REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

PAULIASI MATEAKI TAULAVA,[1]
No. 26 Acropolis Drive,
Acropolis Village, Cubao,
Quezon City,
Accused.

CTA Crim. Case No. O-309
(XV-03-INV-12C-02659)

Violation of Section 255 of the National Internal Revenue Code of 1997

Members:

DEL ROSARIO, P.J., Chairperson,
UY, and
MINDARO-GRULLA, JJ.

Promulgated:

NOV 0 3 2017 ; 8:40 a.m.

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DECISION

UY, J.:

Accused Pauliasi Mateaki Taulava is charged before this Court for "Violation of Section 255 of the National Internal Revenue Code of 1997" under the *Amended Information* dated September 13, 2013,[2] the accusatory portion of which reads:

> "That on or about the 5th day of January 2009 and for sometime prior thereto and persisting up to the present, in Quezon City, Philippines, the (a)bove-named accused, did then and there, willfully, unlawfully fail and neglect and still fails and neglects to pay his Deficiency Income Tax in the amount of P3,201,600.00 and Deficiency Value Added Tax in the amount of P1,000,500.00 exclusive of interest and surcharges of

[1] Resolution dated January 27, 2016; Docket, pp. 571 to 572.
[2] Docket, pp. 111 to 112.

> P4,042,787.51 and P1,307,228.63 or a total of P9,552,116.14, Philippine Currency, computed as of January 5, 2009 covering taxable year 2004, under Assessment Notice No. F08-040-41 dated January 5, 2009 which he failed and refused to pay the aforesaid deficiency Income Tax and Value Added Tax for taxable year 2004 resulting in the deprivation of revenues for the Government and/or Bureau of Internal Revenue herein represented by ATTY. ROEL A. ZAFRA in the amount aforementioned.
>
> CONTRARY TO LAW."

On January 14, 2013, the *Information* dated December 4, 2012 was filed before this Court for "Violation of Sec. 27 and 108 of the National Internal Revenue Code of 1977".[3]

In the Resolution dated February 13, 2013,[4] the Court has given the prosecution an opportunity to amend the said *Information*, since it appears that the crime being charged is a violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, instead of Sections 27 and 108 thereof.

On March 25, 2013, Atty. Faith M. Farochilen, Revenue Attorney IV, Litigation Division of the Bureau of Internal Revenue (BIR), requested to borrow the records of the case, for the purpose of photocopying the *Information* and the said Resolution dated February 13, 2013, and for filing of the necessary pleading.[5]

Within the period given, however, the prosecution failed to amend the *Information*.[6] Nevertheless, in the Resolution dated April 15, 2013,[7] in view of the said request of Atty. Farochilen and in the interest of justice, the prosecution was given, once again, an opportunity to comply with the Court's Resolution dated February 13, 2013.

Again, within the additional period given to amend the *Information*, the prosecution failed to do the same.[8] Thus, in the

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[3] Docket, pp. 4 to 5.
[4] Docket, pp. 26 to 28.
[5] Letter dated March 25, 2013, Docket, p. 29.
[6] Records Verification dated March 26, 2013, Docket, p. 31.
[7] Docket, p. 33.
[8] Records Verification dated May 15, 2013, Docket, p. 34.

Resolution dated June 7, 2013,[9] the Court concluded that the crime charged is a violation of Section 255 of the NIRC of 1997, not of Sections 27 and 108 thereof, and then proceeded to determine the existence of probable cause in this case. After due deliberation, the Court found the existence of probable cause, and ordered the issuance of a *Warrant of Arrest* against the accused, setting the bail for the latter's provisional liberty at ₱24,000.00.[10]

Correspondingly, the *Warrant of Arrest* dated June 24, 2013 was issued by the Presiding Justice, Roman G. Del Rosario.[11]

In view of the voluntary appearance of the accused, who posted bail for his provisional liberty by way of cash bond in the amount of ₱24,000.00, the Warrant of Arrest against the accused was lifted and recalled in the Resolution dated July 12, 2013, and the arraignment of the accused was set on August 8, 2013.[12]

On July 12, 2013, accused filed an *Omnibus Motion (1. Motion for Authority To Travel 2. Motion for Reinvestigation).*[13]

At the hearing held on August 8, 2013, the Court made the following resolutions, to wit:

1. There being no opposition interposed by the prosecution, accused's *Motion for Authority to Travel* was granted;
2. The prosecution was granted an additional fifteen (15) days from the said date to file the required *Amended Information*;
3. The *Motion for Reinvestigation* was submitted for resolution;
4. There being no opposition to the motion to defer the arraignment, the same was granted. Thus, the scheduled arraignment was cancelled and was reset to October 9, 2013; and
5. Atty. Felix Paul Velasco III was granted five (5) days from the said date to submit his deputation to represent the plaintiff.[14]

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[9] Docket, pp. 36 to 40.
[10] Resolution dated June 7, 2013, Docket, pp. 36 to 40.
[11] Docket, pp. 41 to 42.
[12] Docket, pp. 65 to 66.
[13] Docket, pp. 54 to 57.
[14] Minutes at the hearing held on August 8, 2013 and Resolution dated August 8, 2013, Docket, pp. 76 to 77, and 79 to 81.

On August 23, 2013, the prosecution filed a *Motion for Extension of Time To File Amended Information,*[15] which was granted by the Court in the Resolution dated September 6, 2013.[16] Thus, on September 19, 2013, the *Amended Information* was filed by the prosecution.[17]

In the meantime, for lack of merit, this Court denied accused's *Motion for Reinvestigation* in the Resolution dated August 30, 2013.[18]

Upon arraignment, accused, assisted by his counsel, Atty. Albert M. Rasalan, entered a plea of "Not Guilty" to the offense charged.[19]

On October 11, 2013, an *Entry of Appearance* was filed by the Special Prosecutors, namely, Attys. Romel C. Curiba and Dayne B. Medina. Thus, on October 22, 2013, Atty. Felix Paul R. Velasco III filed his *Withdrawal of Appearance.*

The Pre-Trial Conference was held on November 27, 2013.[20] In their *Joint Stipulation of Facts and Issues* (JSFI) filed on January 21, 2014,[21] the parties stipulated on the following, to wit:

"I.
SUMMARY OF
ADMITTED REQUEST FOR STIPULATIONS

1. The proposal for stipulation of the Prosecution was first tackled. Out of eight (8) request for stipulations proposed by the Prosecution, the Accused **admitted** the following:

> 1.30. Letter of Anna May[22] Taulava dated December 10, 2010 addressed to Jonas DP Amora, Assistant Regional Director, Revenue Region No. 7;

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[15] Docket, pp. 97 to 99.
[16] Docket, p. 108.
[17] Docket, pp. 109 to 112.
[18] Docket, pp. 102 to 106.
[19] Certificate of Arraignment, Docket, p. 115; Resolution dated October 9, 2013, Docket, pp. 122 to 123.
[20] Minutes at the Pre-Trial Conference held on November 27, 2013, Docket, pp. 187 to 188.
[21] Docket, pp. 222 to 230; Pre-Trial Order dated February 11, 2014, Docket, pp. 234 to 240.
[22] Order dated March 16, 2016.

2. Paul Asi M. Taulava and Pauliasi M. Taulava refer to one and the same person;

3. Anna May Taulava is the wife of herein accused;

4. Anna May Taulava submitted a letter with the BIR addressed to Jonas DP Amora

6. Accused was fully aware of the submission of the letter by his wife Anna May Taulava;

7. Accused failed to protest the findings of Revenue Officers on his Tax Deficiencies.

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3. The proposal for stipulation of the Accused was then tackled. Out of the five (5) request for stipulations proposed by the Accused, only No. 3 was **partially admitted** by the Prosecution, to wit:

(i) that Anna May Taulava executed a handwritten request dated December 10, 2010 requesting to settle the tax liabilities Assessment/Demand No. F08-040-41dated January 5, 2009; and (ii) that accused, through Anna May Taulava, paid forty (40%) percent of the basic assessed tax for deficiency income tax and deficiency VAT.

xxx xxx xxx."

The said JSFI was approved by the Court in the Resolution dated February 4, 2014.[23] In the same Resolution, the Pre-Trial was terminated by the Court. On February 11, 2014, the Court issued the Pre-Trial Order.[24]

Trial ensued.

To establish the accused's culpability, the following prosecution witnesses testified during trial, to wit: Mr. Noel G. Bihasa,[25] Ms. Rose Mary M. Gochingco,[26] Atty. Roel A. Zafra,[27] Ms. Margarita R. Jose,[28]

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[23] Docket, p. 232.
[24] Docket, pp. 234 to 240.
[25] Minutes at the hearing held on March 26, 2014, Docket, pp. 295 to 303; and Resolution dated March 26, 2014, Docket, pp. 305 to 306.
[26] Supra.
[27] Minutes at the hearing held on June 4, 2014, Docket, pp. 345 to 349; and Resolution

Ms. Nelia A. Delos Reyes,[29] and Mr. Arnold C. Larrosa.[30]

First prosecution witness, Mr. Noel G. Bihasa, Revenue Officer III, and assigned as a seizure agent of Revenue District Office (RDO) No. 42, San Juan City, testified on direct examination by way of Judicial Affidavit,[31] as follows:

On July 20, 2009, Noel G. Bihasa received the case of the accused. He is the seizure agent who enforced the collection proceedings against the accused, for the deficiency income tax for taxable year 2004, amounting to ₱7,244,387.51, including increments, and the deficiency value-added tax (VAT) for 2004 amounting to ₱2,307,728.63, including increments, as per Assessment Notice No. F08-040-41 dated January 5, 2009.

Mr. Bihasa testified that Assessment Notice F08-040-41 was issued to the accused at No. 26 Acropolis Drive, Acropolis Village, Quezon City. It was signed by Alfredo V. Misajon, Regional Director with a stamp mark "POSTED IN FORM – 40 / COLLECTIBLE ACCOUNT."

Formal Letter of Demand No. F08-040-41 dated January 5, 2009 was likewise addressed to No. 26 Acropolis Drive, Acropolis Village, Quezon City.

The First Notice Before Issuance of Warrant of Distraint and Levy dated May 18, 2009 was also issued against the accused at No. 26 Acropolis Drive, Acropolis Village, Quezon City.

A Final Notice Before Seizure (FNBS) dated June 1, 2009 was issued against the accused, with address at Unit 604 AIC Gold Towers, Emerald Street, Ortigas, Pasig City. In addition, a Preliminary Collection Notice (PCN) dated July 15, 2009 was issued.

The deficiency taxes became final and demandable due to the failure of the accused to timely file a valid protest to the Final

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dated June 4, 2014, Docket, pp. 351 to 352.

[28] Minutes at the hearing held on August 6, 2014, Docket, pp. 381 to 386; and Resolution dated August 6, 2014, Docket, pp. 388 to 390.

[29] Supra.

[30] Minutes at the hearing held on January 14, 2015, Docket, pp. 433 to 436; and Resolution dated January 14, 2015, Docket, pp. 438 to 439.

[31] Exhibit "P-24" Docket, pp. 256 to 265.

Assessment Notice, yet it still remains unpaid.

Since the First Notice Before Issuance of Warrant of Distraint and Levy, which is the equivalent of a PCN and the FNBS were already issued, Mr. Bihasa continued with the collection proceeding by informing the Coca Cola Tigers Team and the Philippine Basketball Association of Mr. Taulava's internal revenue tax liabilities. Mr. Bihasa caused the issuance of three (3) Collection Notices, and served them through registered mail on August 26, 2009 to the accused, using different addresses, namely:

1) Mr. Paulasi M. Taulava
c/o Coca-Cola Bottlers Phils., Inc.
20th Floor, San Miguel Properties Centre
Saint Francis Street, Ortigas Center, Mandaluyong City
(Registry Receipt No. 1493);

2) Mr. Paulasi M. Taulava
c/o Philippine Basketball Association, Inc.
No. 186 E. Rodriguez, Jr. Avenue
Bagumbayan, Quezon City
(Registry Receipt No. 1495); and

3) Mr. Paulasi M. Taulava
c/o Coca-Cola Bottlers Phils., Inc.
No. 1890 Paz Guanzon Avenue
Paco, Manila
(Registry Receipt No. 1494).

Since there was no response from the accused, Mr. Bihasa caused the issuance and service of three (3) FNBS dated October 6, 2009, on October 14, 2009, using three different addresses, namely:

1) Mr. Paulasi M. Taulava
c/o Coca-Cola Bottlers Phils., Inc.
20th Floor, San Miguel Properties Centre
Saint Francis Street, Ortigas Center, Mandaluyong City
(Registry Receipt No. 2892);

2) Mr. Paulasi M. Taulava
c/o Coca-Cola Bottlers Phils., Inc.
No. 1890 Paz Guanzon Avenue
Paco, Manila
(Registry Receipt No. 2894); and

3) Mr. Paulasi M. Taulava
c/o Philippine Basketball Association, Inc.
No. 186 E. Rodriguez, Jr. Avenue
Bagumbayan, Quezon City
(Registry Receipt No. 2893).

Because the accused still failed to respond, Mr. Bihasa again caused the issuance of four (4) letters addressed to different offices requesting for any information filed with their respective offices as to the whereabouts or current local address of the accused, to wit:

1) The Human Resource & Administrative Manager
Coca-Cola Bottlers Philippines, Inc.
No. 1890 Paz Guanzon Avenue
Paco, Manila

2) The Human Resource & Adminstrative Manager
Coca-Cola Export Employees Credit Cooperative
10 Floor King's Court Building I,
No. 2129 Chino Roces Avenue corner Dela Rosa Street
San Lorenzo, Makati
(Chino Roces Avenue, Formerly: Pasong Tamo Street)

3) Mr. Renauld N. Barrios
Commissioner, Philippine Basketball Association
No. 186 E. Rodriguez Jr. Avenue
Bagumbayan, Libis, Quezon City

4) The Human Resource & Administrative/Team Manager
Coca-Cola Export Employees Credit Cooperative
10 Floor King's Court Building I,
No. 2129 Chino Roces Avenue corner Dela Rosa Street
San Lorenzo, Makati
(Chino Roces Avenue, Formerly: Pasong Tamo Street)

The first letter was personally received by Dodie Hipong, as evidenced by the signature and date on the receiving copy. The second letter was sent through registered mail as evidenced by RR No. 899, with stamp date February 24, 2010. The third was personally received by the Philippine Basketball Association as evidenced by a receiving stamp with signature and date. The fourth was personally received by Jenny Bondad as evidenced by signature and date on the receiving copy.

The deficiency taxes remained unpaid, so Mr. Bihasa caused the issuance of a Warrant of Distraint and/or Levy (WDL) dated November 18, 2010.

Thereafter, Mr. Bihasa caused the issuance of the Warrant of Garnishment dated November 18, 2010 addressed to the President, Accounting Manager, Treasurer and/or Cashier of Meralco Bolts. They served the same at the Meralco Corporate Office, 2nd Floor Lopez Building, Meralco Center, Ortigas Avenue, but the Team Manager of Meralco Bolts then, in the person of Mr. Virgil V. Villavicencio refused to receive the same.

Sometime on December 10, 2010, Mrs. Anna May Taulava executed an Offer of Compromise requesting to pay 40% of the total basic deficiency income tax and VAT amounting to ₱1,681,200.00. Mr. Bihasa waited for the accused to furnish their office with a duly validated BIR Form No. 0605 and deposit slip, but there was none.

Mr. Bihasa verified with the BIR-ITS Collection and Bank Reconciliation System (CBR) and BIR-ITS Taxpayer Accounting System (TAS) if any payment was made, but there was no payment from the accused for the period from December 10, 2010 up to February 15, 2011.

Due to the absence of any payment, Mr. Bihasa recommended that the case be referred to the Legal Division of Revenue Region No. 7 for appropriate legal action.

On cross-examination,[32] Mr. Bihasa stated that he received the case record only on July 20, 2009. Prior to this date, he had no knowledge of the case. He merely reviewed Assessment Notice No. F08-040-41 dated January 5, 2009. The same is true with the Formal Letter of Demand No. F08-040-41 dated January 5, 2009; the First Notice Before Issuance of Warrant of Distraint and/or Levy dated May 18, 2009; and the Final Notice Before Seizure dated June 1, 2009.

The First Notice Before Issuance of Warrant of Distraint and Levy was sent to No. 26 Acropolis Drive, Acropolis Village, Quezon City. The Final Notice Before Seizure issued by RDO No. 40 was addressed at Unit 604 AIC Gold Towers, Emerald. These were notices sent prior to his taking over the case.

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[32] TSN dated March 26, 2014, pp. 15 to 56.

Mr. Bihasa caused the issuance of the three (3) collection notices addressed to Mr. Paul Asi Taulava c/o Coca-Cola Bottlers, Philippines. The second was c/o PBA and the third c/o Coca-Cola Bottlers Philippines, because the accused was playing for Coca-Cola in the PBA season at the time. The notices were sent by registered mail, and he is certain there were return cards, but he did not mention it in his Judicial Affidavit because they were not marked.

He also caused the issuance of three (3) Final Notices Before Seizure dated October 6, 2009 to the different addresses. He has the registry receipts to prove that they were sent by registered mail, and he will check the BIR records if there are return cards.

Mr. Bihasa sent four (4) letters to four (4) different addresses, asking for information of the current local address of accused. The first was sent to the Human Resource and Administrative Manager of Coca-Cola; the second to the Human Resource and Administrative Manager of Coca-Cola Export Employees Credit Cooperative; the third to Mr. Reynald Barrios, Commissioner, PBA; and the fourth to the Human Resource and Administrative Team Manager of Coca-Cola. The first letter was personally served and was received by Dodi Hipong. The second letter was sent by registered mail with Registry Receipt No. 899, but he will check the records for the return card. The third letter was sent personally to the PBA and the fourth letter was personally received by Ms. Jenny Bundad.

He prepared and recommended the issuance of the Warrant of Distraint and Levy, and his initial appears therein, below the typewritten name of Jonas DP. Amora, Assistant Regional Director. However, the said Warrant of Distraint and Levy was not served to the accused. He also prepared and recommended the issuance of the Warrant of Garnishment dated November 18, 2010, and his initials are just below the typewritten name of Jonas DP Amora, Assistant Regional Director. Though, it was also not served to the accused.

Mr. Bihasa confirmed he met with Mrs. Anna May Taulava on December 10, 2010, at the office of Mrs. Ruth Vivian Gadia, Chief of the Collection Division of the BIR. The Offer of Compromise was executed by Mrs. Anna May Taulava on the said date and Mrs. Gadia asked Mr. Bihasa to compute the 40% of the basic income tax deficiency for the compromise amount, which amounted to ₱1,281,000.00. He prepared BIR Form No. 0605 in the office of Mrs. Gadia, as requested by Mrs. Taulava and the TIN was handwritten by Mrs. Taulava in the said BIR Form. The form was signed by him and by Chief Ruth Vivian Gadia. The machine validation of the payment amounting to ₱1,281,000.00 was made by the bank. The figure appearing thereon is ₱400,200.00 representing the 40% of the basic tax assessed. There is also a machine validation showing the date December 13, 2000.

On February 15, 2011, he verified with the BIR-ITS Collection that there was no payment from December 10, 2010 up to February 5, 2011. He has access to the BIR-ITS Collection on Bank Reconciliation System where the payment made by the taxpayer through the bank is uploaded to the BIR. He also verified in the taxpayer's accounting system or the ledger and no amount of payment were encoded.

Once payment is made through the bank by the taxpayer, the bank BIR officer encodes the amount to the Limited Bank Data Entry System (LBDS). This is uploaded to the BIR Integrated Tax System (ITS) and will be posted in the Collection and Bank Reconciliation (CBR) and the taxpayers' ledger, which is the taxpayer accounting system. The bank has 48 hours to upload the payment to the BIR-ITS CBR. He still needs to verify if the accused has paid the taxes.

If there was an error in the entry of the TIN since it was handwritten by Mrs. Taulava and Mr. Taulava has two (2) TINs, it is the error handler who will know, and not him, as he is a collection officer.

On re-direct examination,[33] he testified that the Warrant of Distraint and Levy was not served to the accused because he is not the occupant of No. 26 Acropolis Drive, Acropolis Village, Quezon City. The occupant is the team coach of Ginebra San Miguel, Mr. Junio Chico.

The Warrant of Garnishment was also not served to the accused because Mr. Virgil B. Villavicencio refused to receive the same since he is not authorized to do so.

When Mrs. Taulava left the office of Mrs. Gadia, they advised her to furnish them a copy of the validated BIR Form No. 0605 and the deposit slip of her payment on December 10, 2010. However, Mrs. Taulava did not furnish them a copy of the payment form and deposit slip.

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[33] TSN dated March 26, 2014, pp. 57 to 64.

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From December 10, 2010 to February 15, 2011, he verified if there was indeed any payment made by Mrs. Taulava on February 15, 2011. There was no transaction in the BIR ITS-CBR and in the BIR-ITS taxpayers' account system. He also verified before the filing of the case and there was none.

Based on the procedure of the Collection Division, after the payment by the taxpayer they secure a copy of the validated BIR Form No. 0605 and the Deposit Slip. All offer of payment of delinquent taxpayer is subject for review by the Regional Evaluation Board (for regional cases) or the National Evaluation Board (for national cases), chaired by the Commissioner of Internal Revenue.

The signing of the BIR Form No. 0605 by the Chief of the Collection Division is not yet the approval of the compromise settlement, it is merely recommendatory.

On re-cross examination,[34] he testified that upon verification with the BIR in this case, he did not see any payment. If there was payment reflected in the BIR-ITS, even if the taxpayer failed to furnish him the machine validation of BIR Form No. 0605 and the Deposit Slip, he will still print the same and recommend for its approval because payment has been validated in the system. But in this case there was no payment reflected in the system.

On clarificatory questions,[35] he stated that he verified with the BIR-ITS if payment was made even before the filing of the case. He did not verify from the bank because he does not know which bank. When the Information was filed with the Court on January 14, 2013, he verified sometime July of 2013, that there was still no payment reflected in the system. Moreover, upon verification of the two (2) TINs of the accused: 1) registered with RDO No. 40 – Cubao, TIN 22A-597-020; and 2) registered with RDO No. 43 (now RDO No. 43A), TIN 907-664-109; there was still no payment made.

Second witness for the prosecution, Ms. Rose Mary M. Gochingco, Revenue Officer I, and presently designated as a group supervisor in the Assessment Division, testified on direct examination, also by way of Judicial Affidavit,[36] as follows:

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[34] TSN dated March 26, 2014, pp. 64 to 73.
[35] TSN dated March 26, 2014, pp. 74 to 79.
[36] Exhibit "P-25" Docket, pp. 266 to 269.

Ms. Gochingco is the Revenue Officer who conducted the audit investigation that resulted to the 2004 deficiency income tax of the accused amounting to ₱7,244,387.51, including increments and 2004 deficiency value-added tax (VAT) amounting to ₱2,307,728.63, including increments, as per Assessment Notice No. F08-040-41 dated January 5, 2009. She upheld the findings of the examiners, except for the compromise penalty amounting to ₱25,000.00, which she removed. She also recommended the issuance of a Preliminary Assessment Notice and the subsequent Final Assessment Notice against Mr. Taulava.

The recommendation of Ms. Gochingco was approved, as evidenced by the issuance of a Preliminary Assessment Notice dated December 10, 2008 and Final Assessment Notice with Formal Letter of Demand, both bearing No. F08-040-41, dated January 5, 2009.

On cross-examination,[37] she testified that she recommended the issuance of the Preliminary Assessment Notice, Assessment Notice and the Formal Letter of Demand. The draft she prepared was approved for issuance.

She testified that she upheld the findings of the examiner, except as to the compromise penalty. Based on her review, the Revenue Officer assessed the taxpayer with the 50% surcharge for willful neglect or for failure to file the income tax return and value-added tax return. Hence, she recommended for the compromise penalty of ₱25,000.00.

On clarificatory question,[38] she stated that the audit investigation was conducted by Ms. Miraflor Ayen of Revenue District Office No. 40 - Cubao.

Third prosecution witness, Atty. Roel A. Zafra, the BIR lawyer who reviewed the delinquent account case of the accused, testified on direct examination by way of Judicial Affidavit,[39] as follows:

Atty. Zafra is the lawyer who reviewed the delinquent account case of the accused, and caused the issuance of the Demand Before Suit, as well as instituted the criminal complaint against the accused.

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[37] TSN dated March 26, 2014, pp. 86 to 90.
[38] TSN dated March 26, 2014, pp. 90 to 91.
[39] Exhibit "P-26" Docket, pp. 311 to 320.

Upon review and evaluation of the case, he found out that based on Assessment Notice No. F08-040-41 dated January 5, 2009, the deficiency income tax of the accused amounted to ₱7,244,387.51, including increments, and the 2004 deficiency VAT amounted to ₱2,307,728.63, including increments. It was issued against the accused at No. 26 Acropolis Drive, Acropolis Village, Quezon City. It was signed by Alfredo V. Misajon, Regional Director, with a stamp mark "POSTED IN FORM – 40 / COLLECTIBLE ACCOUNT," which meant that it is already entered into the database of the BIR as a delinquent account.

Formal Letter of Demand No. F08-040-41 dated January 5, 2011 was sent along with the Assessment Notice to 26 Acropolis Drive, Acropolis Village, Quezon City. Despite becoming final and demandable due to the failure of the accused to timely file a valid protest to the Final Assessment Notice, the deficiency taxes of the accused remained unpaid.

The First Notice Before Issuance of Warrant of Distraint and Levy dated May 18, 2009 was issued against the accused at No. 26 Acropolis Drive, Acropolis Village, Quezon City.

The FNBS dated June 1, 2009 was likewise issued against the accused at Unit 604 AIC Gold Towers, Emerald Street, Ortigas, Pasig City. Likewise, a Preliminary Collection Notice dated July 15, 2009 was issued.

Collection proceedings were continued through the service of notices on August 26, 2009, informing the Coca Cola Tigers Team and the Philippine Basketball Association of the internal revenue tax liabilities of Mr. Taulava using different addresses, namely:

1) Mr. Paulasi M. Taulava
c/o Coca-Cola Bottlers Phils., Inc.
20th Floor, San Miguel Properties Centre
Saint Francis Street, Ortigas Center, Mandaluyong City
(Registry Receipt No. 1493);

2) Mr. Paulasi M. Taulava
c/o Philippine Basketball Association, Inc.
No. 186 E. Rodriguez, Jr. Avenue
Bagumbayan, Quezon City
(Registry Receipt No. 1495); and

3) Mr. Paulasi M. Taulava
c/o Coca-Cola Bottlers Phils., Inc.
No. 1890 Paz Guanzon Avenue
Paco, Manila
(Registry Receipt No. 1494).

Thereafter, three (3) FNBS dated October 6, 2009, were served on Mr. Taulava on October 14, 2009, using three different addresses, namely:

1) Mr. Paulasi M. Taulava
c/o Coca-Cola Bottlers Phils., Inc.
20th Floor, San Miguel Properties Centre
Saint Francis Street, Ortigas Center, Mandaluyong City
(Registry Receipt No. 2892);

2) Mr. Paulasi M. Taulava
c/o Coca-Cola Bottlers Phils., Inc.
No. 1890 Paz Guanzon Avenue
Paco, Manila
(Registry Receipt No. 2894); and

3) Mr. Paulasi M. Taulava
c/o Philippine Basketball Association, Inc.
No. 186 E. Rodriguez, Jr. Avenue
Bagumbayan, Quezon City
(Registry Receipt No. 2893).

Subsequently, four (4) letters were filed with the following offices, requesting for any information filed with their respective offices as to the whereabouts or current local address of Mr. Taulava, to wit:

1) The Human Resource & Administrative Manager
Coca-Cola Bottlers Philippines, Inc.
No. 1890 Paz Guanzon Avenue
Paco, Manila

2) The Human Resource & Adminstrative Manager
Coca-Cola Export Employees Credit Cooperative
10 Floor King's Court Building I,
No. 2129 Chino Roces Avenue corner Dela Rosa Street
San Lorenzo, Makati
(Chino Roces Avenue, Formerly: Pasong Tamo Street)

3) Mr. Renauld N. Barrios
Commissioner, Philippine Basketball Association
No. 186 E. Rodriguez Jr. Avenue
Bagumbayan, Libis, Quezon City

4) The Human Resource & Administrative/Team Manager
Coca-Cola Export Employees Credit Cooperative
10 Floor King's Court Building I,
No. 2129 Chino Roces Avenue corner Dela Rosa Street
San Lorenzo, Makati
(Chino Roces Avenue, Formerly: Pasong Tamo Street)

The first letter was personally received by Dodie Hipong as evidenced by the signature and date on the receiving copy. The second letter was sent through registered mail as evidenced by Registry Receipt No. 899, with stamp date February 24, 2010. The third was personally received by the Philippine Basketball Association as evidenced by a receiving stamp with signature and date. The fourth was personally received by Jenny Bondad as evidenced by signature and date on the receiving copy.

The deficiency taxes having remained unpaid despite the service of the said letters, a WDL dated November 18, 2010 was issued.

Thereafter, a Warrant of Garnishment dated November 18, 2010 addressed to the President, Accounting Manager, Treasurer and/or Cashier of Meralco Bolts was likewise issued.

After conducting the review of the delinquent account case of the accused, Atty. Zafra caused the issuance and service of the Demand Before Suit dated March 17, 2011. It was served through registered mail as evidenced by a Registry Receipt attached thereto.

Due to the willful refusal of the accused to pay his long overdue tax liabilities, Atty. Zafra initiated the filing of the complaint against the accused by executing an Affidavit dated March 5, 2012. It was referred to the Office of the City Prosecutor of Quezon City as evidenced by a Referral Letter dated March 7, 2012 and duly signed by the OIC-Regional Director of the Bureau of Internal Revenue, Revenue Region No. 7, Quezon City. It was filed with the Prosecutors Office on March 21, 2012 as evidenced by the Stamp of Receipt dated March 21, 2012.

On cross-examination,[40] Atty. Zafra testified that he entered the BIR way back in 1998. The deficiency income tax of the accused has become due and demandable due to the failure to file a protest within 30 days from receipt of the Final Assessment Notice (FAN).

The FAN was sent by the Assessment Division through registered mail to the given address of the accused. Atty. Zafra caused the filing of the Complaint and participated in the preparation and filing thereof.

The FAN became final because no protest was filed by the accused. The BIR Records contain the registry receipt of the notices sent to the accused.

Atty. Zafra's affidavit does not contain the return card and he relies on the efficiency of the postal service that the notice was actually sent. Until June 4, 2014, no protest was filed by the accused.

After the assessment has become final and executory, the BIR shall commence the collection proceedings. The collection proceeding is undertaken based on Atty. Zafra's review, first by the issuance of a preliminary notice, then a second notice, preliminary notice before seizure, and final notice before seizure.

There was still a willful refusal to pay the deficiency tax because no response was sent by the accused. The records submitted for review does not include the return card.

Atty. Zafra is aware of the letter dated December 10, 2010, handwritten by Anna May Taulava, the wife of the accused, which is contained in the BIR docket. However, he is not aware if payment was made by the accused. Payment Form No. 0605 is used in the payment of tax obligations. All payments are coursed through the bank and the BIR does not receive payments directly. He is not aware if payment was made in this case.

After payment, the BIR will receive advice from the bank that payment has been made. The taxpayer should furnish the BIR of the proof of payment. Then the BIR will validate the same in the system.

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[40] TSN dated June 4, 2014, pp. 9 to 28.

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Upon clarificatory questions,[41] Atty. Zafra testified that all taxpayers who failed to pay taxes may be the subject of a criminal action. This is the first case in his office that reached the Court of Tax Appeals as some were filed with the MTC and RTC, depending on the amount involved.

In this case, efforts have been made by the collection agent to send notices at the different addresses of the accused. The FAN was issued on January 5, 2009, beyond the three (3) year period, but there was fraud mentioned in the report. Atty. Zafra did not make an independent determination of fraud. He merely relied on the assessment and the report of the examiner. The FAN is based on the finding of fraud. But the basis of the finding of fraud is not indicated in the records. The determination of fraud belongs to the examiners. He merely reviewed the records once it was forwarded for recommendation to file a criminal case. He relied on the assessment and the report of the examiners.

The fourth witness for the prosecution, Ms. Margarita R. Jose, the Revenue Officer who initially executed summary remedies for the collection of the 2004 delinquent account of accused, testified on direct examination, also by way of Judicial Affidavit,[42] as follows:

Ms. Jose testified that she is the Revenue Officer who initially executed summary remedies for the collection of the 2004 delinquent account of the accused. As per Memorandum of Assignment No. 010/05/2009 dated May 11, 2009, she was directed, among others, to demand from the taxpayer, the payment of the delinquent accounts and the execution of summary remedies if the taxpayer fails or refuses to pay the tax liability.

Upon receipt of the Memorandum of Assignment, she reviewed and evaluated the case and found out that based on Assessment Notice No. F08-040-41 dated January 5, 2009, the 2004 deficiency income tax of the accused amounted to ₱7,244,387.51 and deficiency VAT amounted to ₱2,307,728.63, including increments. The Assessment Notice, together with a Formal Letter of Demand, was issued to the accused at No. 26 Acropolis Drive, Acropolis Village, Quezon City. It was signed by Alfredo V. Misajon, Regional Director, with a stamp mark "POSTED IN FORM – 40 / COLLECTIBLE ACCOUNT." Thereafter, the deficiency income tax of the accused became final and demandable due to the failure to file a

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[41] TSN dated June 4, 2014, pp. 28 to 40.
[42] Exhibit "P-29" Docket, pp. 371 to 374.

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valid protest to the Final Assessment Notice.

Finally, she caused the issuance of the First Notice Before Issuance of Warrant of Distraint and Levy dated May 18, 2009. It was served through registered mail to the accused at No. 26 Acropolis Drive, Acropolis Village, Quezon City. As for the Final Notice Before Seizure (FNBS) dated June 1, 2009, it was served through registered mail to the accused at Unit 604 AIC Gold Towers, Emerald Street, Ortigas, Pasig City. Likewise, a Preliminary Collection Notice dated July 15, 2009 was issued.

On cross-examination,[43] she testified that she was the Revenue Officer who initially executed the summary remedies in the collection of the delinquent account of the accused. She started her evaluation when the Memorandum of Assignment No. 010052009 dated May 11, 2009 was issued to her. She terminated her investigation when the FNBS was issued on July 15, 2009. She does not know if there was payment made by the accused in 2010. Payments may be verified from the ITS system. However, she no longer has any update after July 15, 2009.

Upon clarificatory questions,[44] Ms. Jose stated that the accused received a copy of the FAN dated January 5, 2009, issued by the Assessment Division through registered mail. She came to the conclusion that the Assessment became final and demandable because no protest was filed within 30 days from receipt of the FAN. She does not know when the FAN was received by the accused.

The fifth prosecution witness, Ms. Nelia A. Delos Reyes, the Revenue Officer who stamped the words "POSTED IN FORM 40 COLLECTIBLE ACCOUNT" on the Assessment Notice issued against accused, testified on direct examination by way of Judicial Affidavit,[45] as follows:

Ms. Delos Reyes testified that she is the Revenue Officer who stamped the words "POSTED IN FORM 40 / COLLECTIBLE ACCOUNT" on the Assessment Notice issued against the accused. Assessment Notice No. F08-040-41 dated January 5, 2009 was issued against the accused for his 2004 deficiency income tax and deficiency VAT amounting to ₱7,244,387.51 and ₱2,307,728.63, including increments, as of January 22, 2009, respectively.

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[43] TSN dated August 6, 2014, pp. 24 to 27.
[44] TSN dated August 6, 2014, pp. 27 to 30.
[45] Exhibit "P-30" Docket, pp. 363 to 366.

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She is authorized to perform the stamping of the aforementioned words, because she is the Head of the Billing Section, Assessment Division of Revenue Region No. 7, Quezon City. It is part of her duties and function to stamp the said words on delinquent accounts.

The said words mean that the deficiency taxes of the accused have become final and demandable. The deficiency taxes became final and demandable because the accused failed to timely file a valid protest to the Final Assessment Notice.

She initially viewed and evaluated the case and found out that based on Assessment Notice No. F08-040-41 dated January 5, 2009, the 2004 deficiency income tax of the accused amounted to ₱7,244,387.51, including increments, as of January 22, 2009 and deficiency VAT amounted to ₱2,307,728.63, including increments, as of January 22, 2009. It was issued to the accused at No. 26 Acropolis Drive, Acropolis Village, Quezon City, together with the Formal Letter of Demand. It was also signed by Alfredo V. Misajon, Regional Director.

Aside from stamping the above-mentioned words, Form No. 40, pertinent to the delinquent account of the accused, was prepared under her supervision and which she caused to be signed by the Chief of the Assessment Division.

On cross-examination,[46] Ms. Reyes stated that she supervised the preparation of the Assessment Notices and Formal Letter of Demand. The assessment was prepared by the Revenue Office of RDO No. 40 – Cubao, and reviewed by the Reviewer from the Assessment Division, and finalized by the Billing Section. The process started in January 5, 2009 and ended once the case was posted in Form No. 40 – Collectible Account. The posting was made in April 2009. Thereafter, the same was forwarded to the Collection Division. She has no more knowledge if payment was made by the accused.

The last witness for the prosecution, Mr. Arnold C. Larrosa, the Revenue Officer who served the Final Assessment Notice (FAN) and Formal Letter of Demand (FLD), both dated January 5, 2009, issued against the accused, testified on direct examination, also by way of Judicial Affidavit,[47] as follows:

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[46] TSN dated August 6, 2014, pp. 37 to 40.
[47] Exhibit "P-33" Docket, pp. 422 to 424.

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Mr. Larrosa testified that he was the Revenue Officer who served the FAN dated January 5, 2009 and FLD dated January 5, 2009 issued against the accused for taxable year 2004. At that time, he was an Administrative Aide II, assigned at the Administrative Division of the BIR, Revenue Region No. 7, Quezon City.

On January 5, 2009, the FAN and the FLD were served through registered mail at the BIR Post Office, Quezon City. The receiving copy of the transmittal receipt of the FAN and FLD duly received by the BIR Post Office are evidence to prove the fact of mailing of the FAN and FLD issued by the BIR against the accused for taxable year 2004.

The mailing of the FAN issued by the Assessment Division of Revenue Region No. 7, Quezon City was assigned to him by the Chief of the Administrative Division, being the official letter carrier of the Revenue Region at that time.

Finally, based on the Certification issued by the Quezon City Central Post Office dated September 2, 2014, their office can no longer ascertain the final disposition made on registered mail under Registry Receipt No. 30, addressed to Paul Asi Mateaki Taulava, since their records for the year 2009 has already been disposed.

On cross-examination,[48] Mr. Larrosa testified that he is in charge of the mailing of the documents for the BIR. He personally mailed the FAN and FLD to the accused. He does not have any proof as to the return card.

On clarificatory questions,[49] he said there is no proof of the return card because he has no copy on record. The FAN was posted on January 5, 2009, addressed to the accused. As a policy, the registry return card received by the Records Section (Administrative Division) is sent by the Chief of the Records Section to the Assessment Division. However, there is no document to show if it was received or not.

Upon completion of the presentation of prosecution's evidence, the prosecution filed its *Formal Offer of Evidence* on February 3, 2015.[50] In the Resolution dated March 17, 2015,[51] this Court

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[48] TSN dated January 14, 2015, pp. 13 to 16.
[49] TSN dated January 14, 2015, pp. 17 to 27.
[50] Docket, pp. 440 to 451.

admitted all of the prosecution's evidence marked as Exhibits "P-1" to "P-33", including sub-markings, with the exception of Exhibit "P-14-1", which was denied admission for plaintiff's failure to identify during trial and for failure of the actual exhibit to correspond to its description, and Exhibits "P-27" to "P-28", which were denied for plaintiff's failure to present the original documents. With the admission of the said exhibits, the prosecution was deemed to have rested its case.

The accused then filed a *Motion For Leave of Court To File Demurrer To Evidence* on March 30, 2015,[52] and an *Urgent Ex-Parte Supplemental Motion for Leave of Court To File Demurrer To Evidence* on March 31, 2015.[53] Thus, in its Resolution dated April 7, 2015,[54] the Court directed the prosecution to file its comment/opposition to the said two (2) *Motions*, within a period of five (5) days from notice. However, the prosecution failed to file the said comment/opposition within the said period.[55]

In the Resolution dated May 8, 2015,[56] the Court took note of, and admitted, the *Urgent Ex-Parte Supplemental Motion for Leave of Court To File Demurrer To Evidence* of the accused, and granted his *Motion For Leave of Court To File Demurrer To Evidence*.

Thus, on June 1, 2015, the accused filed his *Demurrer To Evidence*.[57] The prosecution then filed, on June 22, 2015, its *Motion For Extension of Time To File Opposition To Demurrer To Evidence*,[58] which was granted by the Court via the Order dated June 26, 2015.[59] In the Resolution dated September 17, 2015,[60] the Court denied accused's *Demurrer To Evidence* for lack of merit.

For his part, accused and his wife, Anna May C. Taulava testified in support of his defense.

Accused Pauliasi Mateaki Taulava testified on direct examination by way of Judicial Affidavit[61] dated January 20, 2016, as

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[51] Docket, pp. 484 to 486.
[52] Docket, pp. 487 to 490.
[53] Docket, pp. 491 to 493.
[54] Docket, p. 496.
[55] Records Verification dated April 28, 2015, Docket, p. 497.
[56] Docket, pp. 499 to 501.
[57] Docket, pp. 501 to 532.
[58] Docket, pp. 502 to 503.
[59] Docket, p. 505.
[60] Docket, pp. 520 to 533.
[61] Docket, pp. 545 to 558.

follows:

Pauliasi M. Taulava testified that he is the accused in this case, and from 2010 up to the present, he lives at No. 27 San Simon St., Capitol 8, Pasig City. From 2004 to 2009, they lived at a rented house at No. 17 Kabutihan St., Kawilihan Village, Pasig City. From 2002 to 2004, they lived at a rented house at No. 26 Acropolis Drive, Acropolis Village, Quezon City. Finally, from 2001 to 2002, they lived at a rented condo at Unit 604 AIC Gold Towers, Emerald St., Ortigas, Pasig City.

In 2009, they were no longer living at No. 26 Acropolis Drive, Acropolis Village, Quezon City, and they did not receive the notices sent by the BIR to accused by registered mail, namely: the Final Assessment Notice for Deficiency Income Tax bearing Demand No. F08-040-41, the Final Assessment Notice for Deficiency Value Added Tax bearing Demand No. F08-040-41 and Formal Letter of Demand No. F08-041-41, all dated January 5, 2009, with address at No. 26 Acropolis Drive, Acropolis Village, Quezon City.

They did not know who the occupants were at No. 26 Acropolis Drive, Acropolis Village, Quezon City back in January 5, 2009. The occupants of the said address, or any other person from Acropolis Village, did not forward any BIR notice to them.

Neither did they receive the First Notice Before Issuance of Warrant of Distraint and Levy dated May 18, 2009 sent to accused at No. 26 Acropolis Drive, Acropolis Village, Quezon City.

Likewise, they did not receive the Final Notice Before Seizure dated June 1, 2009 and the Preliminary Collection Notice dated July 15, 2009 sent to the accused at Unit 604 AIC Gold Towers, Emerald St., Ortigas, Pasig City. Nobody from the said unit or from AIC Gold Towers administration forwarded any BIR notice to them.

They also failed to receive the three (3) Collection Notices all dated August 24, 2009, coursed through different offices, namely, Coca-Cola Bottlers Phils., Inc., and Philippine Basketball Association, Inc., and no one from the said offices ever forwarded any BIR notice to them.

He likewise denied receipt of the three (3) Final Notices Before Seizure and the four (4) letter requests dated February 17, 2010, sent to the accused by registered mail, through different offices, namely, Coca-Cola Bottlers Phils., Inc., and Philippine Basketball Association, Inc.

Accused identified Doddie Hipona as the ballboy for the Coca Cola Tigers Team, but denied knowing Jenny Bondad.

He also denied the receipt of the Warrant of Distraint and Levy and the Warrant of Garnishment, both dated November 18, 2010 and both sent to No. 26 Acropolis Drive, Acropolis Village, Quezon City.

He further testified that he was playing for the Meralco Bolts in 2010, and his team manager showed him a letter request sometime in November 2010.

After being shown the letter, he and his wife immediately went to the BIR and looked for Ruth Vivian Gadia, the signatory of the letter, to find out what it was about. They frequented the BIR about four or five times, and at times with the accused tagging along. During their first visit, however, he did not meet Ms. Gadia, but were able to talk to a certain Noel Bihasa, who introduced himself as a collector/seizure agent of the BIR.

Noel Bihasa explained to them that he has unpaid taxes incurred for the year 2004 amounting to more than Nine Million Pesos and threatened that the accused could be deported if they failed to pay this amount to the BIR.

After threatening them with deportation, Noel Bihasa told them, in a lower voice, that there is something he could do to lower the amount to be paid. Then he said words to the effect that there is a price to be paid for his services, but did not mention an amount.

Unsure of his character, they did not give in to Noel Bihasa's suggestions. Instead, they insisted to talk with the Chief, Ms. Gadia. But since Ms. Gadia was not there, they decided to return on another date.

It was his wife and accountant who were able to meet and talk with Ms. Gadia on December 10, 2010. When his wife arrived at home after the meeting, she showed the accused a copy of the letter she wrote and submitted to the BIR upon the instructions of Ms. Gadia. His wife even emphasized that she was directed to immediately pay the said amount, and thereafter give them a copy of the payment form and the deposit slip.

They managed to produce the money and pay the compromise settlement amount after three (3) days. Together with their accountant, his wife immediately went to Metrobank Acropolis Branch on December 13, 2010 and paid the compromise settlement amounting to ₱1,281,000.00 for the deficiency income tax and ₱400,500.00 for the deficiency VAT, or a total of ₱1,681,200.00.

After paying the compromise settlement amount, his wife immediately returned home and showed the accused BIR Form No. 0605 and Metrobank deposit slips for ₱1,281,000.00 and ₱400,200.00. Thereafter, his wife, accompanied by their accountant, then went to the BIR to furnish the office a copy of BIR Form No. 0605 and deposit slips.

He came to know the charge against him when he personally went to this Court to post bail on July 11, 2013. It was only at that time that he was given documents regarding his alleged non-payment of taxes.

He got a call from his basketball teammate, Leo Avenido, who was informed by an NBI Agent that there was a standing warrant against him. He did not believe his teammate, until other players also called him about it, and he called his lawyer to confirm.

With the assistance of his lawyer, he personally went to this Court and posted bail. Thereafter, he went to the BIR office to verify how this case came about when he already paid the compromise settlement amount.

The BIR officials told him that there was an error in the encoding of his TIN by the bank teller, and that was the reason why the money he paid the BIR, as compromise settlement, just remained floating with the BIR.

He supplied to the BIR his correct TIN, after which, he was assured that everything would be in order already. Had he been duly informed earlier of the alleged non-payment of deficiency income tax and deficiency value added tax for the year 2004, he would have immediately taken action on that, asked his accountant to go over them. After determining the correctness of his tax liabilities, he would immediately settle the same. He will not ruin his basketball career and reputation as a law-abiding citizen over a petty thing of not paying the correct taxes due.

On cross-examination,[62] the accused testified that in 2009, his address is No. 26 Acropolis Drive, Acropolis Village, Quezon City. He did not apply for a change of address in 2009.

In the Resolution[63] dated January 27, 2016, this Court noted that there is a discrepancy regarding the name of accused appearing on the caption and on the body of the Amended Information. With the consent of the defense counsel, Atty. Romel Curiba was allowed to make an insertion of the letter "i" in the body of the Amended Information referring to the name of accused, between the words "Paul and asi" to read as "Pauliasi." Thus, it was resolved, with the conformity of the defense counsel and the accused, to consider all other discrepancies appearing in the previous issuances of this Court, as referring to the correct name of accused as "Pauliasi Mateaki Taulava."

Anna May C. Taulava, the wife of the accused, testified on direct examination by way of Judicial Affidavit[64] dated March 4, 2016, as follows:

Anna May C. Taulava is the wife of accused Pauliasi Mateaki Taulava. From 2010 up to the present, they live at the house they own at No. 27 San Simon St., Capitol 8, Pasig City. From 2004 to 2009, they lived at a rented house at No. 17 Kabutihan St., Kawilihan Village, Pasig City. From 2002 to 2004, they lived at a rented house at No. 26 Acropolis Drive, Acropolis Village, Quezon City. Finally, from 2001 to 2002, they lived at a rented condo at Unit 604 AIC Gold Towers, Emerald St., Ortigas, Pasig City.

Thus, from 2004, they were no longer living at No. 26 Acropolis Drive, Acropolis Village, Quezon City, and they did not receive the notices sent by the BIR to accused by registered mail, namely: the Final Assessment Notice for Deficiency Income Tax bearing Demand No. F08-040-41, the Final Assessment Notice for Deficiency Value Added Tax bearing Demand No. F08-040-41 and Formal Letter of Demand No. F08-041-41, all dated January 5, 2009, with address at No. 26 Acropolis Drive, Acropolis Village, Quezon City.

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[62] TSN dated January 27, 2016, pp. 13 to 20.
[63] Docket, pp. 571 to 572.
[64] Docket, 577 to 588.

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They did not know who the occupants were at No. 26 Acropolis Drive, Acropolis Village, Quezon City back in January 5, 2009. The occupants of the said address, or any other person from Acropolis Village, did not forward any BIR notice to them.

Neither did they receive the First Notice Before Issuance of Warrant of Distraint and Levy dated May 18, 2009 sent to accused at No. 26 Acropolis Drive, Acropolis Village, Quezon City.

Likewise, they did not receive the Final Notice Before Seizure dated June 1, 2009 and the Preliminary Collection Notice dated July 15, 2009 sent to the accused at Unit 604 AIC Gold Towers, Emerald St., Ortigas, Pasig City. Nobody from the said unit or from AIC Gold Towers administration forwarded any BIR notice to them.

They also failed to receive the three (3) Collection Notices all dated August 24, 2009, coursed through different offices, namely, Coca-Cola Bottlers Phils., Inc., and Philippine Basketball Association, Inc., and no one from the said offices ever forwarded any BIR notice to them.

She likewise denied receipt of the three (3) Final Notices Before Seizure and the four (4) letter requests dated February 17, 2010, sent to the accused by registered mail, through different offices, namely, Coca-Cola Bottlers Phils., Inc., and Philippine Basketball Association, Inc.

She further denied their receipt of the Warrant of Distraint and Levy and the Warrant of Garnishment, both dated November 18, 2010 and both sent to No. 26 Acropolis Drive, Acropolis Village, Quezon City.

The first time that she learned about her husband's tax liabilities subject of this case was sometime in November 2010, when the accused told her that their team manager Virgil Villavicencio showed him a letter request from the BIR.

She manages the finances of the family, including the taxes. Together with their accountant, she immediately went to the BIR and looked for Ruth Vivian Gadia, the signatory of the letter, to find out what it was all about. She frequented the BIR about four or five times, and at times with the accused tagging along. During their first visit, however, she did not meet Ms. Gadia, but were able to talk to a certain Noel Bihasa, who introduced himself as a collector/seizure agent of the BIR.

She narrated that Noel Bihasa explained to them that the accused has unpaid taxes incurred for the year 2004 amounting to more than Nine Million Pesos. He also threatened that the accused could be deported if they failed to pay this amount to the BIR.

After threatening them with deportation, Noel Bihasa told them, in a lower voice, that there is something he could do to lower the amount to be paid. Then he said words to the effect that there is a price to be paid for his services, but did not mention an amount.

Unsure of his character, they did not give in to Noel Bihasa's suggestions. Instead, they insisted to talk with the Chief, Ms. Gadia. But since Ms. Gadia was not there, they decided to return on another date.

Together with their accountant, they were able to meet with Ruth Vivian Gadia on December 10, 2010, who was very accommodating. Ms. Gadia told her to write a letter requesting to pay a compromise settlement of 40%. Ms. Gadia dictated the contents of the letter, particularly the basis of the compromise settlement, Revenue Regulation No. 30-2002, Section 4.2 and to whom the letter is to be addressed to.

Ms. Gadia also summoned Noel Bihasa, directed the latter to compute the 40% and came up with the amount of ₱1,681,200.00. Ms. Gadia assured them that after immediately settling the 40% compromise settlement, the concerned tax assessments of the accused will be considered settled and there would be nothing more to worry about. Ms. Gadia even emphasized to furnish them a copy of the payment form and deposit slip.

They paid the compromise settlement amount after three (3) days. Together with their accountant, she immediately went to Metrobank Acropolis Branch on December 13, 2010 and paid the compromise settlement amounting to ₱1,281,000.00 for the deficiency income tax and ₱400,500.00 for the deficiency VAT, or a total of ₱1,681,200.00.

After paying the compromise settlement amount, she immediately returned home and showed the accused BIR Form No.

0605 and Metrobank deposit slips for ₱1,281,000.00 and ₱400,200.00.

A few days later, her accountant accompanied her to the BIR to furnish the office a copy of the BIR Form 0605 and the Metrobank deposit slips.

On cross-examination,[65] she testified that she is a graduate of AB Communication Arts. She took up one semester of Master's Degree in Advertising in the University of Santo Tomas. She understands the word compromise as an agreement to settle the tax liability.

On May 5, 2016, accused filed an *Ex-Parte Motion To Correct Markings of Exhibits With Formal Offer of Evidence For The Accused*,[66] praying for the remarking of certain Exhibits and the admission of the offered Exhibits. In the Resolution dated June 3, 2016,[67] the Court granted the remarking prayed for the accused and scheduled a Commissioner's hearing for that purpose on June 23, 2014. After this date, the prosecution was given a period of fifteen (15) days within which to file their comment to the accused's *Formal Offer of Evidence*.[68] The prosecution, however, failed to file the said comment.[69] This Court then submitted accused's *Formal Offer of Evidence* for resolution.[70]

In the Resolution dated September 19, 2016,[71] this Court admitted Exhibits "A-1", "A-3", "A-5", "A-7" to "A-7-a", "A-8" to "A-8-a" and "A-9", but denied the admission of Exhibit "A-2", for failure to identify the same, and Exhibits "A-4" and "A-6", for failure to submit the originals for comparison. In the same Resolution, this Court gave the parties a period of thirty (30) days from receipt thereof within which to file their respective memorandum.

On October 18, 2016, the accused filed his *Memorandum*.[72] The prosecution, however, failed to file its *Memorandum*.[73] Subsequently, the case was submitted for decision on November 16,

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[65] TSN dated March 16, 2016, pp. 12 to 16.
[66] Docket, pp. 634 to 639.
[67] Docket, p. 642.
[68] Supra.
[69] Records Verification dated July 22, 2016, Docket, p. 646.
[70] Resolution dated August 1, 2016, Docket, p. 651.
[71] Docket, pp. 654 to 655.
[72] Docket, pp. 656 to 698.
[73] Records Verification dated November 8, 2016, Docket, p. 699.

2016.[74]

Hence, this Decision.

THE ISSUES

The parties stipulated the following issue for this Court's resolution, to wit:

> "Whether or not the accused is liable for the commission of the offense which is the violation of Section 255 of the National Internal Revenue Code of 1997."

Accused's arguments:

The accused argues that there has already been full payment of the subject tax liabilities in view of the payment of the compromise settlement pursuant to Revenue Regulations No. 30-2002.

According to the accused, there is no cause of action for willful failure to pay deficiency income tax and VAT, since there is no iota of proof that accused duly received the subject assessment notices.

Moreover, the accused avers that the Final Assessment Notices to pay deficiency income tax and VAT have already prescribed under Section 203 of the NIRC.

Lastly, it is also the contention of the accused that the alleged offense charged against him has already prescribed under Section 281 of the NIRC.

THE COURT'S RULING

As already stated, the accused is being charged for violation of Section 255 of the NIRC of 1997, which provides:

> "SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on*

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[74] Resolution dated November 16, 2016, Docket, p. 703.

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> *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, 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.
>
> Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of an internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years."

Based on the first paragraph of the foregoing provision, the following elements must be established by the prosecution to secure the conviction of accused in the instant criminal case, to wit:

1. The accused was **required under the NIRC of 1997 to pay any tax**, make a return keep any record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, **at the time or times required by law** or rules and regulations; and

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

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

A careful reading of the foregoing would reveal that the *second* and *third* elements are dependent on the *first* element. Thus, it is only when the *first* element is established that the remaining elements must be determined to exist. Specifically, the showing of the failure to pay the pertinent tax and the willfulness of such failure rest on whether the accused is required to pay the said tax in the first place. In other words, there can be no willful failure to pay a tax if there is no requirement to pay the same at all.

The requirement to pay any tax under the NIRC of 1997 may arise from either of two (2) specific instances: *first*, upon being required by the same law to pay a particular tax, simultaneous with the filing of the pertinent tax return;[75] or *second*, upon being informed of a tax assessment issued by the BIR, requiring the taxpayer to pay the assessed tax within a specific period as set forth in the said tax assessment.

The said *first* instance involves a self-assessment approach wherein the taxpayer is responsible for determining his or her tax liability, filing the appropriate tax return, paying the tax due, if any, and complying with other reporting requirements. In *Commissioner of Internal Revenue vs. Fitness By Design, Inc.*,[76] the Supreme Court describes the said approach as follows:

> "The assessment process starts with the filing of tax return and payment of tax by the taxpayer. The initial assessment evidenced by the tax return is a self-assessment of the taxpayer. **<u>The tax is primarily computed and voluntarily paid by the taxpayer without need of any demand from government.</u> If tax obligations are properly paid, the Bureau of Internal Revenue may dispense with its own assessment.**" *(Emphasis and underscoring supplied)*

Upon the other hand, the above-stated *second* instance involves the issuance by the Commissioner of Internal Revenue, or his or her duly authorized representative, of a tax assessment, when the tax obligation is not properly paid. In this connection, it must be pointed out that Section 6(A) of the NIRC of 1997 provides as follows:

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[75] Examples of these are the following: Section 51 in relation to Section 56(A)(1) [For Income Tax – Individuals], Section 77 [For Income Tax – Corporations], Section 91 [for Estate Tax], Section 103 [for Donor's Tax], Section 114 [for VAT], Section 128 [for Other Percentage Taxes], Section 130 [for Excise Taxes], and Section 200 [for Documentary Stamp Tax], all of the NIRC of 1997, as amended.

[76] G.R. No. 215957, November 9, 2016.

"SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. –*

(A) *Examination of Returns and Determination of Tax Due. –* xxx

The tax or any deficiency tax so assessed shall be paid <u>upon notice and demand</u> from the Commissioner or from his duly authorized representative." *(Emphasis and underscoring supplied.)*

Accordingly, from the moment that the Commissioner or his or her duly authorized representative serves a notice on the concerned taxpayer and demands the payment of tax, or any deficiency tax, the legal obligation to pay the assessed tax arises. Such notice, however, must be in writing, informing the taxpayer of the law and the facts on which the assessment is made; otherwise, such assessment shall be void.[77] As a corollary, the reason for requiring that taxpayers be informed in writing of the facts and law on which the assessment is made is the constitutional guarantee that no person shall be deprived of his property without due process of law.[78]

In this case, the *first* element of the crime being charged against the accused supposedly arose from the above-stated *second* instance on being required to pay tax, *i.e.*, upon being informed of tax assessments issued by the BIR.

The prosecution, however, was **<u>not</u>** able to successfully establish that the accused was served with the *Formal Letter of Demand*[79] and *Assessment Notices*[80] (all dated January 5, 2009), which required accused to pay the deficiency income tax and VAT, including increments, in the amounts of ₱7,244,387.51 and ₱2,307,728.63, respectively.[81] Thus, the legal obligation of the accused to pay the said taxes did not arise. Correspondingly, the *first* element of the crime, *i.e.*, that the accused is required to pay the taxes under the NIRC of 1997, is not present.

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[77] Refer to Section 228 of the NIRC of 1997, which partly provides as follows: *"The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void."*

[78] *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation, etseq.*, G.R. Nos. 215534 and 215557, April 18, 2016.

[79] Exhibit "P-3", Docket, pp. 143 to 144.

[80] Exhibits "P-1" and "P-2", Docket, pp. 141 to 142.

[81] Exhibits "S" to "U," Docket, pp. 192 to 194.

According to the prosecution's witness, Mr. Arnold C. Larrosa,[82] the said *Formal Letter of Demand* and *Assessment Notices*, were sent to accused via registered mail.

Section 3(v) of Rule 131 of the Rules of Court provides as follows:

> "SEC. 3. *Disputable presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
>
> xxx xxx xxx
>
> (v) **That a letter duly directed and mailed was received in the regular course of the mail;**"

In *Nava vs. Commissioner of Internal Revenue*,[83] the Supreme Court said:

> "'The facts to be proved to raise this presumption are (a) **<u>that the letter was properly addressed with postage prepaid</u>**, and (b) **<u>that it was mailed</u>**. **<u>Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mails.</u> But if one of the said facts fails to appear, the presumption does not lie.**' (VI Moran, Comments on the Rules of Court, 1963 Ed., 56-57; citing Enriquez v. Sun Life Assurance of Canada, 41 Phil. 269)"

Guided by the foregoing jurisprudential pronouncements, We shall determine whether the above-stated disputable presumption may be applied in the instant case.

We shall first address the issue of whether the subject *Formal Letter of Demand* and *Assessment Notices* were properly addressed. According to the accused, he could not have received the said documents because he was no longer living at No. 26 Acropolis Drive, Acropolis Village, Q.C., in the year 2009.

We do not agree.

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[82] Exhibit "P-33", Docket, pp. 422 to 424.
[83] G.R. No. L-19470, January 30, 1965.

While it may be true that he was no longer living at the said address in the year 2009, the accused should have informed the Bureau of Internal Revenue of his change of address, pursuant to Section 11 of RR No. 12-85,[84] which reads:

> "SECTION 11. *Change of Address.* — **In case of change of address, the taxpayer must give written notice thereof to the Revenue District Officer or the district having jurisdiction over his former legal residence and/or place of business, copy furnished the Revenue District Officer having jurisdiction over his new legal residence or place of business,** the Revenue Computer Center and the Receivable Accounts Division, BIR, National Office, Quezon City, and in case of failure to do so, any communication referred to in these regulations previously sent to his former legal residence or business address as appearing in his tax return for the period involved shall be considered valid and binding for purposes of the period within which to reply." *(Emphasis supplied)*

Upon cross-examination of the accused at the hearing held on January 27, 2016,[85] it was established that his BIR registered address in 2009 was No. 26 Acropolis Drive, Acropolis Village, Q.C., and that he did not inform the BIR of his subsequent change of address, to wit:

"ATTY. CURIBA:

Q. **In 2009 your address is No. 26 Acropolis Drive, Acropolis Village, Quezon City?**

MR. TAULAVA:

A. **In 2009, yes, 2004 to 2009, I'm not sure with the dates.**

ATTY. CURIBA:

Q. Your Honors, we would like to make it on record that the accused is referring to his Judicial Affidavit.

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[84] SUBJECT: Procedure Covering Administrative Protests on Assessments of the Bureau of Internal Revenue.

[85] Minutes of the hearing held on January 27, 2016, Docket, pp. 564 to 568; Resolution dated January 27, 2016, Docket, pp. 571 to 572.

JUSTICE UY:

Please answer without looking at your Judicial Affidavit.

MR. TAULAVA:

A. I'm sorry, your Honors, I'm having a hard time with the dates going back to where I was living up to the present time. But before I was living at Capitol 8 I was staying in Kawilihan.

JUSTICE UY:

If you had difficulty remembering the dates, how were you able to execute your Affidavit.

MR. TAULAVA:

A. My wife, my wife is the one having the dates where we were living at that time.

JUSTICE UY:

So, it was your wife who gave you the dates?

MR. TAULAVA:

A. Yes, she's the one.

JUSTICE UY:

So, you don't remember from your own memory?

MR. TAULAVA:

A. No, I know where I was staying but the years when I was staying there.

JUSTICE UY:

That's his answer.

You may proceed.

xxx xxx xxx

ATTY. CURIBA:

Q. And, as far as you can remember, today, you did not apply for change of address before the Bureau of Internal Revenue?

MR. TAULAVA:

A. I think I did, because I had to have my address changed.

ATTY. CURIBA:

Q. You did?

MR. TAULAVA:

A. I'm not sure but I know I want, I need to have my address where I am personally examined by them.

ATTY. CURIBA:

Q. You have evidence that you applied for change of address?

MR. TAULAVA:

A. With the BIR?

ATTY. CURIBA:

I am not yet finished.

Q. **Do you have evidence that you applied for change of address before the Bureau of Internal Revenue?**

MR. TAULAVA:

A. **I think, no.**"[86] *(Emphases supplied)*

Correspondingly, it cannot here be doubted that subject *Formal Letter of Demand* and *Assessment Notices* were properly addressed, for purposes of the presumption under the aforequoted Section 3(v)

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[86] Transcript of Stenographic Notes dated January 27, 2016, pp. 14 to 15, and 19.

of Rule 131 of the Rules of Court.

Nevertheless, We will then determine whether the same *Formal Letter of Demand* and *Assessment Notices* were mailed. Relative thereto, it is noted that the accused denies having received the said documents.[87]

Apropos, in *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*,[88] the Supreme Court ruled:

> "xxx. The Court has held that when an assessment is made within the prescriptive period, as in the case at bar, receipt by the taxpayer may or may not be within said period. But it must be clarified that the rule does not dispense with the requirement that the taxpayer should actually receive the assessment notice, even beyond the prescriptive period. GJM, however, denies ever having received any FAN.
>
> If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. Here, the *onus probandi* has shifted to the BIR to show by contrary evidence that GJM indeed received the assessment in the due course of mail. It has been settled that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee.
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> **To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the taxpayer or its authorized representative. And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention.** The Court does not put much credence to the self-serving documentations made by the BIR personnel, especially if they are unsupported

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[87] 14.Q & A, Exhibit "A-7", Docket, p. 549.

[88] G.R. No. 202695, February 29, 2016.

by substantial evidence establishing the fact of mailing. While it is true that an assessment is made when the notice is sent within the prescribed period, the release, mailing, or sending of the same must still be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or control, and without adequate supporting evidence cannot suffice. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices." *(Emphasis supplied)*

Thus, since the prosecution failed to present the registry receipt issued by the Bureau of Posts or the Registry return card in connection with the mailing of the subject *Formal Letter of Demand* and *Assessment Notices*, or a Bureau of Posts Certification to the effect that the same *Formal Letter of Demand* and *Assessment Notices* were mailed, there can be no other conclusion than that the said documents were not mailed and hence, has not been received by the accused.

In *Commissioner of Internal Revenue vs. BASF Coating + Inks Phils., Inc.,*[89] the Supreme Court upheld the ruling that a FAN never attains finality when the taxpayer never receives it, either actually or constructively. The case underscored the significance of due process in the collection of taxes, ensuring that taxpayers will be accorded due process by the BIR, before they can be held liable for deficiency tax assessments. Thus, it was held that a taxpayer's right to due process is violated when no valid notice of assessment was sent to it, to wit:

> "It might not also be amiss to point out that petitioner's issuance of the First Notice Before Issuance of Warrant of Distraint and Levy violated respondent's right to due process because no valid notice of assessment was sent to it. An invalid 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 properly been informed of the basis of its tax liabilities. Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there

[89] G.R. No. 198677, November 26, 2014.

can be no deprivation of property, because no effective protest can be made."

Consequently, the absence of competent proof that the FLD was duly transmitted to the taxpayer and that he was informed of the subject tax assessments, gives rise to the conclusion that the accused is under no obligation to pay for the subject taxes. Thus, the *first* element of the crime charged is not present, and there is no basis to sustain the charges against the accused. As such, it becomes unnecessary and futile to discuss the existence of the *second* and *third* elements of the crime charged.

WHEREFORE, in light of the foregoing considerations, accused **PAULIASI MATEAKI TAULAVA** is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt.

The cash bond posted by accused **PAULIASI MATEAKI TAULAVA** in the amount of ₱24,000.00 is hereby cancelled, pursuant to Section 22 of Rule 114 of the Revised Rules of Criminal Procedure. The cash bond shall be refunded only upon presentation of the Official Receipt and shall be granted only to the person named in the Official Receipt or to the duly authorized representative, in accordance with *En Banc* Resolution No. 03-2009, *"Re: Guidelines on Reduction and Refund of Bail Bonds."*

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
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 case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Chairperson
Presiding Justice