failed to supply correct and accurate information in his ITR and VAT Returns for taxable year 2009, with the following discrepancies:

Kind of Tax	Declared Income	Alleged True Income
Income Tax - 2009[95]	Php 14,583,960.66	Php 72,835,095.99
VAT – 1st Qtr. 2009[96]	2,724,217.68	11,277,098.81
VAT – 2nd Qtr. 2009[97]	3,823,946.16	24,971,330.46
VAT – 3rd Qtr. 2009[98]	4,017,263.58	27,198,224.75

To prove such allegation, the prosecution presented the respective Tax Returns of the accused. It also presented the

[95] CTA Crim. Case No. O-266.
[96] CTA Crim. Case No. O-267.
[97] CTA Crim. Case No. O-268.
[98] CTA Crim. Case No. O-269.

Annual Information Return of Creditable Income Taxes Withheld (Expanded)/ Income Payments Exempt from Withholding Tax (Form 1604-E) for taxable year 2009 and Certificate of Creditable Tax Withheld at Source (Form 2307) for taxable year 2009.

However, this Court did not admit into evidence the VAT Return for 2nd quarter of taxable year 2009 as well as those Bureau of Internal Revenue (BIR) Form Nos. 1604-E's and Form 2307's, which were supposed to prove the abovementioned alleged true income earned by the accused. Thus, there was no evidence on the alleged true income of the accused. These documents were vital to prove the allegation of the prosecution that the accused had indeed failed to supply correct and accurate information as the same were the sources of the alleged correct income.

Although the prosecution's witnesses identified and testified on said exhibits, their testimony cannot anymore be corroborated by valid documentary evidence. Hence, it cast doubts as to the accuracy of such testimony.

Further, the income earned by the accused in the Amended Post Reporting Notice dated May 23, 2012 and the Details of Delinquency from the BIR which were presented by the accused as his evidence marked as Exhibits "A-34" to "A-34-d" reveal otherwise. The prosecution did not object nor made any comment in the introduction of said exhibits.[99]

The Net Taxable Income after adjustment as determined by the BIR amounted only to Php19,545,997.93[100] and not the alleged amount of Php72,835,095.99. Further, the VAT payable after adjustment as determined by the BIR for the entire taxable year 2009 amounted only to Php2,216,563.61[101]. Thus, the deficiency income tax and VAT before surcharge and interest amounted only to Php401,938.87 and Php2,024,281.88,[102] respectively, which were already paid according to the Termination Letter[103] dated October 16, 2012 from the BIR Revenue Region No. 19, Davao City.

---

[99] Docket, CTA Crim. Case NO. O-266, Vol. 4, Resolution dated May 21, 2018, p. 1712.
[100] *Id.*, CTA Crim. Case NO. O-266, Vol. 4, Exhibit "A-34-b", p. 1724.
[101] *Id.*, Exhibit "A-34-d", p. 1726.
[102] *Id.*, Exhibit "A-34", p. 1723.
[103] *Id.*, Exhibit "A-35", p. 1731.

In the Details of Discrepancies attached to the Preliminary Assessment Notice (PAN)[104] presented by the prosecution during trial, the basis for the assessment was the variation between the sales figures as determined by the BIR Examiners in Tagum as compared to the one determined by its examiners in Davao. Further, the alleged income earned by the accused was based only on the list of purchases made by the accused from several of its suppliers including the list of payees from STANFILCO and LAPANDAY which were not admitted into evidence by this Court.

Income is different from purchases as the former refers to "a gain or recurrent benefit usually measured in money that derives from capital or labor" or "a gain received in a period of time"[105] while the latter, on the other hand, refers to "something obtained especially for a price in money or its equivalent."[106] Income pertains to an inflow of asset while purchases pertain to an outflow of asset.

Thus, the assessment made by the BIR was based on a presumption and not on actual audit investigation by assuming that the variance arising from the purchases of the accused as income thereof without any empirical and valid evidence to support its computation on said assessment, *i.e.* the accused's official receipts issued by his customers or clients or the certificates of withholding tax issued by said customers or clients. In *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*[107], the Supreme ruled that the assessment must be based on credible evidence, otherwise such assessment becomes arbitrary and capricious, to wit:

> The rule is that in the absence of the accounting records of a taxpayer, his tax liability may be determined by estimation. The petitioner is not required to compute such tax liabilities with mathematical exactness. Approximation in the calculation of the taxes due is justified. To hold otherwise would be tantamount to holding that skillful concealment is an invincible barrier to proof. However, the rule does not apply where the estimation is arrived at arbitrarily and capriciously.
>
> We agree with the contention of the petitioner that, as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions

---

[104] *Id.*, CTA Crim No. O-266, Vol 1, Exhibit "FF", pp. 488-491.
[105] Merriam-Webster's Collegiate Dictionary, Tenth Edition, p. 589.
[106] *Id.*, p. 949.
[107] G.R. No. 136975, March 31, 2005.

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

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

In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*[108], the Supreme Court ruled that the requisite of informing the taxpayer of the facts and the law as basis of said assessment under Section 228 of the 1997 NIRC, as amended, is not merely a formal requirement but a substantive one, hence, a violation thereof renders the assessment null and void, to wit:

Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations - that taxpayers should be able to present their case and adduce supporting evidence.

xxx xxx xxx

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between

[108] G.R. No. 185371, December 08, 2010.

the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude. Hence in *Commissioner of Internal Revenue v. Algue, Inc.*, it was said -

> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
>
> xxx xxx xxx
>
> It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for the lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.
>
> **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure**. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate x x x that the law has not been observed. (Emphasis supplied).

Thus, the invalidity of the subject assessment, being the basis of filing the instant cases, casts substantial doubt as to the prevalence of the second element of the offense under

Section 255 of the 1997 NIRC, as amended, in addition to the failure of the prosecution to support its allegation with credible evidence.

As to the third element of the offense, the prosecution alleged that the accused willfully failed to supply correct and accurate information.

As repartee to said accusation, the accused explained that the alleged discrepancy could be attributable to his adoption of a cash method of accounting in contrast with his four customers, i.e. STANFILCO, LAPANDAY, First Davao Consolidated Joint Venture, and Sumifru (Philippine) Corporation, using an accrual method of accounting, which usage was advised by his lawyer, to wit:[109]

> Q6: The BIR said your income per ITR did not match with the income payments reflected in the said Alpha List of Payees of said four (4) customer-corporations, can you explain why the two do not match?
>
> A6: Since Richpack Plastic Manufacturing is a sole proprietorship, my method of accounting is the cash basis, and those of the four (4) corporations is accrual basis, then, the two will not match if all the payments are not actually received.
>
> Q7: Why do you say that only those income payments that you actually received should be declared as your income?
>
> A7: I say that only those income payments that I actually received should be declared by me as my income because my method of accounting is the cash basis.
>
> Q8: Why are you using the cash basis method of accounting?
>
> A8: I am using the cash basis method of accounting because my company is a sole proprietorship and I was advised by my lawyer in 2008 that since my company is a sole proprietorship then it should observe the cash basis method of accounting, and since my customer-corporations above-mentioned uses the accrual basis method of accounting, all accrued payments should be reflected in the Alpha List of Payees of the said customer-corporations. It, therefore, does not follow that the payments reflected in the Alpha List of Payees of the said customer-corporations be reported in my ITR because of the difference in our method of accounting. I

[109] Docket, CTA Crim. Case No. O-266, Vol. 3, Judicial Affidavit of Ritche S. Barriga, pp. 983-985.

> was further advised that the withholding tax certificates issued by the said customer-corporations should not be used by my company if the payments have not been actually received. This explains why the credible withholding taxes were not used in my ITR.
>
> xxx xxx xxx
>
> Q12: Did you ever change your method of accounting?
>
> A12: No. From the time this company started until 2010, we used the cash basis method of accounting.

Such usage of the cash method of accounting by the accused was emphasized by him during his cross-examination by the prosecution, to wit:[110]

> ATTY. CACAYURAN
>
> Q: Lastly, Mr. Witness. You said that before customer corporations used the accrual method in accounting, do you have proof of such statement, Mr. Witness, considering that you are not well-versed with the accounting methods, Mr. Witness?
>
> MR. BARRIGA
>
> A: 'Yan. Po 'yung sinabi sa akin ng accountant ko, ma'am, na 'pag corporation, ma'am, accrual tapos 'pag 'yung indibidwal, ma'am, 'yung single proprietorship, 'yung cash method.
>
> ATTY. CACAYURAN
>
> Q: So Mr. Witness, it's just your accountant who said that these four (4) corporations are using the accrual basis of accounting?
>
> MR. BARRIGA
>
> A: Yes. ma'am.

Accused's statement was corroborated by his witness, Atty. Hector Gerard C. Belisario, who was the lawyer who advised the usage of such method of accounting.[111]

He also testified that the reason for paying the Ten Million Pesos (Php10,000,000.00) even before any assessment

---

[110] Docket, CTA Crim. Case No. O-266, Vol. 4, Transcript of Stenographic Notes of Hearing dated February 15, 2017, p. 1543.

[111] *Id.*, Vol. 4, Judicial Affidavit of Atty. Hector Gerard C. Belisario, pp. 1548-1553; Transcript of Stenographic Notes of Hearing dated April 26, 2017, pp. 1569-1576.

was served to him was made to cover any tax deficiency that may result in the ongoing audit investigation at that time because he was avoiding any criminal suit that may arise, to wit:

> Q16: In connection with the foregoing assessment, did you make any payments to the BIR?
>
> A16: Yes. I made a deposit of Ten Million Pesos (P10,000,000.00) as evidenced by my letter to Atty. Sales dated 07 April 2011, Metrobank "Deposit Slip for Tax Payments" dated 07 April 2011 and Payment Form 0605 dated 07 April 2011 even before the BIR came up with a formal assessment because I was afraid of the criminal prosecution before the DOJ and as a sign of good faith. Then, I made payments in the total amount of P4,503,656, as evidence by three (3) Payment Forms 605 dated 28 May 2012 with attached respective three (3) Metrobank "Deposit Slip for Tax Payments" dated 28 May 2012, for alleged deficiency income tax, expanded withholding tax and VAT. All of which payments were because of my fear.

In *People of the Philippines v. Judy Anne Santos y Lumagui*[112], this Court provides the definition of what is willful, to wit:

> "Citing *Black's Law Dictionary*, the term "willful" is defined as voluntary and intentional, And in *Merten's Law of Federal Income Taxation*, "willful" in tax crimes statutes is defined as voluntary, intentional violation of a known legal duty."

Thus, the definition requires that the one who will commit such act is aware that such act will be in violation of the law. The records of the case reveal that the accused had relied mainly on the representation and advice made by his lawyer and accountant that being a sole proprietorship, he should use the cash method of accounting of his income and not the accrual method.

Further, Sections 43 and 45 of the 1997 NIRC, as amended, do not require for the strict usage of accrual method of accounting in determining the taxpayer's income but dependent on its choice of method provided it is in accordance with generally accepted method in accounting, to wit:

---

[112] CTA Crim. Case No. O-012, January 16, 2013.

> "**SEC. 43. General Rule**. - The taxable income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer, but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner clearly reflects the income. If the taxpayer's annual accounting period is other than a fiscal year, as defined in Section 22(Q), or if the taxpayer has no annual accounting period, or does not keep books, or if the taxpayer is an individual, the taxable income shall be computed on the basis of the calendar year.
>
> xxx xxx xxx
>
> **SEC. 45. Period for which Deductions and Credits Taken.** - The deductions provided for in this Title shall be taken for the taxable year in which *'paid or accrued'* or *'paid or incurred'*, dependent upon the method of accounting upon the basis of which the net income is computed, unless in order to clearly reflect the income, the deductions should be taken as of a different period. In the case of the death of a taxpayer, there shall be allowed as deductions for the taxable period in which falls the date of his death, amounts accrued up to the date of his death if not otherwise properly allowable in respect of such period or a prior period.

What is prohibited under Section 3(5), Chapter II of **Revenue Regulations No. V-1**, otherwise known as **"The Bookkeeping Regulations"**, is the keeping of books of accounts for both methods of accounting of income, to wit:

> 3(5). ACCRUAL AND CASH BASIS IN KEEPING BOOKS OF ACCOUNTS. – A taxpayer cannot be permitted to keep his books of accounts on both the accrual and cash basis. (B.I.R. Ruling dated Sept. 23, 1953)

Thus, as shown in the instant case, the accused adopts solely the cash method of accounting.

In sum, the prosecution failed to establish all the elements of Section 255 of the 1997 NIRC, as amended, that the accused is indeed guilty of said offense charged, hence, there was no compliance as to the quantum of evidence required for conviction.

In *Capistrano Daayata, et al. v. People of the Philippines*[113], the Supreme Court explains the quantum of evidence required for conviction of an accused in a criminal case, to wit:

> "Conviction in criminal actions demands proof beyond reasonable doubt. Rule 133, Section 2 of the Revised Rules on Evidence states:
>
>> Section 2. Proof beyond reasonable doubt. — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.
>
> While not impelling such a degree of proof as to establish absolutely impervious certainty, the quantum of proof required in criminal cases nevertheless charges the prosecution with the immense responsibility of establishing moral certainty, a certainty that ultimately appeals to a person's very conscience. While indeed imbued with a sense of altruism, this imperative is borne, not by a mere abstraction, but by constitutional necessity:
>
>> This rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused. Requiring proof beyond reasonable doubt finds basis not only in the due process clause of the Constitution, but similarly, in the right of an accused to be "presumed innocent until the contrary is proved." "Undoubtedly, it is the constitutional presumption of innocence that lays such burden upon the prosecution." Should the prosecution fail to discharge its burden, it follows, as a matter of course, that an accused must be acquitted..."

In *Guilbemer Franco v. People of the Philippines*[114], the Supreme Court imposes upon the prosecution the burden to prove two things beyond reasonable doubt, to wit:

> "The burden of such proof rests with the prosecution, which must rely on the strength of its case rather than on the weakness of the case for the defense. Proof beyond

---

[113] G.R. No. 205745, March 08, 2017.
[114] G.R. No. 191185, February 01, 2016.

> reasonable doubt, or that quantum of proof sufficient to produce a moral certainty that would convince and satisfy the conscience of those who act in judgment, is indispensable to overcome the constitutional presumption of innocence.
>
> In every criminal conviction, the prosecution is required to prove two things beyond reasonable doubt: *first*, the fact of the commission of the crime charged, or **the presence of all the elements of the offense**; and *second*, the fact that the accused was the perpetrator of the crime." (*Emphasis supplied*)

As discussed above, the prosecution failed to establish the existence of the second and third elements constitutive of the offense charged under Section 255 of the 1997 NIRC, as amended. Thus, there is reasonable doubt if indeed the accused willfully failed to supply correct and accurate information in his ITR and VAT Returns.

As to the civil liability of the accused, considering that the assessment was based merely on a presumption, such assessment becomes invalid as well as the notices issued subsequent to the conduct of the alleged audit investigation because an invalid or void assessment bears no valid fruit, as ruled by the Supreme Court in the case of *Commissioner of Internal Revenue v. Azucena T. Reyes*[115], to wit:

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

---

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

The nullity of the assessment notices and other subsequent issuances absolves the accused from any civil liability in the instant consolidated cases.

WHEREFORE, accused RITCHE S. BARRIGA is hereby **ACQUITTED** in CTA Crim. Case Nos. O-266, O-267, O-268, and O-269 for failure of the prosecution to establish the accused's guilt beyond reasonable doubt (without civil liability).

The cash bail bonds posted by accused are hereby **CANCELLED** and **ORDERED RELEASED** to the accused upon presentation of the proper documents, in accordance with usual accounting rules and regulations.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice