REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIM. CASE NOS. O-485, O-486, O-487, O-488, O-490, O-491, O-492, O-493, O-494, O-495, O-496 & O-498**
- versus -	Members: **RINGPIS-LIBAN,** *Chairperson*, **MODESTO-SAN PEDRO,** and **FERRER-FLORES,** *JJ.*
JANET LIM NAPOLES, Accused.	Promulgated: MAR 21 2024 11:05 a.m.

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CTA Crim. Case No. O-485:[1]

"1st AMENDED INFORMATION

The undersigned Prosecutors of the Department of Justice, hereby accuses *[sic]* **JANET LIM NAPOLES** of violation of Section 255 of the National Internal Revenue Code of 1997, as amended committed as follows:

> 'That on or about April **2005**, in Pasig City and within the jurisdiction of this honorable Court, the above-named accused, an individual and a Filipino citizen residing in the Philippines, and at that time required by law, rules and regulations to file her annual income tax return did, then and there, willfully, unlawfully and feloniously fail to supply correct and accurate information in her annual income tax return, by then and there substantially under-declaring her income for taxable year **2004** which resulted to a basic deficiency income tax of One Million Ninety Four Thousand Six Hundred Forty Two Pesos and Three Centavos (₱1,094,642.03), more or less, for taxable year **2004**, exclusive of surcharge and interest to the damage and prejudice of the Government of the Republic of the Philippines.
>
> CONTRARY TO LAW."

CTA Crim. Case No. O-486:[2]

"1st AMENDED INFORMATION

The undersigned Prosecutor of the Department of Justice, hereby accuses *[sic]* **JANET LIM NAPOLES** of violation of Section 255 of the National Internal Revenue Code of 1997, as amended, committed as follows:

> 'That on or about April **2007**, in Pasig City and within the jurisdiction of this Honorable Court, the above-named accused, an individual and a Filipino citizen residing in the Philippines, and at that time required by law, rules and regulations to file her annual income tax return did, then and there, willfully, unlawfully and feloniously fail to supply correct and accurate information in her annual income tax return, by then and there substantially under-declaring her income for taxable year **2006** which resulted in a basic deficiency income tax of Seven Million Eighty Eight Thousand Two Hundred Five Pesos and Sixty Nine Centavos (₱7,088,205.69), for taxable year **2006**, exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines.'

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[1] Docket – Vol. 1 (CTA Crim. Case No. O-485), pp. 241 to 242.
[2] Docket (CTA Crim. Case No. O-486), pp. 243 to 244.

CONTRARY TO LAW."

CTA Crim. Case No. O-487:[3]

"1st AMENDED INFORMATION

The undersigned Prosecutors of the Department of Justice, hereby accuses *[sic]* **JANET LIM NAPOLES** of violation of Section 255 of the National Internal Revenue Code of 1997, as amended, committed as follows:

> 'That on or about April **2009**, in Pasig City and within the jurisdiction of this Honorable Court, the above-named accused, an individual and a Filipino citizen residing in the Philippines, and at that time required by law, rules and regulations to file her annual income tax return did, then and there, willfully, unlawfully and feloniously fail to supply correct and accurate information in her annual income tax return, by then and there substantially under-declaring her income for taxable year **2008** which resulted to a basic deficiency income tax of One Million Three Hundred Thirty Three Thousand Seven Hundred Thirty Four Pesos and Forty Eight Centavos (₱1,333,734.48) for taxable year **2008**, exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines.'
>
> CONTRARY TO LAW."

CTA Crim. Case No. O-488:[4]

"1st AMENDED INFORMATION

The undersigned Prosecutors of the Department of Justice, hereby accuses *[sic]* **JANET LIM NAPOLES** of violation of Section 255 of the National Internal Revenue Code of 1997, as amended, committed as follows:

> 'That on or about April **2010**, in Pasig City and within the jurisdiction of this Honorable Court, the above-named accused, an individual and a Filipino citizen residing in the Philippines, and at that time required by law, rules and regulations to file her annual income tax return did, then and there, willfully, unlawfully and feloniously fail to supply correct and accurate information in her annual income tax return, by then and there substantially under-declaring her income for taxable year **2009** which resulted to a basic deficiency income tax of Three Million Ninety Six Thousand Three Hundred Seventy Five Pesos and Seventy Four

[3] Docket (CTA Crim. Case No. 0-487), pp. 236 to 237.
[4] Docket (CTA Crim. Case No. O-486), pp. 242 to 243.

Centavos (₱3,096,375.74) for taxable year **2009**, exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines.'

CONTRARY TO LAW."

CTA Crim. Case No. O-490[5]

"SECOND (2ND) AMENDED INFORMATION

The undersigned Prosecutors of the Department of Justice, hereby accuses *[sic]* **JANET LIM NAPOLES** for her attempt to evade or defeat tax, in violation of Section 254 of the National Internal Revenue Code of 1997, as amended, committed as follows:

'That on or about April 2013, in Pasig City and within the jurisdiction of this Honorable Court, the above-named accused, an individual and a Filipino citizen residing in the Philippines, and at that time required by law, rules and regulations to file her annual income tax return did, then and there, willfully, unlawfully and feloniously attempt to evade or defeat tax, as said accused **failed to declare any income** for taxable year 2012 which resulted to a basic deficiency income tax of Two Million One Hundred Fifty Two Thousand Seven Hundred Four Pesos and Eighty One Centavos (₱2,152,704.81) for taxable year 2012, exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines.

CONTRARY TO LAW."[6]

CTA Crim. Case No. O-491[7]

"1ST AMENDED INFORMATION

The undersigned Prosecutors of the Department of Justice, hereby accuses *[sic]* **JANET LIM NAPOLES** for her attempt to evade or defeat tax, in violation of Section 254 of the National Internal Revenue Code of 1997, as amended, committed as follows:

'That on or about April **2012**, in Pasig City and within the jurisdiction of this Honorable Court, the above-named accused, an individual and a Filipino citizen residing in the Philippines, and at that time required by law, rules and regulations to file her annual income tax return did, then and there, willfully, unlawfully and feloniously attempt to evade or defeat tax, as said accused substantially under-declared her income for taxable year **2011** which resulted to a basic

[5] Initially raffled to the Court of Tax Appeals (CTA) First Division.
[6] Docket (CTA Crim. Case No. 0-490), pp. 266 to 267.
[7] Initially raffled to the CTA Second Division.

deficiency income tax of One Million Seven Hundred fifty Four Thousand Eight Hundred Thirty Eight Pesos and Fourteen Centavos (₱1,754,838.14) for taxable year **2011**, exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines.

CONTRARY TO LAW."[8]

CRIMINAL CASE NO. O-492:[9]

"1st AMENDED INFORMATION

The undersigned Prosecutors of the Department of Justice, hereby accuses *[sic]* **JANET LIM NAPOLES** for her attempt to evade or defeat tax, in violation of Section 254 of the National Internal Revenue Code of 1997, as amended, committed as follows:

'That on or about April **2011**, in Pasig City and within the jurisdiction of this Honorable Court, the above-named accused, an individual and a Filipino citizen residing in the Philippines, and at that time required by law, rules and regulations to file her annual income tax return did, then and there, willfully, unlawfully and feloniously attempt to evade or defeat tax, as said accused substantially under-declared her income for taxable year **2010** which resulted to a basic deficiency income tax of One Million Nine Hundred Seventy Four Thousand Eight Hundred Thirty Eight Pesos and Fourteen Centavos (₱1,974,838.14) for taxable year **2010**, exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines.'

CONTRARY TO LAW."

CRIMINAL CASE NO. O-493:[10]

"1st AMENDED INFORMATION

The undersigned Prosecutors of the Department of Justice, hereby accuses *[sic]* **JANET LIM NAPOLES** for her attempt to evade or defeat tax, in violation of Section 254 of the National Internal Revenue Code of 1997, as amended, committed as follows:

'That on or about April **2010**, in Pasig City and within the jurisdiction of this Honorable Court, the above-named accused, an individual and a Filipino citizen residing in the Philippines, and at that time required by law, rules and regulations to file her annual income tax return did, then and

[8] Docket (CTA Crim. Case No. 0-491), p. 244.
[9] Docket (CTA Crim. Case No. 0-492), pp. 240 to 241.
[10] Docket (CTA Crim. Case No. 0-493), pp. 239 to 240.

there, willfully, unlawfully and feloniously attempt to evade or defeat tax, as said accused substantially under-declared her income for taxable year **2009** which resulted to a basic deficiency income tax of Three Million Ninety Six Thousand Three Hundred Seventy Five Pesos and Seventy Four Centavos (₱3,096,375.74) for taxable year 2009, exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines.

CONTRARY TO LAW."

CTA Crim. Case No. O-494:[11]

"1st AMENDED INFORMATION

The undersigned Prosecutors of the Department of Justice, hereby accuses *[sic]* **JANET LIM NAPOLES** for her attempt to evade or defeat tax, in violation of Section 254 of the National Internal Revenue Code of 1997, as amended, committed as follows:

'That on or about April **2009**, in Pasig City and within the jurisdiction of this Honorable Court, the above-named accused, an individual and a Filipino citizen residing in the Philippines, and at that time required by law, rules and regulations to file her annual income tax return did, then and there, willfully, unlawfully and feloniously attempt to evade or defeat tax, as said accused substantially under-declared her income for taxable year **2008** which resulted to a basic deficiency income tax of One Million Three Hundred Thirty Three Thousand Seven Hundred Thirty Four Pesos and Forty Eight Centavos (₱1,333,734.48) for taxable year **2008**, exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines.'

CONTRARY TO LAW."

CTA Crim. Case No. O-495:[12]

"1st AMENDED INFORMATION

The undersigned Prosecutors of the Department of Justice, hereby accuses *[sic]* **JANET LIM NAPOLES** of violation of Section 254 of the National Internal Revenue Code of 1997, as amended, committed as follows:

'That on or about April **2007**, in Pasig City and within the jurisdiction of this Honorable Court, the above-named accused, an individual and a Filipino citizen residing in the

[11] Docket (CTA Crim. Case No. 0-494), pp. 244 to 245.
[12] Docket – Vol. 1 (CTA Crim. Case No. O-495), pp. 240 to 241.

Philippines, and at that time required by law, rules and regulations to file her annual income tax return did, then and there, willfully, unlawfully and feloniously attempt to evade or defeat tax, as said accused substantially under-declared her income for taxable year **2006** which resulted in a basic deficiency income tax of Seven Million Eighty Eight Thousand Two Hundred Five Pesos and Sixty Nine Centavos (₱7,088,205.69), for taxable year **2006**, exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines.'

CONTRARY TO LAW."

CTA Crim. Case No. O-496:[13]

"1st AMENDED INFORMATION

The undersigned Prosecutors of the Department of Justice, hereby accuses *[sic]* **JANET LIM NAPOLES** of violation of Section 254 of the National Internal Revenue Code of 1997, as amended, committed as follows:

'That on or about April **2005**, in Pasig City and within the jurisdiction of this Honorable Court, the above-named accused, an individual and a Filipino citizen residing in the Philippines, and at that time required by law, rules and regulations to file her annual income tax return did, then and there, willfully, unlawfully and feloniously attempt to evade or defeat tax, as said accused substantially under-declared her income for taxable year **2004**, which resulted to a basic deficiency income tax of One Million Ninety Four Thousand Six Hundred Forty Two Pesos and Three Centavos (₱1,094,642.03) for taxable year **2004**, exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines.'

CONTRARY TO LAW."

CTA Crim. Case No. O-498:[14]

"SECOND (2nd) AMENDED INFORMATION

The undersigned Prosecutors of the Department of Justice, hereby accuses *[sic]* **JANET LIM NAPOLES** for her attempt to evade or defeat tax, in violation of Section 255 of the National Internal Revenue Code of 1997, as amended, committed as follows:

'That on or about April 2012, in Pasig City and within the jurisdiction of this Honorable Court, the above-named

[13] Docket (CTA Crim. Case No. 0-496), pp. 240 to 241.
[14] Docket (CTA Crim. Case No. 0-498), pp. 262 to 263.

accused, an individual and a Filipino citizen residing in the Philippines, and at that time required by law, rules and regulations to file her annual income tax return did, then and there, willfully, unlawfully and feloniously **fail to file her annual income tax return (ITR)** for taxable year 2011 which resulted to a basic deficiency income tax of One Million Seven Hundred fifty Four Thousand Eight Hundred Thirty Eight Pesos and Fourteen Centavos (P1,754,838.14) for taxable year 2011, exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines.

CONTRARY TO LAW."

FACTUAL ANTECEDENTS

Accused Napoles is a registered taxpayer of Revenue District Office (RDO) No. 43A, East Pasig, with Tax Identification Number (TIN) 174-764-580-000 and doing business under the trade name "Jo-Chris Trading".[15] She registered with the Bureau of Internal Revenue (BIR) only in 1998 with address as 2502 Discovery Centre, #25 ADB Avenue, Ortigas Center, Barangay San Antonio, Pasig City.[16] She filed her income tax returns (ITR) from years 1999 to 2009.[17] She did not, however, file her ITRs for taxable years (TYs) 2010, 2011 and 2012.[18]

The investigation against the accused was prompted by National Investigation Division (NID) Memo Assignment No. KJH/SCD 2013-08-05-0647, dated August 5, 2013, issued by Mr. Sixto C. Dy, Jr., Chief, NID of the Bureau of Internal Revenue (BIR), directing Group Supervisor (GS) Josephine D. Madera, and Revenue Officers (ROs) Amercia G. Ami, Marites P. Arias and Nilda T. Se, to conduct a preliminary investigation on the accused and her spouse, Jaime G. Napoles (Spouses Napoles). In 2010, accused Napoles' registration was cancelled due to "cessation of registration".[19]

A Letter of Authority (LOA) was issued on August 27, 2013 by the BIR against accused Napoles, as well as her husband Jaime Garcia Napoles, who is also accused of violating Sections 254 and 255 of the NIRC of 1997, as amended.[20]

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[15] Par. 4, Facts admitted by accused:, Pre-Trial Order dated February 7, 2017, Docket – Vol. 2 (CTA Crim. Case No. O-485), p. 572.
[16] Exhibit "P-1", Docket – Vol. 3 (CTA Crim. Case No. O-485), p. 1381.
[17] Par. 4, Facts admitted by the prosecution:, Pre-Trial Order, *supra*.
[18] Par. 8, Facts admitted by accused:, Pre-Trial Order, *supra*, p. 573.
[19] Par. 5, Facts admitted accused:, Pre-Trial Order, *ibid.*
[20] Par. 6, Facts admitted by the prosecution:, Pre-Trial Order, *supra*, p. 572.

The BIR used the Expenditure Method in making an inference as regards the supposed "unreflected" income of accused. On the basis of the ITR of the accused submitted by the BIR, it was reflected that she had accumulated gross sales or revenue receipts from 1999 up to 2009 in the amount of Eighty-One Million Eight Hundred Thirty Thousand Nine Hundred Forty-One Pesos and 59/100 (₱81,830,941.59);[21] whereas what was reflected in her ITRs for TYs 1999 to 2009 shows Net Taxable Income as follows:[22]

ITR	Net Taxable Income in PHP
1999	376,882.85
2000	615,350.39
2001	451,420.70
2002	325,856.67
2003	187,443.40
2004	195,800.00
2005	772,824.09
2006	-
2007	721,909.97
2008	100,744.59
2009	-
Total	**3,748,232.66**

Thereafter, the *Letter of Authority* (LOA) with Serial Number SN eLA201100045687 (LOA-211-2013-00000140), dated August 27, 2013, was issued against the accused by then Commissioner of Internal Revenue (CIR) Kim S. Jacinto-Henares,[23] authorizing ROs Nilda Se, Marites Arias and GS Josephine Madera, to examine the accused's books of accounts and other accounting records, for all internal revenue taxes, including documentary stamp tax and other taxes (miscellaneous tax), for the period from January 1, 1999 to December 31, 2012, pursuant to the R.A.T.E. Program.

On August 28, 2014, CIR Henares wrote a letter to the then Secretary of Justice Leila De Lima,[24] referring the *Joint Complaint-Affidavit* executed by the said ROs and GS,[25] for preliminary investigation and the filing of appropriate informations in court, if evidence so warrants.

In the said *Joint Complaint-Affidavit*, the complainants alleged, among others, that Spouses Napoles substantially underdeclared their income in their ITRs for TYs 2004 to 2009, and herein accused failed to file her ITRs for TYs 2010 to 2012, and failed to pay the correct amount of tax due thereon. The information gathered during the investigation of the complainants disclosed

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[21] Pars. 7 and 8, Facts admitted by the prosecution:, Pre-Trial Order, *ibid.*
[22] Par. 9, Facts admitted by the accused:, Pre-Trial Order, *supra.* p. 573.
[23] Exhibit "P-19", Docket – Vol. 3 (CTA Crim. Case No. O-485), p. 1421.
[24] Exhibit "P-18", Docket – Vol. 3 (CTA Crim. Case No. O-485), pp. 261 to 262.
[25] Exhibit "P-17", Docket – Vol. 3 (CTA Crim. Case No. O-485), pp. 212 to 227.

that Spouses Napoles, in various periods, were able to purchase real properties, a number of motor vehicles, several insurance policies and club shares and that they also invested tens of millions of pesos in various new corporations, which acquisitions and investments, they could not have conceivably acquired given the income they stated in their ITRs. A comparison of the respective incomes declared by Spouses Napoles vis-à-vis their expenses for TYs 2004, 2006, 2008, 2009, 2010, 2011 and 2012 clearly indicates that the expenditures exceed their declared income per ITRs.

In their *Joint Counter-Affidavit*,[26] accused claims that she retained the services of Ms. Marina C. Sula as bookkeeper of Jo-Chris Trading, a sole proprietorship engaged in the business of trading with TIN No. 153-954-811-000. She asserts that she relied on Ms. Sula, who was in charge of all the bookkeeping, accounting and tax filings of her business, being only a high school graduate with no knowledge of accounting principles and concepts necessary in the preparation of ITRs and dealing with the BIR. Further, she alleges that, upon cessation of the business operation of Jo-Chris Trading, she became a member of the board of directors of several domestic corporations and received *per diems* and dividends therefrom. She argues that as recipient of dividends, she is not required to file ITRs as the dividends were subjected to final withholding tax. She further alleges that the alleged LOA authorizing the ROs to examine her books of accounts and other accounting records were not personally served upon her. She also posits that the BIR should have issued deficiency assessment before filing a criminal complaint for fraudulent tax evasion. Finally, she avers that the allegations in the Complaint are insufficient to prove that there is unreported taxable income as the BIR merely used expenditure method, which is not enough to consider her failure to pay taxes as willful.

Subsequently, Assistant State Prosecutors Stewart Allan A. Mariano and Mark Roland S. Estepa issued the Resolution dated March 13, 2015,[27] finding probable cause and recommending the filing of criminal information against the accused. The said Resolution was approved by Prosecutor General Claro A. Arellano.

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[26] Docket – Vol. 1 (CTA Crim. Case No. O-485), pp. 266 to 276.
[27] *Id.*, pp. 9 to 26.

PROCEEDINGS BEFORE THIS COURT

For an orderly presentation of these consolidated cases, the Court deems it proper to state the proceedings for each case prior to consolidation. Thereafter, the Court shall summarize the evidence presented and the arguments raised by each party.

CTA Crim. Case No. O-485

On May 7, 2015, the prosecution filed an *Information* before this Court,[28] charging the accused for the offense of willful failure to supply correct and accurate information in her ITR for TY 2003, in violation of Section 255 of the NIRC of 1997, as amended.

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

The Third Division of this Court issued a Resolution on May 21, 2015 ordering the plaintiff to clarify the allegations in the Information pertaining to the jurisdictional amount in this case.[29] Plaintiff then filed a *Motion to Admit Attached First (1st) Amended Information* and the *1st Amended Information* attached thereto on June 5, 2015.[30] In the *1st Amended Information,*[31] the TY covered was changed from 2003 to 2004 and the term "more or less" after the amount of deficiency income tax was omitted.

In the Resolution dated June 17, 2015, the Court ordered the plaintiff to submit the Certification of Referral Letter issued by the CIR.[32] Plaintiff, thus, submitted the *Referral Letter* issued by the CIR, *Joint Counter-Affidavit* of the accused, and the *Minutes of the Preliminary Investigation* on June 30, 2015.[33] Thereafter, the Resolution dated July 10, 2015 was issued ordering the prosecution to submit a certified true copy (CTC) of the ITR of the accused for TY 2004 and other relevant documents necessary to substantiate the allegations in the Information,[34] which was reiterated in the Resolution dated August 17, 2015 with warning that the Court will dismiss the case if no compliance was filed within the given period.[35] On September 2, 2015, plaintiff filed a *Manifestation* stating that they have requested from the CIR a CTC of the accused's ITR for TY 2004 and will immediately furnish the same to the Court once obtained.

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[28] Docket – Vol. 1 (CTA Crim. Case No. O-485), pp. 6 to 7.
[29] *Id.*, pp. 235 to 238.
[30] *Id.*, pp. 239 to 240.
[31] *Id.*, pp. 241 to 242.
[32] *Id.*, pp. 244 to 245.
[33] *Id.*, pp. 246 to 262.
[34] *Id.*, pp. 280 to 282.
[35] *Id.*, pp. 287 to 288.

CTA Crim. Case No. O-486

On May 7, 2015, plaintiff filed an *Information*[36] before this Court, charging the accused for the offense of willful failure to supply correct and accurate information in her ITR for TY 2005, in violation of Section 255 of the NIRC of 1997, as amended.

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

The Second Division of this Court issued a Resolution on May 19, 2015 ordering the plaintiff to submit to the Court the CIR's written authority for the filing of a criminal action against accused.[37] Plaintiff then filed a *Compliance* with the letter of the CIR attached thereto on June 4, 2015.[38] Thereafter, plaintiff filed a *Motion to Admit Attached First (1st) Amended Information* on June 8, 2015.[39] In the attached *1st Amended Information*, the TY covered was changed from 2005 to 2006 and the term "more or less" after the amount of deficiency income tax was omitted. In the Order dated June 11, 2015, the Court ordered the plaintiff to submit records of the preliminary investigation.[40] On June 30, 2015, the Court dismissed the case without prejudice, for failure of the prosecution to submit the required documents as directed in the Order dated June 9, 2015.[41] On even date, the Court received the prosecution's *Compliance* dated June 26, 2015[42] and submitted via registered mail on June 29, 2015. In the said *Compliance*, the prosecution submitted the CTCs of the documents[43] presented during preliminary investigation.

On July 13, 2015, the prosecution filed a *Motion for Reconsideration*[44] praying that the Second Division reconsider and set aside its *Order* dated June 30, 2015, and issue a new one (1) reinstating CTA Crim. Case No. O-486 against accused; (2) noting and making part of the case records its *Compliance* dated June 26, 2015 as well as the attachments thereto; and (3) issuing a warrant of arrest against the accused, upon determination of probable cause. On July 22, 2015, the Second Division issued a Resolution[45] granting the prosecution's *Motion for Reconsideration*, thereby setting aside the Resolution dated June 30, 2015, noting prosecution's *Compliance*, and granting *Motion to Admit Attached First (1st) Amended Information* and admitting the attached Amended Information as part of the case records. After

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36 Docket (CTA Crim. Case No. O-486), pp. 6 to 7.
37 *Id.*, pp. 234 to 236.
38 *Id.*, pp. 239 to 242.
39 *Id.*, pp. 245 to 246.
40 *Id.*, pp. 244 to 245.
41 *Id.*, pp. 249 to 250.
42 *Id.*, pp. 251 to 252.
43 *Id.*, pp. 253 to 326.
44 *Id.*, pp. 327 to 330.
45 *Id.*, pp. 331 to 335.

considering the Amended Information and supporting documents, the Court, in the same Resolution, found the existence of probable cause for the issuance of warrant of arrest against the accused. Thus, the *Warrant of Arrest* dated July 24, 2015[46] was issued against the latter.

CTA Crim. Case No. O-487

On May 7, 2015, plaintiff filed an *Information* before this Court,[47] charging the accused for the offense of willful failure to supply correct and accurate information in her ITR for TY 2007 in violation of Section 255 of the NIRC of 1997, as amended.

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

On even date, plaintiff filed a *Motion to Admit Attached First (1st) Amended Information.*[48] In the *1st Amended Information*,[49] the TY covered was changed from 2007 to 2008 and the term "more or less" after the amount of deficiency income tax was omitted.

The Court issued a Resolution, dated June 8, 2015,[50] ordering the plaintiff to submit to this Court the CIR's written authority for the filing of a criminal action against accused and to take appropriate action to clarify allegations in the Information pertaining to the jurisdictional amount. Plaintiff then filed its *Compliance*[51] via registered mail on June 29, 2015, received by the Court on June 30, 2015, submitting the CTC of the September 26, 2013 letter of CIR Henares,[52] which constitutes as the written authorization to file the criminal action before this Court.

On July 1, 2015, the Court issued a Resolution[53] admitting the *1st Amended Information* and requiring submission of the original or CTC of the written authority from the CIR to file the criminal action before the Court. Plaintiff filed its *Compliance*[54] via registered mail on July 16, 2015, received by the Court on same date, submitting the CTC of the September 26, 2013 letter of the CIR.[55]

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[46] *Id.*, p. 339.
[47] Docket (CTA Crim. Case No. O-487), pp. 6-8.
[48] *Id.*, pp. 234 to 235.
[49] *Id.*, pp. 236 to 237.
[50] *Id.*, pp. 239 to 243.
[51] *Id.*, pp. 244 to 245.
[52] *Id.*, pp. 246 to 247.
[53] *Id.*, pp. 249 to 250.
[54] *Id.*, pp. 251 to 252.
[55] *Id.*, pp. 253 to 254.

Thereafter, the Court issued the Resolution, dated July 24, 2015,[56] finding the existence of probable cause for the issuance of warrant of arrest against the accused. Thus, the *Warrant of Arrest* dated July 27, 2015[57] was issued against the latter.

CTA Crim. Case No. O-488

On May 7, 2015, the prosecution filed an *Information* before this Court,[58] charging the accused for the offense of willful failure to supply correct and accurate information in her ITR for TY 2008 in violation of Section 255 of the NIRC of 1997, as amended.

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

On June 8, 2015, plaintiff filed a *Motion to Admit Attached First (1st) Amended Information.*[59] In the attached amended information, the TY covered was changed from 2008 to 2009 and the term "more or less" after the amount of deficiency income tax was omitted.

The First Division of this Court issued a Resolution, dated June 8, 2015,[60] ordering the plaintiff to submit to this Court the CIR's written authority for the filing of a criminal action against accused and to take appropriate action to clarify allegations in the Information pertaining to the jurisdictional amount.

On July 1, 2015, the Court issued a Resolution admitting the *1st Amended Information* and requiring submission of the original or CTC of the written authority from the CIR to file the criminal action before the Court.[61] Plaintiff filed its *Compliance*[62] via registered mail on July 16, 2015, received by the Court on same date, submitting the CTC of the September 26, 2013 letter of CIR Henares which constitutes as the written authorization to file the criminal action before this Court.[63]

Thereafter, the Court issued the Resolution, dated July 24, 2015,[64] finding the existence of probable cause for the issuance of warrant of arrest

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[56] *Id.*, pp. 256 to 258.
[57] *Id.*, p. 259.
[58] Docket (CTA Crim. Case No. O-488), pp. 6 to 8.
[59] *Id.*, pp. 240 to 241.
[60] *Id.*, pp. 235 to 239.
[61] *Id.*, pp. 253 to 254.
[62] *Id.*, pp. 255 to 256.
[63] *Id.*, pp. 257 to 258.
[64] *Id.*, pp. 260 to 262.

against the accused. Thus, the *Warrant of Arrest* dated July 27, 2015 was issued against the latter.[65]

CTA Crim. Case No. O-490

On May 7, 2015, plaintiff filed an *Information* before this Court,[66] charging the accused for the offense of willful attempt to evade or defeat tax for TY 2011 pursuant to Section 254 of the NIRC of 1997, as amended.

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

The First Division of this Court issued a Resolution, dated June 8, 2015,[67] ordering the plaintiff to submit to this Court the CIR's written authority for the filing of a criminal action against accused and to take appropriate action to clarify allegations in the Information pertaining to the jurisdictional amount.

On June 8, 2015, plaintiff filed a *Motion to Admit Attached First (1st) Amended Information.*[68] In the attached *1st Amended Information,*[69] the TY covered was changed from 2011 to 2012 and the term "more or less" after the amount of deficiency income tax was omitted.

Plaintiff then filed its *Compliance*[70] on June 30, 2015, submitting the September 26, 2013 letter of the CIR Henares,[71] which constitutes as the written authorization to file the criminal action before this Court.

On July 1, 2015, the Court issued a Resolution[72] admitting the *1st Amended Information* and requiring the submission of the original or CTC of the written authority from the CIR to file the criminal action before the Court. Plaintiff filed its *Compliance*[73] on July 3, 2015, manifesting that it already filed an amended information to clarify the allegations in the information and submitting the September 26, 2013 letter of the CIR Henares.[74] On July 16, 2015, another *Compliance*[75] was filed by plaintiff submitting the written authorization to file criminal action[76] pursuant to the Court's Resolution dated July 1, 2015.

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[65] *Id.*, p. 263.
[66] Docket (CTA Crim. Case No. O-490), pp. 6 to 8.
[67] *Id.*, pp. 235 to239.
[68] *Id.*, pp. 240 to 241
[69] *Id.*, pp. 242 to 243.
[70] *Id.*, pp. 247 to 248.
[71] *Id.*, pp. 249 to 250.
[72] *Id.*, pp. 245 to 246.
[73] *Id.*, pp. 251 to 252.
[74] *Id.*, pp. 249 to 250.
[75] *Id.*, pp. 255 to 256.
[76] *Id.*, pp. 257 to 258.

In the Resolution dated July 22, 2015,[77] the Court noted the *Compliance* filed by plaintiff on June 30, 2015 and July 3, 2015. In the same resolution, however, the Court noted a discrepancy in the allegation of facts in the *1st Amended Information* and the findings of fact in the supporting documents of the preliminary investigation. The Court, thus, directed the Prosecutor General Claro A. Arellano to file the correct amended information.

Meanwhile, on July 30, 2015, the Court promulgated the Resolution[78] noting plaintiff's *Compliance* filed on July 16, 2015.

On August 3, 2015, plaintiff filed its *Motion to Admit Attached Second (2nd) Amended Information*[79] seeking the amendment of the Information in compliance with the Court's Resolution dated July 22, 2015. It attached to the motion the *Second (2nd) Amended Information*.[80]

Thereafter, the Court issued the Resolution dated August 26, 2015,[81] admitting the *Second (2nd) Amended Information* and finding the existence of probable cause for the issuance of warrant of arrest against the accused. Thus, the *Warrant of Arrest* dated September 3, 2015[82] was issued against the latter.

CTA Crim. Case No. O-491

On May 7, 2015, plaintiff filed an *Information* before this Court,[83] charging the accused for her attempt to evade or defeat tax for TY 2010 in violation of Section 254 of the NIRC of 1997, as amended.

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

In the Resolution dated May 25, 2015,[84] the Court ordered the plaintiff to submit the referral/approval of the CIR to file criminal action. plaintiff then filed its *Compliance*[85] on June 4, 2015, submitting the CTC submitting the CTC of the September 26, 2013 letter of CIR Henares,[86] which constitutes as the written authorization to file the criminal action before this Court.

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[77] *Id.*, pp. 260 to 261.
[78] *Id.*, p. 263.
[79] *Id.*, pp. 264 to 265.
[80] *Id.*, pp. 264 to 265.
[81] *Id.*, pp. 269 to 271.
[82] *Id.*, pp. 272 to 273.
[83] *Id.*, pp. 6 to 8.
[84] Docket (CTA Crim. Case No. O-491), pp. 235 to 237.
[85] *Id.*, pp. 238 to 239.
[86] *Id.*, pp. 240 to 241.

On June 8, 2015, plaintiff filed its *Motion to Admit Attached First (1st) Amended Information.*[87] In the *1st Amended Information*,[88] the TY covered was changed from 2010 to 2011 and the term "more or less" after the amount of deficiency income tax was omitted.

On June 29, 2015, the Court issued a Resolution[89] noting plaintiff's *Compliance* filed on June 4, 2015, admitting the *1st Amended Information*, and finding the existence of probable cause for the issuance of warrant of arrest against the accused. Thus, the *Warrant of Arrest* dated July 1, 2015[90] was issued against the latter.

CTA Crim. Case No. O-492

On May 7, 2015, plaintiff filed an *Information* before this Court, charging the accused for her attempt to evade or defeat tax for TY 2009 in violation of Section 254 of the NIRC of 1997, as amended.[91]

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

On May 25, 2015, the Court issued a Resolution[92] ordering the plaintiff to make the necessary formal corrections in the Information against the accused, to review the attached Resolution and correct inconsistencies as he sees fit, and to present additional evidence, if any. Plaintiff then filed a *Motion to Admit Attached First (1st) Amended Information* on June 8, 2015.[93] In the attached *1st Amended Information,*[94] the TY covered was changed from 2007 to 2008 and the term "more or less" after the amount of deficiency income tax was omitted.

On June 23, 2015, the Court issued a Resolution granting plaintiff's *Motion to Admit Attached First (1st) Amended Information*, and admitting the attached *1st Amended Information* to replace the Information previously filed. After considering the Amended Information and supporting documents, the Court, in the same Resolution, found the existence of probable cause for the issuance of warrant of arrest against the accused.[95] Thus, the *Warrant of Arrest* dated June 29, 2015[96] was issued against the latter.

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[87] *Id.*, pp. 242 to 243.
[88] *Id.*, pp. 244 to 245.
[89] *Id.*, pp. 247 to 250.
[90] *Id.*, p. 251.
[91] Docket (CTA Crim. Case No. O-492), pp. 6 to 8.
[92] *Id.*, pp. 235 to 237.
[93] *Id.*, pp. 238 to 239.
[94] *Id.*, pp. 240 to 241.
[95] *Id.*, pp. 243 to 245.
[96] *Id.*, pp. 246 to 247.

CTA Crim. Case No. O-493

On May 7, 2015, plaintiff filed an *Information*[97] before this Court charging the accused for her attempt to evade or defeat tax for TY 2008, in violation of Section 254 of the NIRC of 1997.

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

On May 25, 2015, the Second Division of this Court issued a Resolution on May 19, 2015 ordering the plaintiff to submit to the Court the CIR's written authority for the filing of a criminal action against accused.[98] Plaintiff then filed a *Compliance* with the letter of the CIR attached thereto on June 4, 2015.[99] Thereafter, plaintiff filed a *Motion to Admit Attached First (1st) Amended Information*[100] on June 8, 2015. In the attached *1st Amended Information*,[101] the TY covered was changed from 2008 to 2009 and the term "more or less" after the amount of deficiency income tax was omitted. On June 29, 2015, the Court issued a Resolution[102] noting plaintiff's *Compliance*, filed on June 4, 2015, granting prosecution's *Motion to Admit Attached First (1st) Amended Information*, and admitting the *1st Amended Information*. After considering the Amended Information and supporting documents, the Court, in the same Resolution, found the existence of probable cause for the issuance of warrant of arrest against the accused. Thus, the *Warrant of Arrest* dated July 1, 2015[103] was issued against the latter.

CTA Crim. Case No. O-494

On May 7, 2015, the prosecution filed an *Information* before this Court,[104] charging the accused for her attempt to evade or defeat tax in violation of Section 254 of the NIRC of 1997, as amended, for TY 2007.

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

The Second Division of this Court issued a Resolution, dated May 19, 2015,[105] ordering the Assistant State Prosecutors and Prosecutor General to submit to this Court the CIR's written approval for the filing of a criminal action against accused. On June 4, 2015, plaintiff filed a *Compliance*[106]

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[97] Docket (CTA Crim. Case No. O-493), pp. 6 to 8.
[98] *Id.*, pp. 234 to 236.
[99] *Id.*, pp. 241 to 242.
[100] *Id.*, pp. 237 to 238.
[101] *Id.*, pp. 239 to 240.
[102] *Id.*, pp. 246 to 249.
[103] *Id.*, p. 250.
[104] Docket (CTA Crim. Case No. O-494), pp. 6-8.
[105] *Id.*, pp. 235 to 237.
[106] *Id.*, pp. 238 to 239.

submitting the CTC of the September 26, 2013 letter of the CIR Henares,[107] which constitutes as the written authorization to file the criminal action before this Court.

On June 8, 2015, the prosecution filed a *Motion to Admit Attached First (1st) Amended Information.*[108] In the *1st Amended Information*,[109] the TY covered was changed from 2007 to 2008 and the term "more or less" after the amount of deficiency income tax was omitted.

On June 9, 2015, the Second Division issued an *Order*[110] noting the prosecution's *Compliance* and ordering the plaintiff to submit records of the preliminary investigation. On June 30, 2015, the Court dismissed the case without prejudice, for failure of the prosecution to submit the required documents as directed in the Order dated June 9, 2015.[111] On even date, the Court received the prosecution's *Compliance* dated June 26, 2015[112] and submitted via registered mail on June 29, 2015. In the said *Compliance*, the prosecution submitted the CTCs of the documents[113] submitted during preliminary investigation.

On July 13, 2015, the prosecution filed a *Motion for Reconsideration*[114] praying that the Second Division reconsider and set aside its *Order* dated June 30, 2015, and issue a new one (1) reinstating CTA Crim. Case No. O-494 against accused; (2) noting and making part of the case records its *Compliance* dated June 26, 2015 as well as the attachments thereto; and (3) issuing a warrant of arrest against the accused, upon determination of probable cause. On July 22, 2015, the Second Division issued a *Resolution*[115] granting the prosecution's *Motion for Reconsideration*, thereby setting aside the *Resolution* dated June 30, 2015, noting prosecution's *Compliance*, and granting *Motion to Admit Attached First (1st) Amended Information* and admitting the attached Amended Information as part of the case records. After considering the Amended Information and supporting documents, the Court, in the same Resolution, found the existence of probable cause for the issuance of warrant of arrest against the accused. Thus, the *Warrant of Arrest* dated July 24, 2015[116] was issued against the latter.

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[107] *Id.*, pp. 240 to 241.
[108] *Id.*, pp. 242 to 243.
[109] *Id.*, pp. 244 to 245.
[110] *Id.*, pp. 243 to 245.
[111] *Id.*, pp. 250 to 251.
[112] *Id.*, pp. 252 to 253.
[113] *Id.*, pp. 256 to 361.
[114] *Id.*, pp. 362 to 364.
[115] *Id.*, pp. 366 to 370.
[116] *Id.*, p. 371.

CTA Crim. Case No. O-495

On May 7, 2015, plaintiff filed an *Information*[117] before this Court, charging the accused for her attempt to evade or defeat tax in violation of Section 254 of the NIRC of 1997, as amended, for TY 2005.

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

On May 25, 2015, the Court issued a Resolution[118] ordering the plaintiff to make the necessary formal corrections in the Information against the accused, to review the attached Resolution and correct inconsistencies as he sees fit, and to present additional evidence, if any. Plaintiff then filed a *Motion to Admit Attached First (1st) Amended Information* on June 8, 2015.[119] In the attached *1st Amended Information,*[120] the TY covered was changed from 2005 to 2006 and the term "more or less" after the amount of deficiency income tax was omitted.

On June 23, 2015, the Court issued a Resolution[121] granting plaintiff's *Motion to Admit Attached First (1st) Amended Information* and admitting the attached *1st Amended Information* to replace the Information previously filed. After considering the Amended Information and supporting documents, the Court, in the same Resolution, found the existence of probable cause for the issuance of warrant of arrest against the accused. Thus, the *Warrant of Arrest* dated June 29, 2015[122] was issued against the latter.

CTA Crim. Case No. O-496

On May 7, 2015, the prosecution filed an *Information* before this Court,[123] charging the accused for her attempt to evade or defeat tax in violation of Section 254 of the NIRC of 1997, as amended, for TY 2003.

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

The Third Division of this Court issued a Resolution, dated May 25, 2015,[124] ordering the Assistant State Prosecutor to make necessary corrections in the Information. On June 8, 2015, the prosecution filed a *Motion to Admit*

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[117] Docket (CTA Crim. Case No. O-495), pp. 6 to 7.
[118] *Id.*, pp. 235 to 237.
[119] *Id.*, pp. 238 to 239.
[120] *Id.*, pp. 240 to 241.
[121] *Id.*, pp. 243 to 245.
[122] *Id.*, pp. 246 to 247.
[123] Docket (CTA Crim. Case No. O-496), pp. 6 to 8.
[124] *Id.*, pp. 235 to 237.

Attached First (1st) Amended Information.[125] In the attached Amended Information, the TY covered was changed from 2003 to 2004 and the term "more or less" after the amount of deficiency income tax was omitted.

On June 23, 2015, the Court issued a *Resolution*[126] granting the prosecution's *Motion to Admit Attached First (1st) Amended Information* and admitted the *1st Amended Information* to replace the Information previously filed. After considering the Amended Information and supporting documents, the Court, in the same Resolution, found the existence of probable cause for the issuance of warrant of arrest against the accused. Thus, the *Warrant of Arrest* dated June 29, 2015[127] was issued against the latter.

The Court received on July 15, 2015, the *Certification* dated July 10, 2015,[128] issued by the Bureau of Corrections (BuCor) in connection to the *Warrant of Arrest* dated June 29, 2015, certifying that inmate Janet Napoles y Lim with Prison No. C215O-083 has been confined in the BuCor's Correctional Institution for Women (CIW) since April 16, 2015 by virtue of a Commitment Order issued by the Regional Trial Court (RTC) Branch 150 under Criminal Case No. 13-1992.

CTA Crim. Case No. O-498

On May 7, 2015, the prosecution filed an *Information* before this Court,[129] charging the accused for the offense of willful failure to supply correct and accurate information in her ITR for TY 2010 pursuant to Section 255 of the NIRC of 1997, as amended.

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

The First Division of this Court issued a Resolution on June 8, 2015,[130] ordering the plaintiff to submit to this Court the CIR's written authority for the filing of a criminal action against accused and to take appropriate action to clarify allegations in the Information pertaining to the jurisdictional amount.

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[125] *Id.*, pp. 238 to 239.
[126] *Id.*, pp. 243 to 245.
[127] *Id.*, pp. 246 to 247.
[128] *Id.*, p. 248.
[129] *Id.*, pp. 6-8.
[130] *Id.*, pp. 235 to 239.

On even date, plaintiff filed a *Motion to Admit Attached First (1st) Amended Information.*[131] In the attached *1st Amended Information*,[132] the TY covered was changed from 2010 to 2011 and the term "more or less" after the amount of deficiency income tax was omitted.

Plaintiff then filed its *Compliance*[133] on June 30, 2015, submitting the CTC of the September 26, 2013 letter of the CIR Henares,[134] which constitutes as the written authorization to file the criminal action before this Court.

On July 1, 2015, the Court issued a Resolution[135] admitting the *1st Amended Information* and requiring the submission of the original or CTC of the written authority from the CIR to file the criminal action before the Court. On July 16, 2015, the prosecution filed its *Compliance*[136] with the attached authorization from the CIR to file criminal action in Court.[137]

In the Resolution dated July 22, 2015,[138] the Court noted the *Compliance* filed by plaintiff on June 30, 2015. In the same resolution, however, the Court noted a discrepancy in the allegation of facts in the *1st Amended Information* and the findings of fact in the supporting documents of the preliminary investigation. The Court, thus, directed the Prosecutor General Claro A. Arellano to file the correct amended information.

Meanwhile, on July 30, 2015, the Court promulgated the Resolution[139] noting plaintiff's Compliance, filed on July 16, 2015.

On August 3, 2015, the prosecution filed its *Motion to Admit Attached Second (2nd) Amended Information*[140] seeking the amendment of the Information in compliance with the Court's Resolution dated July 22, 2015. It attached to the motion the *Second (2nd) Amended Information.*[141]

Thereafter, the Court issued the Resolution dated August 26, 2015,[142] admitting the *Second (2nd) Amended Information* and finding probable cause

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[131] *Id.*, pp. 240 to 241.
[132] *Id.*, pp. 242 to 243.
[133] *Id.*, pp. 244 to 245.
[134] *Id.*, pp. 246 to 247.
[135] *Id.*, pp. 249 to 250.
[136] *Id.*, pp. 251 to 252.
[137] *Id.*, pp. 253 to 254.
[138] *Id.*, pp. 256 to 257.
[139] *Id.*, p. 259.
[140] *Id.*, pp. 260 to 261.
[141] *Id.*, pp. 262 to 263.
[142] *Id.*, pp. 265 to 267.

for the issuance of warrant of arrest against the accused. Thus, the *Warrant of Arrest* dated September 3, 2015[143] was issued against the latter.

Consolidation of Cases:

On September 3, 2015, the Second Division of this Court issued a Resolution ordering the consolidation of CTA Crim. Case Nos. O-486, O-491, O-493 and O-494 with CTA Crim. Case No. O-485 lodged with the Third Division.[144] The First Division likewise ordered the consolidation of CTA Crim. Case Nos. O-487, O-488, O-490 and O-498 with CTA Crim. Case No O-485 on September 8, 2015.[145] Eventually, CTA Crim. Case Nos. O-486, O-487, O-488, O-490, O-492, O-491, O-493, O-494, O-495, O-496 and O-498 were consolidated with CTA Crim. Case No. O-485, as per Resolutions dated September 29, 2015 and October 6, 2015.[146]

The Court issued another Resolution on September 17, 2015 ordering plaintiff one more time to submit a CTC of the ITR of accused Napoles and other relevant documents necessary to substantiate the allegations in the Information within thirty (30) days from receipt thereof; otherwise, the Court will dismiss the instant case and the prosecution will be proceeded against for Contempt of Court.[147]

The Court then received on September 29, 2015 a Certification from the Correctional Institution for Women (CIW) of the Bureau of Correction, certifying that inmate Janet Napoles y Lim with Prison No. C215O-083 has been confined in said institution since April 16, 2015 up to the present by virtue of the Commitment Order issued by the Honorable Judge of Regional Trial Court (RTC) Branch 150, Makati City, under Criminal Case No. 13-1992 for the crime of Serious Illegal Detention & Penalized under Article 267 of the Revised Penal Code (RPC), and was sentenced to suffer the prison term of *reclusion perpetua.*[148]

Plaintiff then filed a *Manifestation with Omnibus Motion a) For the Issuance of Subpoena Duces Tecum; and b) For the Dismissal of the motu propio*[149] *charge of Indirect Contempt* on October 5, 2015,[150] which was granted by the Court in the Resolution dated October 14, 2015. On even date, the Court issued another Resolution noting the Certification issued by the

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[143] *Id.*, pp. 268 to 269.
[144] Docket – Vol. 1 (CTA Crim. Case No. O-485), pp. 292 and 303 to 330.
[145] *Id.*, pp. 293 to 302 and 308 to 310.
[146] *Id.*, pp. 317, 326 to 328.
[147] *Id.*, pp. 312 to 314.
[148] *Id.*, p. 315.
[149] *sic*
[150] Docket – Vol. 1 (CTA Crim. Case No. O-485), pp. 318 to 322.

CIW.[151] The Court issued *Subpoena Duces Tecum* on October 15, 2015.[152] Subsequently, plaintiff submitted the Affidavits of Mr. Florante R. Aninag and Ms. Nilda T. Se on November 25, 2015.[153]

Acting on the letter of this Court's Presiding Justice,[154] the Supreme Court granted his request for authority to issue subpoena/summons effecting the transfer of accused Napoles from the CIW in Mandaluyong to the Third Division of the CTA for her arraignment and trial for CTA Crim. Case Nos. O-485 to O-488, O-490 to O-496, and O-498.[155]

After a careful review of the said *Information* and supporting documents submitted by Assistant State Prosecutors Mariano and Estepa, the Court, in its Resolution dated January 20, 2016,[156] found the existence of probable cause. No warrant of arrest, however, was issued considering that accused was already detained in the CIW and the arraignment was set on February 17, 2016. A subpoena was then issued on January 21, 2016 to accused Napoles for her arraignment on February 17, 2016.[157]

On February 15, 2016, accused's counsel filed an *Entry with Motion to Quash* raising the following grounds: (1) that the facts charged do not constitute an offense; (2) the officer who filed the Information in this case, the State Prosecutors of the Department of Justice, had no authority to do so; and (3) the criminal action has been extinguished because the action has prescribed.[158] In view of this pending motion, the arraignment of accused was reset to May 4, 2016.[159]

The Court noted the entry of appearance of Atty. Ian Dela Cruz Encarnacion and denied accused's Motion to Quash on April 27, 2016,[160] considering that the Court already determined the existence of probable cause in the instant consolidated cases and whether or not there is an existing ITR for TY 2004 is for the plaintiff to prove during the hearing of the case. The Court further held that Section 220 of the NIRC of 1997, as amended, merely requires that the BIR Commissioner approve the institution of civil and criminal cases; hence, the legal officers of the BIR are not required to sign the Information. Finally, the Court ruled that all cases filed against accused have not yet prescribed.

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[151] *Id.*, pp. 330 to 331.
[152] *Id.*, pp. 335 to 336.
[153] *Id.*, pp. 340 to 345.
[154] *Id.*, pp. 337 to 338.
[155] *En Banc* Notice, posted on December 2, 2015 and received by the Court on December 10, 2015, Docket – Vol. 1 (CTA Crim. Case No. O-485), pp. 346 to 347.
[156] Docket – Vol. 1 (CTA Crim. Case No. O-485), pp. 349 to 351.
[157] *Id.*, p. 352.
[158] *Id.*, pp. 353 to 359.
[159] Minutes of the hearing held on February 17, 2016, Docket – Vol. 1 (CTA Crim. Case No. O-485), p. 363.
[160] Resolution, Docket – Vol. 1 (CTA Crim. Case No. O-485), pp. 396 to 401.

During the hearing held on May 4, 2016, the Court granted the request of accused to defer the arraignment in view of the filing of the Urgent Partial Motion for Reconsideration of the Resolution, dated April 27, 2016, denying her Motion to Quash Information. The arraignment was reset to June 15, 2016.[161] The *Urgent Partial Motion for Reconsideration* was filed on May 4, 2016, [162] which was denied by the Court in a Resolution dated June 7, 2016.[163]

When arraigned on June 15, 2016, the accused, duly assisted by her counsel, pleaded "NOT GUILTY" to the offenses charged against her.[164] The Preliminary Conferences were held on July 14, 2016,[165] August 16, 2016,[166] August 25, 2016,[167] September 13, 2016[168] and September 15, 2016,[169] while the Pre-Trial Conference was held on November 9, 2016.[170]

Meanwhile, the plaintiff's *Pre-Trial Brief* was filed on September 22, 2016,[171] while the accused's *Pre-Trial Brief* was submitted on November 9, 2016.[172] The Court then issued the Pre-Trial Order dated February 7, 2017,[173] deeming the termination of the pre-trial.

Trial ensued.

During trial, plaintiff presented their documentary and testimonial evidence. Initially, plaintiff offered the testimonies of the following ROs of the BIR, assigned at its National Investigation Division (NID), namely: (1) Ms. Madera,[174] (2) Ms. Se,[175] (3) Mr. Jose Ivan T. Justiniano,[176] (4) Ms.

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[161] Minutes of the hearing held on May 4, 2016, Docket – Vol. 1 (CTA Crim. Case No. O-485), p. 403.
[162] Docket – Vol. 1 (CTA Crim. Case No. O-485), pp. 416 to 422.
[163] Docket – Vol. 2 (CTA Crim. Case No. O-485), pp. 429 to 430.
[164] Minutes of the hearing held on, and Order dated, June 15, 2016, Docket – Vol. 2 (CTA Crim. Case No. O-485), pp. 432 to 434; Certificate of Arraignment dated June 15, 2016, Docket – Vol. 2 (CTA Crim. Case No. O-485), p. 435.
[165] Minutes of the Preliminary Conference held on July 14, 2016, Docket – Vol. 2 (CTA Crim. Case No. O-485), pp. 439 to 448.
[166] Minutes of the Preliminary Conference held on August 16, 2016, Docket – Vol. 2 (CTA Crim. Case No. O-485), pp. 459 to 461.
[167] *Id.*, pp. 463 to 465.
[168] *Id.*, pp. 470 to 476.
[169] *Id.*, pp. 477 to 482.
[170] Minutes of the hearing held on, Transcript of Stenographic Notices (TSN) dated, and Order dated, November 9, 2016, Docket – Vol. 2 (CTA Crim. Case No. O-485), pp. 561 to 563.
[171] Docket – Vol. 2 (CTA Crim. Case No. O-485), pp. 484 to 501.
[172] *Id.*, pp. 510 to 516.
[173] *Id.*, pp. 571 to 589.
[174] Minutes of the hearing held on, Order dated, and TSN dated April 26, 2017, Docket – Vol. 2 (CTA Crim. Case No. O-485), pp. 675 to 740.
[175] Minutes of the hearings held on, Orders dated, and TSNs dated May 24, 2017 and June 21, 2017, Docket – Vol. 2 (CTA Crim. Case No. O-485), pp. 869 to 880, 898 to 899 and 909 to 951.
[176] Minutes of the hearing held on, and Order dated, August 30, 2017, Docket – Vol. 2 (CTA Crim. Case No. O-485), pp. 952 to 954.

Kathleen V. Driz,[177] (5) Mr. Uldarico P. Aure, Jr.,[178] (6) Mr. Florante R. Aninag,[179] (7) Ms. Francelita B. Garcia,[180] (8) Ms. Marissa P. Delos Santos,[181] (9) Ms. Marites P. Arias,[182] (10) Ms. Lucieta L. Estrella[183] and (11) Ms. Rosario Rosalyn M. Enriquez.[184]

On September 20, 2018, plaintiff filed its *Formal Offer of Evidence.*[185] No comment, however, was filed thereon by the accused.[186]

Atty. Encarnacion filed a *Withdrawal of Appearance* on November 9, 2018 stating that, due to conflict of interest arising from his appointment as City Legal Officer of Cavite City, he is withdrawing as counsel of accused in this case.[187]

In the Resolution dated November 15, 2018,[188] the Court admitted plaintiff's Exhibits, *except* for Exhibits "P-3-A", "P-4-A", "P-5", "P-5-A", "P-6", "P-6-A", "P-6-B", "P-7", "P-7-A", "P-15, P-15-A", "P-28, P-28-A" and "P-29, P-30", for not being found in the records; and "P-26", for failure to identify.

On November 16, 2018, the Court issued a Resolution ordering accused's counsel to secure the approval of his client to withdraw as her counsel in this case.[189]

Subsequently, on November 29, 2018, plaintiff filed a *Motion for Reconsideration (of the Resolution dated November 15, 2018).*[190]

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[177] Minutes of the hearing held on, Order dated, and TSN dated September 27, 2017, Docket – Vol. 2 (CTA Crim. Case No. O-485), pp. 976 to 999.
[178] Minutes of the hearing held on, Order dated, and TSN dated October 18, 2017, Docket – Vol. 3 (CTA Crim. Case No. O-485), pp. 1070 to 1117.
[179] *Ibid.*
[180] Minutes of the hearing held on, Order dated, and TSN dated November 22, 2017, Docket – Vol. 3 (CTA Crim. Case No. O-485), pp. 1141 to 1152.
[181] Minutes of the hearing held on, Order dated, and TSN dated January 17, 2018, Docket – Vol. 3 (CTA Crim. Case No. O-485), pp. 1175 to 1176.
[182] Minutes of the hearing held on, Order and TSN dated June 6, 2018, Docket – Vol. 3 (CTA Crim. Case No. O-485), pp. 1290 to 1320.
[183] Minutes of the hearings held on, Orders and TSNs dated July 4, 2018 and August 1, 2018, Docket – Vol. 3 (CTA Crim. Case No. O-485), pp. 1321 to 1322, 1324 to 1331 and 1332 to 1342.
[184] Minutes of the hearing held on, Order dated September 5, Docket – Vol. 3 (CTA Crim. Case No. O-485), pp. 1355 to 1356.
[185] Docket – Vol. 3 (CTA Crim. Case No. O-485), pp. 1357 to 1379.
[186] Records Verification Report dated October 17, 2018 issued by the Judicial Records Division of this Court, Docket – Vol. 4 (CTA Crim. Case No. O-485), p. 1494.
[187] *Id.*, pp. 1495 to 1496.
[188] *Id.*, pp. 1501 to 1502.
[189] *Id.*, pp. 1503 to 1504.
[190] *Id.*, pp. 1507 to 1510.

Accused filed a *Motion for Leave Ex Abutandi Ad Cautelam (To File Demurrer to Evidence)* on November 27, 2018;[191] whereas plaintiff's *Comment/Opposition (to the Motion for Leave Ex Abutandi Ad Cautelam (To File Demurrer to Evidence) dated November 27, 2018* was filed on September 18, 2019.[192]

On August 28, 2019, the Court issued a Resolution granting plaintiff's *Motion for Reconsideration (of the Resolution dated November 15, 2018),* thereby admitting all of plaintiff's exhibits, and, accused's counsel's *Withdrawal of Appearance.*

The Court, in the Resolution dated November 25, 2020, reiterated its order to accused to secure the services of a new counsel of her choice, within fifteen (15) days from notice and declared that she is deemed to have waived her right to file her Demurrer to Evidence in view of the lapse of the period given to her.

On February 10, 2021, the Court issued a Resolution appointing Atty. Anamarie V. Gonzales as counsel *de oficio* of accused Napoles.[193] Atty. Gonzales, however, filed a *Manifestation (With Prayer to be excused as Counsel de Officio)* on February 22, 2021[194] informing the Court that she was never engaged as counsel of the accused and requested that she be excused as counsel *de officio* as she already had prior appointments to the doctor before she received the Resolution appointing her as such.

An *Entry of Appearance* was filed on February 23, 2021 by accused's new counsel, Napoleon Uy Galit.[195] Atty. Galit, however, filed a *Manifestation* on February 18, 2022 informing the Court that accused Napoles instructed him that Atty. Ian D. Encarnacion will be taking over the instant cases,[196] which was noted by the Court in the Resolution dated March 11, 2022.[197]

Accused then presented her testimonial evidence. She offered the testimonies of the following individuals, namely: (1) Mr. Rudy Go,[198] (2) Ms. Driz[199] and (3) Ms. Madera.[200]

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[191] *Id.*, pp. 1580 to 1582.
[192] *Id.*, pp. 1621 to 1626.
[193] *Id.*, pp. 1640 to 1642.
[194] *Id.*, pp. 1643 to 1644.
[195] *Id.*, pp. 1645 to 1646.
[196] *Id.*, pp. 1673 to 1675.
[197] *Id.*, p. 1678.
[198] Minutes of the hearings held on, and Order and TSN dated, March 30, 2022 and May 24, 2022, Docket – Vol. 4 (CTA Crim. Case No. O-485), pp. 1711 to 1713, 1716 to 1754 and 1816.
[199] Minutes of the hearing held on June 14, 2022, Docket – Vol. 4 (CTA Crim. Case No. O-485), p. 1866.
[200] *Id.*, p. 1866.

Plaintiff filed a *Motion* informing the Court that it had not yet received accused's Formal Offer of Evidence and requested that it be given thirty (30) days to file its Memorandum and thereafter for the instant cases be submitted for decision,[201] which was granted by the Court in the Resolution dated September 14, 2022.[202] In the said Resolution, the Court deemed accused to have waived her right to file a Formal Offer of Evidence; and, thus, the parties were given thirty (30) days to file their respective memoranda.

On September 15, 2022, *Memorandum (For the Plaintiff)* was filed.[203]

The JRD issued a Records Verification Report on February 6, 2023 stating that accused failed to file her Memorandum.[204] Thus, on February 10, 2023, the instant cases were submitted for decision.[205]

On March 28, 2023, accused Napoles, by herself, filed a *Motion for Reconsideration (Re: Resolution promulgated on February 10, 2023)*,[206] informing the Court that, since last year, she tried to contact her counsel of record, Atty. Encarnacion, to inquire into the status of the cases and the progress of the preparation of her Memorandum. Despite her efforts to reach out and considering that phone privileges were restricted at the CIW during the pandemic, she was not able to contact Atty. Encarnacion. Eventually, accused was informed that Atty. Encarnacion suffered a stroke which probably rendered him unable to finish the memorandum or at the very least inform her of the status of her cases. She requested that the Court set aside the Resolution, dated February 10, 2023, submitting the case for decision and instead issue a Resolution granting additional time for her to contact and confer with Atty. Encarnacion to submit the required Memorandum. She also requested that, in case Atty. Encarnacion will not be physically capable of submitting the Memorandum, the accused be directed to hire the services of another lawyer to assist Atty. Encarnacion in the preparation and submission of the Memorandum for the accused.

In its *Comment/Opposition (Re: Accused's Motion for Reconsideration dated March 28, 2023)*,[207] plaintiff asserted that accused's motion for reconsideration failed to state the timeliness of her motion. Moreover, it argued that no medical certificate was submitted by accused to support her claim that her counsel suffered stroke, which was the cause of his failure to submit a Memorandum. Finally, plaintiff averred that accused had not shown that a relaxation of the rules is warranted considering that on September 14,

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[201] Docket – Vol. 4 (CTA Crim. Case No. O-485), pp. 1869 to 1871.
[202] *Id.*, pp. 1874 to 1875.
[203] *Id.*, pp. 1876 to 1903.
[204] *Id.*, p. 1911.
[205] Resolution dated February 10, 2023, Docket – Vol. 4 (CTA Crim. Case No. O-485), p. 1913.
[206] Docket – Vol. 4 (CTA Crim. Case No. O-485), pp. 1915 to 1917.
[207] *Id.*, pp. 1924 to 1929.

2022, the Court deemed accused's right to file formal offer of evidence and required her to file memorandum within thirty (30) days from receipt, which was received by accused.

In view of the filing of a motion for reconsideration, the Court recalled and set aside the Resolution dated February 10, 2023 and required accused to submit a duly notarized medical certificate of Atty. Encarnacion as proof of her assertion that her counsel suffered stroke.[208]

On May 4, 2023, Atty. Marijoy B. Bragado filed her *Entry of Appearance with Motion for Time to File Memorandum*.[209]

The Resolution dated April 18, 2023 was served via LBC on May 3, 2023; however, on May 19, 2023, the shipment was returned to the Court as it was flagged to be with a concern.[210]

On June 22, 2023, the Court issued a Resolution requiring accused's new counsel, Atty. Bragado, to submit the duly notarized medical certificate of accused's former counsel, Atty. Encarnacion.[211] Despite personal service to both accused and her counsel on June 30, 2023, accused and her counsel failed to comply with the Court's order as per Records Verification issued by the Court's JRD on July 26, 2023.[212]

Thus, the Court issued a Resolution on October 25, 2023 denying accused's motion for reconsideration and motion for time to file memorandum and submitting the case anew for decision.[213]

EVIDENCE FOR THE PROSECUTION

To establish the culpability of the accused, plaintiff presented eleven (11) witnesses, namely: (1) Ms. Madera; (2) Ms. Se; (3) Mr. Justiniano; (4) Ms. Driz; (5) Mr. Aure; (6) Mr. Aninag; (7) Ms. Garcia; (8) Ms. Delos Santos; (9) Ms. Arias; (10) Ms. Estrella; and, (11) Ms. Enriquez, whose testimonies during their direct examination, cross-examination and/or responses to clarificatory questions propounded by the Court are summarized as follows:

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[208] Resolution dated April 18, 2023, Docket – Vol. 4 (CTA Crim. Case No. O-485), pp. 1933 to 1935.
[209] Docket – Vol. 4 (CTA Crim. Case No. O-485), pp. 1941 to 1943.
[210] *Id.*, pp. 1944 to 1956.
[211] *Id.*, pp. 1963 to 1965.
[212] Exhibit "P-38", Judicial Affidavit of Josephine Madera, Docket – Vol. 2 (CTA Crim. Case No. O-485), pp. 602 to 613; TSN dated April 26, 2017, Docket – Vol. 2 (CTA Crim. Case NO. O-485) pp. 677 to 740.
[213] Docket – Vol. 4 (CTA Crim. Case No. O-485).

1. Testimony of Ms. Josephine Madera:[214]

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

Ms. Madera testified as regards the process of their investigation of accused's tax liabilities including her business under the trade name "Jo-Chris Trading". Further, Ms. Madera testified that the LOA (LOA-211-213-00000140), dated August 27, 2013, authorizing Ms. Se, Ms. Arias and Ms. Madera of the NID to examine the books of accounts and other accounting records of accused Napoles was served at Discovery Suites Centre, #25 ADB Avenue, Ortigas Center, San Antonio, Pasig City, and was constructively received by accused as witnessed by Mr. Joselito P. Dela Merced, the barangay chairman in the place of business of accused, Mr. Reynaldo R. Bautista and Mr. Ernesto C. Asuncion, Project Security Officer of the Discovery Centre on August 28, 2013. Ms. Madera also testified that they tried several attempts to serve the LOA personally but failed to do so, hence, the resort to constructive service.

In her testimony, Ms. Madera also identified the certifications issued by RDO No. 43A stating that accused: (1) has no Annual Income Tax Return (AITR) filed for TYs 2010, 2011 and 2012; (2) has filed her First Quarter ITR for TY 2010; (3) has filed her First and Second Quarterly ITR and AITR for TY 2004; (4) has filed her AITR for TY 2009 without attachments; and, (5) registration with RDO 43A ended on September 7, 2010. She also identified documents/certifications from private offices which accused dealt with, such as certifications that: (1) accused owns five (5) insurance policies with Philippine American Life and General Insurance Company (Philam Life); (2) accused owns four (4) insurance policies with Insular Life Assurance Co. Ltd. (Insular Life); and, (3) thirteen (13) insurance policies were owned by accused with AXA Philippines.

During cross examination,[215] Ms. Madera explained that they analyzed the Letter of Denunciation received from an informant *"regarding the irregularity in the paid [sic] practice which may consequently resolved [sic] to the underpayment of tax liabilities of a certain taxpayer."* In addition, Madera was asked regarding the service of the LOA to accused's residence in

[214] Exhibit "P-38", Docket – Vol. 2 (CTA Crim. Case No. O-485), pp. 602 to 612.
[215] TSN, April 26, 2017, Docket – Vol. 2, pp. 689 to 690.

Biñan, Laguna, in Ayala Alabang and then to Discovery Centre, where it was constructively served.

2. Testimony of Ms. Nilda T. Se:[216]

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

Ms. Se testified that she computed the tax liabilities of the accused for TYs 2004, 2006, 2008, 2009, 2010, 2011 and 2012 and identified the documents relevant thereto. In her judicial affidavit, she narrated how she computed the tax liability by applying the formula below:

TY 2004

Total Acquisitions, TY 2004	xxx
Add: Taxable Income per 2004 ITR	xxx
Less: Accumulated disposable income as of December 31, 2003 (i.e., Summation of Net Taxable Income from 1999 to 2003)	(xxx)
Less: Personal Exemption	(xxx)
Total Taxable Income per Investigation	xxx
Multiply by: Income Tax Rate	xx%
Income Tax Due, TY 2004	xxx
Less: Income Tax Due per ITR	(xxx)
Basic Tax Due on Income per Investigation	xxx
50% Surcharge	xxx
20% Deficiency Interest	xxx
Income Tax Deficiency, TY 2004	**xxx**

TYs 2006, 2008, 2009, 2010, 2012

Total Acquisitions, subject TY	xxx
Add: Taxable Income per ITR for the subject TY	xxx
Less: Personal Exemption	(xxx)
Total Taxable Income per Investigation	xxx
Multiply by: Income Tax Rate	0-32%
Income Tax Due, subject TY	xxx
Less: Income Tax Due per ITR	(xxx)
Basic Tax Due on Income per Investigation	xxx

[216] Exhibit "P-39", Docket – Vol. 2 (CTA Crim. Case No. O-485), pp. 744 to 756.

50% Surcharge	xxx
20% Deficiency Interest	xxx
Income Tax Deficiency, subject TY	xxx

Based on the above formula, Ms. Se determined that the accused has deficiency income tax liability of ₱3,490,813.42 for TY 2004, ₱19,769,005.66 for TY 2006, ₱3,186,291.67 for TY 2008, ₱7,740,938.67 for TY 2009, ₱3,927,953.06 for TY 2010, ₱3,139,405.43 for TY 2011 and ₱3,420,647.94 for TY 2012, all inclusive of surcharge and interest.

During cross examination,[217] Ms. Se explained how she computed the disposable income of accused as of the end of 2003 by adding up the net taxable income declared in the computer printouts of the accused's ITRs for 1999 to 2003 as follows:

ITR	Net Taxable Income	Tax Due	Other Payment / Disbursement	Disposable Income
1999	376,882.85	(88,064.86)		288,817.99
2000	615,350.39	(164,219.13)		451,131.26
2001	451,420.70	(110,426.21)		340,994.49
2002	325,856.67	(68,291.26)	(965,000.00)	(707,434.59)
2003	187,443.40	(34,360.85)		153,082.55
Total	**1,956,954.01**	**(694,351.46)**	**(965,000.00)**	**526,591.70**

Atty. Encarnacion then questioned whether they were able to determine if the purchase prices of the condominium and the Honda Civic were deducted as lawful business expense in accused's ITR, to which Ms. Se responded in the negative. Nonetheless, she posited that the purchases are not business expenses. Se further explained that the information used in the computation is purely based on the amounts indicated in the ITRs.

3. Testimony of Mr. Jose Ivan Justiniano:[218]

Mr. Justiniano is the Head of Compliance of Philam Life. He testified as to his duties and functions in the company as someone who is responsible for developing, managing, and implementing the Compliance Framework of Philam Life's Insurance, Wealth Management Business and Bancassurance Business. He testified that, as per the records of Philam Life, accused is the owner of Philam Life Prosperity Life Insurance with Policy No. 0231460863, Philam Life Prosperity Life Insurance with Policy No. 0231460872, Philam Life Quantum Life Insurance with Policy No. 1004817665 and Philam Life Quantum Life Insurance with Policy No. 1004817674 and identified the corresponding documents.

[217] TSN dated June 21, 2017, Docket – Vol. 2 (CTA Crim. Case No. O-485), pp. 909 to 951
[218] Exhibit "P-41", Docket – Vol. 2 (CTA Crim. Case No. O-485), pp. 885 to 888.

During the cross examination,[219] Mr. Justiniano narrated how possible payments were made by accused in her Insurance Policies with Philam Life. He mentioned regarding automatic premium loan wherein policy owners are given an option to pay their policies in case they forget to pay and the policy will not lapse. According to Justiniano, accused made consistent payments from 2005, 2006 to 2007 but failed to do so in 2008; thus, the automatic feature of the policy allows the policy owner to obtain a loan from the existing values of the policy. The accused must, however, double the payment in 2009 to preserve the value of the policy.

4. Testimony of Ms. Kathleen V. Driz:[220]

Ms. Driz, the Life Operations Head and Chief Underwriter of AXA Philippines, declared that part of her duties and functions is to manage the Underwriting, Policy Owner Services, Payments, Claims and Documents Solutions Teams of the company and to manage its day-to-day business requirements to meet its objectives. During the cross examination,[221] she further testified that she has custody and supervision of all the official records issued by the Transformation and Operations Division of AXA Philippines. She identified the certification issued by AXA Philippines issued by Mr. Calvin L. Kohchet-Chua, who had already resigned from the company at the time of her testimony.

5. Testimony of Mr. Uldarico Pe Aure, Jr.:[222]

Mr. Aure, the Assistant Manager and Head for Customer Experience Management Department of Insular Life Assurance Co., Ltd. (Insular Life) testified that he is in-charge of attending to policy holders who have special concerns on their policies which they brought to the attention of management, the Insurance Commission, or judicial or quasi-judicial bodies and of signing documents such as certifications and letters upon request or in reply to the inquiries of their policy holders related to their policy servicing requirements. He identified four (4) certifications, all of which were printed in Insular Life letter head and the insurance application of accused as source of the information to issue the certifications.

During cross examination, Mr. Aure was asked to explain what constitutes special concern in his duties and functions in the company. He explained that a special concern would mean a policy holder will request other than those stipulated in the contract or some form of deviation thereto.

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[219] TSN dated June 21, 2017, Docket – Vol. 2 (CTA Crim. Case No. O-485), pp. 909 to 951
[220] Exhibit "P-42", Docket – Vol. 3 (CTA Crim. Case No. O-485), pp. 1482 to 1486.
[221] TSN dated September 27, 2017, Docket – Vol. 2 (CTA Crim. Case No. O-485), pp. 986 to 994.
[222] Exhibit "P-43", Docket – Vol. 3 (CTA Crim. Case No. O-485), pp. 1003 to 1009.

Nevertheless, accused's policy with Insular Life had no deviation. The only transaction he encountered with accused's policy is the issuance of certification regarding the spelling of her name, that is, whether it is with single "n" or with double "n" ("nn"). The Court also clarified from Mr. Aure that the certifications he issued were based on the policy information system or records of every policy holder.

6. Testimony of Mr. Florante R. Aninag:[223]

Mr. Aninag, the Revenue District Officer of RDO 43A – East Pasig City, testified that his duties and functions include: (1) supervising the field investigation and audit of tax cases with the revenue district; (2) administering, implementing and enforcing internal revenue laws and regulations with the revenue district and assisting in the prevention, detection and punishment of frauds or delinquencies in connection therewith; (3) coordinating with other revenue district offices, agencies and local unties within the district for the proper and effective performance of its functions; (4) maintaining a district database which shall include an index and a master file of all taxpayers in order to monitor those who are delinquent in the payment of their taxes; and, (5) performing such other related functions as may be assigned by his superiors from time to time, such as issuance of certifications pursuant to law and rules and regulations. He identified the certifications he issued while he was still in RDO 43A – East Pasig City, in connection with the tax returns of the accused.

7. Testimony of Ms. Francelita B. Garcia:[224]

Ms. Garcia testified that she is the Administrative Assistant VI, the CBR Error Handler and Task Account Adjustment Officer of BIR RDO No. 43A – East Pasig City, and is responsible for the supervision and handling of correction of errors found in the tax returns filed by taxpayers with Accredited Authorized Banks. Corollary to her function, Ms. Garcia said that she has authority to access the BIR Returns Processing System (BIR RPS) and the BIR Collections and Bank Reconciliation System (BIR CBRS) and the duty to issue printouts of Returns Inquiry Transaction Details from the BIR RPS and Payment Information from the BIR CBRS as may be requested by her superiors. She then identified the original printouts of the BIR RPS Return Inquiry Transaction Detail of accused Napoles for the years 2000, 2001, 2002, 2003, 2005, 2006 and 2007, and the original printout of BIR CBRS Payment Information of the accused for 2004.

[223] Exhibit "P-44", Docket – Vol. 3 (CTA Crim. Case No. O-485), pp. 1040 to 1044.
[224] Exhibit "P-45", Docket – Vol. 3 (CTA Crim. Case No. O-485), pp. 1120 to 1124.

During cross-examination, Ms. Garcia confirmed that her only participation in the instant case is the printing of the BIR returns.[225]

8. Testimony of Ms. Marissa P. Delos Santos:[226]

Ms. Delos Santos testified that she is the Administrative Officer V and the Chief of the Administrative Section of BIR RDO No. 43A – East Pasig City, and the custodian of the tax records of taxpayers registered with RDO No. 43A. She then identified the certified true copies of the 2008 and 2009 AITR of accused which the former issued.

During cross-examination,[227] she confirmed that she has no knowledge as regards the preparation of the tax returns prepared by the accused and the specific inclusions thereto.

9. Testimony of Ms. Marites Arias:[228]

Ms. Arias is the RO assigned at the NID of the BIR National Office, who conducted the investigation of accused's tax liabilities, together with Ms. Madera and Ms. Se, for TYs 1999 to 2012, pursuant to a LOA issued by then CIR Henares on August 27, 2013. She testified that they served the LOA at the BIR-registered address of accused, specifically at 2502 Discovery Centre in Ortigas Center, Pasig City, on August 28, 2013. Considering that the accused was not present, they resorted to constructive service, which was allowed under existing laws and regulations, by leaving a copy of the LOA in Discovery Centre, witnessed by Barangay Chairman Dela Merced and two (2) security officers of the Discovery Centre, Mr. Bautista and Mr. Asuncion. She is also one of those who requested for the printout of the BIR registration details of accused and tax returns from BIR RDO 43A – East Pasig City. Ms. Arias likewise testified that her group served upon accused the *Preliminary Assessment Notice* (PAN), dated November 29, 2016, assessing the latter from deficiency taxes for the TYs 2004 to 2012. The first copy thereof was served at the accused's registered address (i.e., Discovery Centre) on May 31, 2017 but was instead left with a certain Ernie Asuncion, the Project Security Manager of Discovery Centre. A second copy was then personally served upon Atty. Encarnacion on June 5, 2017, while the third and fourth copies were served upon the accused and Atty. Encarnacion *via* LBC on May 30, 2017. On January 23, 2018, the *Formal Letter of Demand* (FLD) was personally served by the group upon accused Napoles at Camp Bagong Diwa, Taguig City, where she was being detained at that time. In addition to this, Ms. Arias averred that their group also served copies of the FLD *via* registered

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[225] TSN dated November 22, 2017, Docket – Vol. 3 (CTA Crim. Case No. O-485), p. 1149.
[226] Exhibit "P-46", Docket – Vol. 3 (CTA Crim. Case No. O-485), pp. 1155 to 1158.
[227] TSN dated January 17, 2018, pp. 8 to 9.
[228] Exhibit "P-54", Docket – Vol. 3 (CTA Crim. Case No. O-485), pp. 1193 to 1217.

mail on January 23, 2018 and licensed courier on January 22, 2018, to accused's registered address and to Atty. Encarnacion.

According to Ms. Arias, the results of their investigation are as follows:

a. In 2004, accused, together with her husband, purchased a condominium unit in City & Land Mega Plaza for ₱1,767,037.70;
b. In 2006, accused, together with her husband, bought a parking lot in City & Land Mega Plaza for ₱563,931.50;
c. In 2009, accused, together with her husband, bought a condominium unit in Discovery Centre for ₱9,186,650.00;
d. In 2012, accused, together with several others, bought two (2) parcels of land in Bayambang, Pangasinan, for a total price of ₱13,440,000.00;
e. In 2012, accused, together with her husband, bought a parcel of land in Lanao, Kidapawan City, for ₱500,000.00;
f. In 2001, 2002 and 2005, accused purchased several insurance policies from Philam Life. Between 2002 and 2013, accused also made several premium payments to Philam Life for these insurance policies;
g. In 2006 and 2009, accused purchased several insurance policies from Insular Life. Accused made premium payments of varying amounts for these insurance policies between 2006 to 2013;
h. In 2004 and 2006, accused purchased several insurance policies from AXA Philippines and paid various amounts as premiums for the policies;
i. In 2006, accused purchased a Honda Civic for ₱1,102,000.000;
j. In 2008, accused purchased a Porsche Cayenne for ₱2,310.000.00;
k. In 2008, accused contributed ₱180,000.00 to Lim Luy Kim Giok Foundation;
l. In 2008, accused invested a capital contribution of ₱50,000.00 to Asia Pacific Gun Club;
m. In 2008, accused invested a capital contribution of ₱1,250,000.00 as an incorporator of JLN Construction and Development Corporation (JLN Corp.);
n. In 2010, accused invested an additional capital contribution of ₱1,187,500.00 in JLN Corp; and,
o. In 2011, accused contributed ₱500,000.00 to Magdalena Luy Limchu Charity Foundation in the Service of Divine Mercy Inc.

She then identified the documents relative to the foregoing results of their investigation.

During cross-examination,[229] she confirmed that she has no personal knowledge as regards the preparation of the documents she identified, including the facts and circumstances on how and why those documents were issued to accused and the surrounding facts and circumstances on the premiums paid; instead, she only requested for the copies of the documents from the corresponding offices as part of their investigation. Ms. Arias was also asked whether they assumed that the payments by the accused in 2004, 2006 and 2009 were made in cash and no prior installments were made. She answered in the affirmative considering that the documents did not state any prior installments. Moreover, she averred that, if there is a Transfer [Certificate] of Title, they assumed the property to be fully paid in that year. She posited that, even if there were any prior installment payments made, the computation will remain unaffected.

Ms. Arias was also asked regarding her particular participation in the investigation of accused's tax liabilities together with the other ROs and confirmed that she is the one in charge of serving the LOA to the accused and obtaining the documents necessary for their investigation.

In her re-direct examination, Ms. Arias clarified that the Deeds of Absolute Sale for the City & Land Mega Plaza unit, parking lot, the Discovery Centre unit, and the lots in Pangasinan and Kidapawan City only show the year of purchase and do not indicate any prior installments that could have been made for the said properties, which is the reason why they attributed the full purchase price for the said properties to the corresponding TY. She likewise confirmed that the Honda Civic was included in their investigation despite being owned by Jo-Chris Trading because it is registered with the BIR under accused's name carrying the trade name.

In Atty. Encarnacion's re-cross-examination, Ms. Arias reconfirmed that the properties could have been bought with prior installments as payment and not just fully paid on the subject taxable years indicated in the Deed of Sale. He also re-confirmed with Ms. Arias that the purchase of the Honda Civic may have been sourced from the business funds of Jo-Chris Trading since it is the owner of the vehicle.

10. Testimony of Ms. Lucieta L. Estrella:[230]

Ms. Estrella testified that she is the Records Officer II of the Land Transportation Office – Quezon City District Office (LTO-QC) and is the custodian of the records and other official documents of the said office. She then identified the CTCs of the Certificate of Registration CR No. 9172790-

[229] TSN dated June 6, 2018, Docket – Vol. 3 (CTA Crim. Case No. O-485), pp. 1304 to 1320.
[230] Exhibit "P-55", Docket – Vol. 3 (CTA Crim. Case No. O-485), pp. 1188 to 1190.

4, Official Receipt (OR) No. 783941340 and PGA Cars, Inc. Vehicle Sales Invoice dated June 17, 2008 which she issued to the BIR in her capacity as Records Officer II of LTO-QC.

11. Testimony of Ms. Rosario Rosalyn M. Enriquez:[231]

Ms. Enriquez testified that she is the Records Officer I of the LTO – Novaliches District Office (LTO-Nova) and is the custodian of the Certificates of Registration, ORs, invoices, and other official documents of the said office. She then identified the original copies of the Certificate of Registration, OR and Sales Invoice of the Honda Civic Sedan purchased on May 26, 2008 which were retrieved from the Records Room of LTO-Nova.

EVIDENCE FOR THE ACCUSED

To counter the foregoing evidence of the prosecution, four (4) witnesses were presented by the defense, namely: (1) Mr. Rudy Go; (2) Mr. Uldarico P. Aure; (3) Ms. Driz; and (4) Ms. Madera, whose testimonies during their direct examination, cross-examination and responses to clarificatory questions are summarized as follows:

1. Testimony of Mr. Rudy Go:[232]

In open court, Mr. Go testified that he is the Senior Vice-President of City and Land Developers Incorporated. He brought with him the transaction history for Unit 2335, dated March 29, 2022, printed by the staff from the Accounting Department. The document showed the payment history of accused Napoles which started on May 17, 1998 until its full payment on May 7, 2022. Mr. Go confirmed that there were ORs corresponding to the payments enumerated in the document. Some of the ORs, however, were destroyed already, particularly for the year 1998. Mr. Go brought before the Court a total of fourteen (14) ORs. He also averred that a Deed of Absolute Sale (DOAS) was issued in favor of accused on November 5, 2004.

Mr. Go also presented the transaction history for the purchase of the parking slot P326, indicating the first payment made on March 17, 1998 and the last date of payment on January 31, 2002, thereby recording a total of fifteen (15) transactions. He likewise confirmed that ORs were issued to accused as proof of the payments made, but only brought five (5) ORs to the Court, as the ORs dated 1998 were already destroyed. The DOAS for the parking slot was issued on May 9, 2006.

[231] Exhibit "P-55"; Docket – Vol. 3 (CTA Crim. Case No. O-485), pp. 1188 to 1190.
[232] TSN dated March 30, 2022 and May 24, 2022.

Mr. Go also confirmed that it took two (2) years before the DOAS were issued for the condominium unit and four (4) years for the parking slot.

On cross-examination, Mr. Go confirmed that he is in charge of the Financial Management and Services Department. He was then asked whether he personally generated the transaction history, to which he answered in the negative. He confirmed that he requested it from the accounting department and after looking through it, he certified it. The prosecution then inquired as to the inconsistencies in the TIN appearing in the ORs used in the transaction and the TIN in the payments history certified by Mr. Go. He said that he still needs to check the records to confirm the reason for the discrepancies. He nevertheless confirmed that the person who certified the ORs came from the Cash Department. In addition, Mr. Go mentioned that, aside from the ORs, there was a Contract to Sell which would show that accused purchased the property in installments.

Finally, Mr. Go was asked whether it is a normal practice for the company to delay the issuance of the DOAS despite being fully paid by the client already. Mr. Go answered that the delay was due to the late payment of registration fees which is necessary to transfer the title to the accused.

During re-direct examination, Mr. Go was asked whether the certified true copies presented to the Court were all uploaded in the system of their office, to which he answered in the affirmative and confirmed that there is no reason to doubt the validity, genuineness and due execution of those documents. He again re-confirmed that the delay in the issuance of the DOAS for the unit and the parking slot is due to the delay in the payment of the registration fees by accused.

On re-cross examination, Mr. Go was asked to confirm that he had no control or supervision over the records to which the transaction history is based. Mr. Go, however, answered that he may not have custody over the records, but he has control as the department is under his supervision.

Justice Ma. Belen M. Ringpis-Liban clarified with Mr. Go whether the sales of condominium units are usually in installments. Mr. Go answered that, while there are some cash sales, mostly, sales are through installments, regardless of whether it is pre-selling or even if the condominium construction is finished already. He was also asked to clarify the registration fees required from the unit owners. Mr. Go explained that these expenses are needed to transfer the title to the client and are included in the contract but do not form part of the consideration. The delay in the payment of the registration fees do not necessarily cancel the transaction, but only causes the delay in the transfer of the property.

Justice Erlinda P. Uy also sought clarification from the witness as to whether there can be anybody who can make correction or alteration in the data found in their system. Mr. Go answered that, once the information is encoded, it is part of the system unless there would be an error in the encoding and the IT group would effect the correction. The system is password protected and not anybody can make corrections.

2. Testimony of Ms. Josephine D. Madera: [233]

With the purpose of impeaching her, accused once again asked Ms. Madera regarding the service of the LOA to accused. Ms. Madera testified that the LOA was first served at the residence of accused in Biñan, Laguna, and then to the spouses Napoles' other residence in Alabang on August 27, 2013. She also testified that they called Discovery Centre to inform them that they will be serving LOA but was informed that nobody was occupying the office of accused already. They came back on August 28, 2013 to constructively serve the LOA assisted by the Barangay Chairman and building administrator. Ms. Madera was then asked by Atty. Encarnacion if she is aware that, as of August 28, 2013, the day they constructively served the LOA at Discovery Centre, the accused was already arrested and incarcerated with the Bureau of Jail Management and Penology, to which she answered in the negative.

Ms. Madera was also asked about the steps in their investigation. Ms. Madera averred that, after the receipt of the MOA to commence the investigation, they conducted the preliminary investigation initially with the profiling of the subject taxpayer to determine whether she is registered in the BIR's integrated tax system (ITS). Thereafter, they conducted a third-party verification wherein they accessed information from Land Registration Authority (LRA) to get information on the properties of Spouses Napoles. When they accessed the ITS, they found out that accused already failed to file tax returns for the years 2010, 2011, and 2012, which is covered by their preliminary investigation. After the preliminary investigation, the ROs then proceeded with the formal investigation and, thereafter, issued the LOA. Ms. Madera confirmed that the preliminary investigation started on the day the MOA was issued which was on August 5, 2013.

Ms. Madera confirmed that accused was only registered with the BIR in 1999. She also reiterated that they used the expenditure method to determine the unexplained source of income of accused.

[233] TSN dated June 14, 2022. The purpose of the recall of the witness is to impeach her.

Atty. Encarnacion confronted Ms. Madera with the document from City and Land Developers, Inc. showing that accused paid the condominium unit she and her spouse purchased which was paid in installments from 1998 up to 1999. The documents were not part of the ROs' investigation of accused's tax liabilities. She was then asked if the result of the investigation would still be the same had they considered the documents from City and Land Developers, Inc. showing payment in installments. Ms. Madera confirmed that there is no effect in the investigation if the documents she was confronted with were included. She also noted that the official receipts contain discrepancies in the TIN of City and Land Developers, Inc.

Atty. Encarnacion also pointed out to the witness that there were properties included in the expenditure method but were actually purchased by accused in 1998. Thus, she already had money to purchase the properties prior to her registration with the BIR in 1999.

Still, when asked if there would be any difference in the results of the investigation, Ms. Madera answered that there would be no changes in the results of the investigation for TY 2004, despite the fact that the properties were purchased and partially paid for prior to her registration with the BIR. Ms. Madera further explained that the reason there would be no change in the results of the investigation is because accused consistently failed to submit the documents with the BIR. Instead, the amount of tax liability per year would be the only effect.

She was asked whether she could determine the source of the money used to pay the particular condominium unit and parking space, but Ms. Madera refused to answer asserting she has no personal knowledge as to the sources of funds prior to the registration with the BIR.

Ms. Madera was likewise confronted regarding her investigation on insurance policies procured by accused particularly on Policy No. 5100028447, marked as Exhibit "P-10" *vis-à-vis* the Certification issued by Mr. Calvin Chua, the head of Legal Compliance of Philippine Axa Life Insurance Corporation, stating that the insurance policies were withdrawn in 2006. The same was asked by Justice Ringpis-Liban, clarifying whether during the course of their investigation, the ROs were able to discover that accused withdrew the insurance policies placed in the same Metrobank account. Ms. Madera answered in the negative, but still stated that the amount of liability might differ. Her answer remains the same for the Pangasinan and the Kidapawan properties, which the defense claims to have been purchased using the withdrawn amounts from the insurance policies. Ms. Madera insisted that the accused failed to file ITR for TYs 2010, 2011 and 2012, and

even declared no operation for TY 2009; therefore, it will not affect their investigation.

Atty. Encarnacion then asked whether the withdrawn amounts of insurance policies would be considered income that does not affect accused's non-filing of ITR. Ms. Madera answered in the negative; adding, however, that the investigation used the expenditure method which focused on her expenses and expenditure.

When again asked whether the ROs were able to determine if the expenses were sourced from accused's income, Ms. Madera answered "no"; and replied, instead, that based on the documents they gathered, the fact was that no taxes were paid by accused.

During cross-examination, Atty. Tortoles asked Ms. Madera why the ROs did not access the transaction history presented by the defense, showing payments made in installments. Ms. Madera averred that they were issued certification stating that the annual premium payment made by the accused is the amount that was used as the basis of their assessment. Ms. Madera confirmed that they usually access information from the government offices, which has the presumption of regularity in its issuance. She also confirmed asking accused to present document during the course of the investigation but she (Ms. Madera) was never shown the documents presented by defense counsel during trial.

Justice Ringpis-Liban also asked when the PAN was issued. Ms. Madera affirmed that the PAN was issued on November 29, 2016, and was officially received on June 5, 2017. The FLD, on the other hand, was issued October 2, 2017, but was received on January 23, 2018. It was also clarified that there was no waiver issued by accused.

Justice Uy likewise asked clarificatory questions as regards the service of the LOA. The witness testified that the LOA was served at the registered business address. The LOA was received by the Building Administrator for accused because officially they have not moved out of the premises. While there was nobody occupying the office, the Building Administrator informed them that there is always someone who frequents the office space to check on communication letters.

Justice Uy also asked whether Ms. Madera is aware that accused was already incarcerated when the LOA was served. Ms. Madera said she cannot remember anymore. Nevertheless, the FLD was served personally to accused.

Ms. Madera was again asked to clarify whether the PAN was also served to accused personally in the detention center to which she replied that only the FLD/FAN was served personally. Justice Ringpis-Liban also clarified with Ms. Madera regarding her statement that there was a representative of accused who went to their office regarding the case of accused; however, she cannot remember whether said alleged representative actually submitted an SPA.

Finally, Ms. Madera confirmed that the service of LOA was witnessed by the Building Administrator. The LOA was actually slipped inside the office premises as witnessed by the Building Administrator and the Barangay Chairman.

3. Stipulated Documents:[234]

In lieu of the oral testimony of Ms. Driz, the parties' counsel stipulated that the witness brought with her a Certification and Summary in ledger format certifying that: (a) there was an insurance policy in 2004 and the insurance policy premium was paid in 2004 and encashed or withdrawn in 2006; and, (b) there was an insurance policy in 2006, and the insurance premium was paid in 2006 and was encashed or withdrawn in 2011.[235]

Notably, no *Formal Offer of Evidence* was filed by the accused in the instant consolidated cases.[236]

ARGUMENTS OF THE PARTIES

Plaintiff's arguments:

Plaintiff mainly argues in its *Memorandum* that the accused's expenses and acquisitions exceeded her reported income. Plaintiff explained that the Expenditure Method, which is allowed under Section 6 of the NIRC of 1997, as amended, and in accordance with Revenue Memorandum Circular (RMC) No. 23-2000, was used in determining the tax liability of the accused.[237]

According to plaintiff, the expenses of the accused are more than her reported/declared income as per ITRs filed with the BIR. Thus, the source of funds used for the expenditures was unexplained. Plaintiff further argues that

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[234] Exhibits "P-10 to P-10-M", Docket – Vol. 4 (CTA Crim. Case No. O-485), pp. 1398-1399.
[235] TSN June 14, 2022, pp. 53 to 54.
[236] Resolution dated September 14, 2022, Docket – Vol. 4 (CTA Crim. Case No. O-485), pp. 1874 to 1875.
[237] Entitled "Existing Revenue Procedures on the Assessment of Deficiency Internal Revenue Taxes Based on the 'Best Evidence Obtainable.'"

proof of likely sources of income of accused is not required in the expenditure method; rather, the prosecution only needs to establish that accused's expenditure during a given year exceeded her reported income.

Moreover, plaintiff avers that accused failed to supply correct and accurate information in her ITRs in violation of Section 255 of the NIRC of 1997, as amended. Accused is a taxpayer who is required to report her income to determine her income tax by supplying the correct and accurate information in her filed ITRs. In her ITRs for the subject TYs, plaintiff maintains that she either did not file any or the ITR reflects that her expenditures exceeded accused's reported income; hence, the source of funds used for the expenditures remained unexplained and her correct income unreported. Further, plaintiff claims that accused willfully failed to supply correct and accurate information in her AITR and failed to pay the correct taxes.

To determine the amount of taxes that accused failed to pay relative to her failure to supply accurate information in her returns, plaintiff used the Expenditure Method. Through this method, plaintiff looked into accused's expenditures *vis-à-vis* her reported income. Her expenses which exceeded the reported income were considered unreported and therefore subject to income tax.

Plaintiff further claims that proof of likely sources of income is not required in expenditure method, since by its nature, the source of funds is obviously unexplained. Plaintiff need only to establish that accused's expenditure during a given year exceeded her reported income, and the source of the funds used to make the expenditures is unexplained.

Plaintiff also contends that accused is guilty for attempt to evade or defeat tax under Section 254 of the NIRC of 1997, as amended. The prosecution asserts that the deliberate ploy of accused Napoles in failing to file her ITRs for TYs 2004 to 2009 and her repeated violations of the NIRC of 1997 for seven (7) TYs, confirm her scheme of deliberate tax evasion. Plaintiff also posits that accused must pay the deficiency taxes. Considering that the PAN and FLD were duly served and still accused failed to settle her deficiency income tax liability, the elements of tax evasion for TYs 2004, 2006, 2008, 2009, 2010, 2011 and 2012 were satisfied.

Accused's counter-arguments:

During the trial, accused mainly posits that plaintiff failed to prove that she has unexplained source of income by merely using the expenditure method. Accused denies the charges filed against her as the money used to

buy the properties which were allegedly her expenses came from withdrawn insurance policies that are not considered income. Moreover, she claims that the alleged payments of the properties subject of the investigation were not proven by prosecution to be made in the year subject of the Information; rather, it was paid in installments which commenced prior to the TYs subject of the investigation. Accused denies the charges of failure to supply accurate information in the tax returns as there is nothing to declare considering that the alleged income were not actually income, but were return of premiums of insurance policies. Further, she claims that, upon closure of Jo-Chris Trading, she invested in several domestic corporations and received *per diems* and dividends therefrom. As recipient of dividends, she is, thus, not required to file ITRs as the dividends were subjected to final withholding tax.

ISSUES

The Pre-Trial Order limits the issues of the case as follows:

1. Is the accused guilty as charged in the 12 Informations filed against her?

2. Is the government prejudiced concerning the amounts stated in the Informations covering taxable years 2004, 2006, 2008, 2009, 2010, 2011, and 2012?

THE COURT'S RULING

Elements of the crime charged against accused Napoles

In the instant twelve (12) cases, accused is charged with violation of Sections 254 and 255 of the NIRC of 1997, as amended.

Specifically, accused is charged of the following for the following TYs:

CTA Crim. Case No.	Section in NIRC of 1997	Taxable Year
O-485	255	2004
O-486	255	2006
O-487	255	2008
O-488	255	2009
O-490	254	2012
O-491	254	2011
O-492	254	2010
O-493	254	2009

CTA Crim. Case No.	Section in NIRC of 1997	Taxable Year
O-494	254	2008
O-495	254	2006
O-496	254	2004
O-498	255	2011

Section 254 of the NIRC of 1997, as amended, provides:

> "SEC. 254. *Attempt to Evade or Defeat Tax.* — Any person who **willfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment thereof** shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Thirty thousand pesos (₱30,000) but not more than One hundred thousand pesos (₱100,000) and suffer imprisonment of not less than two (2) years but not more than four (4) years: Provided, That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes." *(Emphasis supplied)*

Corollary, the following elements must be established:

1. A tax is imposed under the NIRC, and a person, natural or juridical, is liable for the said tax;

2. There is an attempt in any manner to evade or defeat any tax imposed under the NIRC or the payment thereof; and,

3. Such attempt to evade or defeat tax or the payment thereof is willful.

The Supreme Court, in the case of *Commissioner of Internal Revenue vs. The Estate of Benigno P. Toda, Jr.*,[238] held that tax evasion connotes the integration of three (3) factors: (1) the end to be achieved, i.e. the payment of less than that known by the taxpayer to be legally due, or the non-payment of tax when it is shown that a tax is due; (2) an accompanying state of mind which is described as being evil, in bad faith, willful, or deliberate and not accidental; and, (3) a course of action or failure of action which is unlawful.

On the other hand, Section 255 of the NIRC of 1997, as amended, provides as follows:

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

[238] G.R. No. 147188, September 14, 2004.

> **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 (₱10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years." *(Emphasis supplied)*

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

1. The accused is a person required under the NIRC or rules and regulations to pay any tax or make a return or supply correct and accurate information;

2. The accused failed to pay such tax, make such return or supply correct and accurate information, at the time or times required by law or rules and regulations; and,

3. Such failure to pay such tax, make such return or supply correct and accurate information is willful.

The Court acquits accused Napoles of all charges.

SECTION 255 OF THE NIRC OF 1997, AS AMENDED: CTA Crim. Case Nos. O-485, O-486, O-487 and O-488

The Court shall discuss first whether accused is liable under Section 255 of the NIRC of 1997, as amended, for TYs 2004, 2006, 2008 and 2009 (CTA Crim. Case Nos. O-485, O-486, O-487, and O-488, respectively). During these TYs, accused was still engaged in business as the sole proprietor of Jo-Chris Trading.

First Element* — *The accused is a person required under the NIRC or rules and regulations to pay any tax, make a return or supply correct and accurate information.

Sections 51 and 74 of the 1997 NIRC, as amended, provide for individuals who are required to file income tax returns, to wit:

"SEC. 51. *Individual Return.* —

(A) Requirements. —

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

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

(b) Every Filipino citizen residing outside the Philippines, on his income from sources within the Philippines;

(c) Every alien residing in the Philippines, on income derived from sources within the Philippines; and

(d) Every nonresident alien engaged in trade or business or in the exercise of profession in the Philippines.

(2) The following individuals shall not be required to file an income tax return:

(a) An individual whose gross income does not exceed his total personal and additional exemptions for dependents under Section 35: Provided, **That a citizen of the Philippines and any alien individual engaged in business or practice of profession within the Philippines shall file an income tax return, regardless of the amount of gross income**;

(b) An individual with respect to pure compensation income, as defined in Section 32(A)(1), derived from sources within the Philippines, the income tax on which has been correctly withheld under the provisions of Section 79 of this Code: *Provided,* That an individual deriving compensation concurrently from two or more employers at any time during the taxable year shall file an income tax return;

(c) An individual whose sole income has been subjected to final withholding tax pursuant to Section 57(A) of this Code; and

(d) A minimum wage earner as defined in Section 22(HH) of this Code or an individual who is exempt from income tax pursuant to the provisions of this Code and other laws, general or special." *(Emphasis supplied)*

"SEC. 74. *Declaration of Income Tax for Individuals.* –

(A) *In General.* – Except as otherwise provided in this Section, every individual subject to income tax under Sections 24 and 25(A) of this Title, who is receiving self-employment income, whether it constitutes the sole source of his income or in combination with salaries, wages and other fixed or determinable income, shall make and file a declaration of his estimated income for the current taxable year on or before April 15 of the same taxable year. In general, **self-employment income consists of the earnings derived by the individual from the practice of profession or conduct of trade or business carried on by him as a sole proprietor or by a partnership of which he is a member.** Nonresident Filipino citizens, with respect to income from without the Philippines, and nonresident aliens not engaged in trade or business in the Philippines, are not required to render a declaration of estimated income tax. The declaration shall contain such pertinent information as the Secretary of Finance, upon recommendation of the Commissioner, may, by rules and regulations prescribe. An individual may make amendments of a declaration filed during the taxable year under the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner.

(B) *Return and Payment of Estimated Income Tax by Individuals.* – The amount of estimated income as defined in Subsection (C) with respect to which a declaration is required under Subsection (A) shall be paid in four (4) installments. The first installment shall be paid at the time of the declaration and the second and third shall be paid on August 15 and November 15 of the current year, respectively. The fourth installment shall be paid on or before April 15 of the following calendar year when the final adjusted income tax return is due to be filed.

(C) *Definition of Estimated Tax.* – In the case of an individual, the term 'estimated tax' means the amount which the individual declared as income tax in his final adjusted and annual income tax return for the preceding taxable year minus the sum of the credits allowed under this Title against the said tax. If, during the current taxable year, the taxpayer reasonable *[sic]* expects to pay a bigger income tax, he shall file an amended declaration during any interval of installment payment dates." *(Emphasis and underscoring supplied)*

Based on the foregoing, an individual Filipino citizen residing in the Philippines is generally required to file his/her income tax return. By way of exception, if said individual's annual taxable income does not exceed the

amount of his/her personal and additional exemptions, then said individual need not file an ITR. However, an individual engaged in business or practice of profession within the Philippines shall file an ITR, regardless of the amount of gross income.

To prove the first element, plaintiff presented a Certification that the accused is a registered taxpayer of then RDO No. 43A – East Pasig City,[239] with Tax Identification Number (TIN) 174-764-580-000 and doing business under the trade name Jo-Chris Trading. As an individual engaged in business within the Philippines, accused is required to file an ITR, regardless of the amount of her gross income. As such, plaintiff has shown compliance with the said *first* element under Section 255 of the NIRC of 1997, as amended.

***Second Element** — The accused failed to pay such tax, make such return or supply correct and accurate information, at the time or times required by law or rules and regulations.*

Section 24 of the 1997 NIRC, as amended by Republic Act (R.A.) No. 9504, reads as follows:

"SEC. 24. *Income Tax Rates.* —

(A) *Rates of Income Tax on Individual Citizen and Individual Resident Alien of the Philippines.* —

(1) An income tax is hereby imposed;

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

(b) On the taxable income defined in Section 31 of this Code, other than income subject to tax under Subsections (B), (C) and (D) of this Section, derived for each taxable year from all sources within the Philippines by an individual citizen of the Philippines who is residing outside of the Philippines including overseas contract

[239] Exhibit "P-2", Docket – Vol. 3 (CTA Crim. Case No. O-485), p. 1382. Consolidated with RDO No. 43B - West Pasig City and renamed as RDO NO. 43 – Pasig City pursuant to Revenue Administrative Order No. 2-16.

workers referred to in Subsection (C) of Section 23 hereof; and

(c) On the taxable income defined in Section 31 of this Code, other than income subject to tax under Subsections (B), (C) and (D) of this Section, derived for each taxable year from all sources within the Philippines by an individual alien who is a resident of the Philippines.

(2) *Rates of Tax on Taxable Income of Individuals.* — The tax shall be computed in accordance with and at the rates established in the following schedule:

Not over ₱10,000	5%
Over ₱10,000 but not over P30,000	₱500+10% of the excess over ₱10,000
Over ₱30,000 but not over ₱70,000	₱2,500+15% of the excess over ₱30,000
Over ₱70,000 but not over ₱140,000	₱8,500+20% of the excess over ₱70,000
Over ₱140,000 but not over ₱250,000	₱22,500+25% of the excess over ₱140,000
Over ₱250,000 but not over ₱500,000	₱50,000+30% of the excess over ₱250,000
Over ₱500,000	₱125,000+32% of the excess over ₱500,000

For married individuals, the husband and wife, subject to the provision of Section 51(D) hereof, shall compute separately their individual income tax based on their respective total taxable income: *Provided*, That if any income cannot be definitely attributed to or identified as income exclusively earned or realized by either of the spouses, the same shall be divided equally between the spouses for the purpose of determining their respective taxable income. xxx." *(Emphasis supplied)*

Based on the afore-cited provisions, an individual citizen residing in the Philippines is liable for income tax on his/her income earned within and without the Philippines. The applicable income tax rates shall be 5% to 32%, whereas income not exceeding ₱10,000 is exempt from income tax.

To prove that accused failed to supply correct or accurate information in her ITR and pay the corresponding tax thereon, plaintiff presented the BIR Returns Processing System Printouts with BIR Collections and Bank Reconciliation System Printouts and the ITRs she filed.[240]

[240] Exhibits "P-2", "P-21" "P-22" and "P-24", Docket – Vol. 3 (CTA Crim. Case No. O-485), p. 1382 and pp. 1423 to 1445.

According to plaintiff, accused only declared the following income:

Reported Net Income in PHP	TY	Exhibit No.
376,882.85	1999	P-21
615,350.39	2000	P-21-A
451,420.70	2001	P-21-B
325,856.67	2002	P-21-C
187,443.40	2003	P-21-D
195,800.00	2004	P-21-H
772,824.09	2005	P-21-E
0	2006	P-21-F
721,909.97	2007	P-21-G
100,744.59	2008	P-22
0	2009	P-24
0	2010	P-2
0	2011	P-2
0	2012	P-2

On the other hand, plaintiff claims that accused amassed real properties, insurance investment policies, and has infused capital in different corporations:

Expenses/Acquisitions	Amount	Evidence	Exhibit
Condominium Unit No. 2335 at the City Land Developers Inc.	Php883,518.85 (half of the amount paid as she is married)	1. Deed of Absolute Sale dated November 05, 2004 2. Condominium Certificate of Title No. PT-41730	Exhibit P-3 Exhibit P-3-A
Parking Slot No. P326 at the City & Land Developers Inc.	Php281,965.75 (half of the amount paid as she is married)	1. Deed of Absolute Sale dated May 09, 2006 2. Condominium Certificate of Title No. PT-45292	Exhibit p-4 Exhibit P-4-A
Condominium Unit No. 2502 at the Discovery Centre Condominium Project	Php4,593,325.00 (half of the amount paid as she is married	1. Deed of Absolute Sale dated November 12, 2009 2. Condominium Certificate of Title No. 011-2010000869	Exhibit P-5 Exhibit P-5-A
Parcels of Land (Lots No. 1084 and 1086) located in Bayambang, Pangasinan	Php1,493,333.33 (a portion of the	I. Deed of Absolute Sale dated January 12, 2012	Exhibit P-6

Expenses/Acquisitions	Amount	Evidence	Exhibit
	amount paid as she is a co-owner)	2. Transfer Certificate of Title No. 026-2013001382 (Lot 1084)	Exhibit P-6-A
		3. Transfer Certificate of Title No. 026-2013001383 (Lot No. 1086)	Exhibit P-6-B
Parcel of Lot No. 36-M Located at Lanao, Kidapawan City	Php 250,000.00 (half of the amount paid as she is married)	Deed of Absolute Sale dated May 02, 2012	Exhibit P-7
		Transfer Certificate of the Title No. 152-2012000752	Exhibit P-7-A
Insurance Policies from PhilAm Life		Letter dated 18 September 2013 Issued by Head of Compliance of Philam Life, Atty. Ione Fay S. Canto	Exhibit P-8
	Premium payment: Php167,676.26 per year	**Property Life Insurance** policy covered by Policy No. 1000275165	Exhibit P-8-A
	Premium payment: Php34,700.00 per year	**Quantum Life Insurance** policy covered by Policy No. 1004817665 effective 28 July 2005	Exhibit P-8-B
	Premium payment: Php166,005.40 per year	**Prosperity Life Insurance** policy covered by Policy No. 0231460872 effective 25 October 2001	Exhibit P-8-C
	Premium payment: Php161,462.54 per year	**Prosperity Life Insurance** policy covered by policy no. 0231460863 effective 25 October 2001	Exhibit P-8-D

Expenses/Acquisitions	Amount	Evidence	Exhibit
	Premium payment Php29,580.00 per year	**Quantum Life Insurance** policy covered by Policy No.1004817674 effective 6 August 2005	Exhibit P-8-E
Insurance Policies from Insular Life Assurance Co.	Premium payment: (2006) Php5,118,827.83	Certification issued by Insular Life Assurance Co. Ltd. dated September 11, 2013 covering Life Insurance Policy No. A001818852	Exhibit P-9
	Premium payment: (2009-2012) Php1,581,400.00 per year	Certification issued by Insular Life Assurance Co, Ltd. dated September 11, 2013 covering Life Insurance Policy No. A002020138	Exhibit P-9-A
	Premium payment: (2009-2012) Php1,549,700.00 per year	Certification issued by Insular Life Assurance Co, Ltd. Dated September 11, 2013 covering Life Insurance Policy No. A002169130	Exhibit P-9-C
Insurance policies from AXA Philippines 2004 2006	 Php 1,662,556.24 Php 1,124,960.00 Php 3,694,040.00 Php 1,535,760.00 Php10,000,000.00	Letter dated 11 September 2013 issued by Head of Compliance of Philippine AXA Life Insurance Corporation, Calvin L. Kochet-Chua, with Life Insurance and Investment-Linked Insurance policy in the name of accused as owner	Exhibits P-10 to P-10-M
Honda Civic (2006)	Php1,102,000.00	LTO Official Receipt for the purchased as Honda Civic in 23 May 2006 with Engine No. RRKD67-6000135	Exhibits P-12 to P-12-B

Expenses/Acquisitions	Amount	Evidence	Exhibit
		A Copy of the **LTO Certification of Registration** A copy of the **LTO Vehicles Sales Invoice**	
Porsche Cayenne (2008)	Php2,310,000.00	**LTO Certificate of Registration,** for purchased of a Porsche Cayenne in 17 June 2008 with Engine No. M5500163819750 and Plate No. CYN 78 **LTO Official Receipt** **Vehicle Sales Invoice**	Exhibits P-13 to P-13-B
Investment (2008) Magdalena Luy Lim Foundation, Inc. (Lim Luy Kim Giok Foundation Inc.)	Php180,000.00	SEC Amended Articles of Incorporation of Janet Napoles contribution of Php180,000.00 as an Luy Kim Giok Foundation, Inc.	Exhibits P-14 to P-14-A
Investment (2008) JLN Construction and Development Corp.	Php1,250,000.00	**SEC Certification Incorporation** Janet Napoles contribution of Php1,250,000.00 as an incorporator	Exhibits P-15 to P-15-A, P-29, and P-30
(2010) Additional	Php1,187,500.00	Janet Napoles contribution of Php1,187,500.00 as an incorporator	
Investment (2011) Magdalena Luy Limchu Charity Foundation	Php500,000.00	**SEC Articles of Incorporation** Janet Napoles contribution of Php500,000.00 as an incorporator	Exhibits P-16 To P-16-A
Investment (2008) Asia Pacific Gun Club Inc. (Foundation)	Php50,000.00	**Certificate of Incorporation**	Exhibits P-28 and P-28-A

Expenses/Acquisitions	Amount	Evidence	Exhibit
		Janet Napoles paid Php50,000.00 to the Corporation	

Prescinding from the above findings, plaintiff ascertained that the accused is liable for deficiency income tax on her alleged undeclared income for TYs 2004, 2006, 2008 and 2009 and that she failed to supply such in her ITRs for the foregoing TYs, using the indirect approach, particularly, the Expenditure Method. The Expenditure Method is based on the theory that if the subject taxpayer's expenditures during a given year exceed his reported income, and the source of the funds used to make the expenditures is unexplained, it may be inferred that such expenditures represent unreported income. The formula for such method is as follows:

Expenditure (Money Spent or Applied)	
Less:	Non-Taxable Sources of Funds
Equals:	**Corrected Adjusted Gross Income**
Less:	Itemized/Standard deduction
	Personal Exemptions
Equals:	**Corrected Taxable Income**
Less:	Reported Taxable Income
Equals:	**Additional Taxable Income (Unreported Income)**

The rationale behind the indirect method in the determination of tax liabilities is embodied in Section 6 (b) of the NIRC of 1997, as amended, which provides that the CIR is authorized to assess a taxpayer based on the best evidence obtainable in case there is reason to believe that there is fraud, to wit:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
>
> xxx xxx xxx
>
> (B) Failure to Submit Required Returns, Statements, Reports and Other Documents. — When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by laws or rules and regulations or when there is reason to believe that any such report is false, incomplete or erroneous, the Commissioner shall assess the proper tax on the best evidence obtainable."

In relation thereto, in *Bureau of Internal Revenue vs. Court of Appeals*,[241] the Supreme Court elucidated on how the indirect approach such as the Expenditure Method is used in criminal cases, *viz*:

[241] G.R. No. 197590, November 24, 2014.

"In *Ungab v. Judge Cusi, Jr.*, we ruled that tax evasion is deemed complete when the violator has knowingly and willfully filed a fraudulent return with intent to evade and defeat a part or all of the tax. Corollarily, an assessment of the tax deficiency is not required in a criminal prosecution for tax evasion. However, in *Commissioner of Internal Revenue v. Court of Appeals,* we clarified that although a deficiency assessment is not necessary, the fact that a tax is due must first be proved before one can be prosecuted for tax evasion.

In the case of income, for it to be taxable, there must be a gain realized or received by the taxpayer, which is not excluded by law or treaty from taxation. The government is allowed to resort to all evidence or resources available to determine a taxpayer's income and to use methods to reconstruct his income. **A method commonly used by the government is the expenditure method, which is a method of reconstructing a taxpayer's income by deducting the aggregate yearly expenditures from the declared yearly income**. The theory of this method is that when the amount of the money that a taxpayer spends during a given year exceeds his reported or declared income and the source of such money is unexplained, it may be inferred that such expenditures represent unreported or undeclared income.

In the case at bar, petitioner used this method to determine respondent spouses' tax liability. Petitioner deducted respondent spouses' major cash acquisitions from their available funds. Thus:

xxx

And since the underdeclaration is more than 30% of respondent spouses' reported or declared income, which under Section 248 (B) of the NIRC constitutes as *prima facie* evidence of false or fraudulent return, petitioner recommended the filing of criminal cases against respondent spouses under Sections 254 and 255, in relation to Section 248 (B) of the NIRC.

The CA, however, found no probable cause to indict respondent spouses for tax evasion. It agreed with Acting Justice Secretary Devanadera that **petitioner failed** to make "a categorical finding of the exact amount of tax due from [respondent spouses]" and **"to show sufficient proof of a likely source of [respondent spouses'] income that enabled them to purchase the real and personal properties** adverted to ...."

We find otherwise.

xxx

The revenue officers also identified the likely source of the unreported or undeclared income in their Reply-Affidavit. The pertinent portion reads:

7. ...

> [Respondent spouses] are into rental business and the net profit for six (6) years before tax summed only to ₱1,238,938.32 (an average of more or less Php200,000.00 annually). We asked respondent [Antonio] if we can proceed to his rented property to [appraise] the earning capacity of the building [for] lease/rent, but he declined our proposition. Due to such refusal made by the respondent, [petitioner], thru its examiners, took pictures of the subject property and came up with the findings that indeed the unexplained funds sought to have been used in acquiring the valuable property in Tagaytay ...came from the underdeclaration of rental income."
>
> Apparently, the revenue officers considered respondent Antonio's rental business to be the likely source of their unreported or undeclared income due to his unjustified refusal to allow the revenue officers to inspect the building."

Based on the foregoing, in criminal cases, when the Expenditure Method is resorted to in the determination of tax liabilities, it is not enough that the expenditures are proven, the plaintiff must likewise show proof of the likely source of income or funds which the accused used for his/her expenditures.

It is also worth noting that the BIR in Revenue Audit Memorandum Order (RAMO) No. 1-00[242] provided that, in criminal cases, proof of the likely source of income is a pre-requisite, to wit:

> "2. Indirect Approach or by Indirect Method — This relies upon circumstantial evidence of determining the correct income or transaction of a taxpayer. Circumstantial evidence is that which tends to prove the existence of the disputed fact by proof of other facts which have a legitimate tendency to lead the mind to a conclusion that the fact exists which is sought to be established. However, where circumstantial evidence is relied upon to prove a fact, the circumstances must be proved by direct evidence and cannot themselves be inferred.
>
> xxx
>
> 2. **Expenditures Method or Excess Cash Expenditures Method**
>
> The expenditures method proceeds on the theory that where the amount of money which a taxpayer spends during a given year exceeds his reported income, and the source of such money is otherwise unexplained, it may be inferred that such expenditures represent unreported income.
>
> xxx

[242] Updated Handbook on Audit Procedures and Techniques Volume I (Revision —Year 2000).

> **As in the case of the Net Worth Method**, when a tax case is civil in nature, direct proof of sources of income is not essential. **However, when a criminal case is filed against the taxpayer, the need for evidence of a likely source of income becomes a prerequisite**." *(Emphasis supplied)*

Under the same RAMO, specifically under the Net Worth Method, the need for evidence of source of income is discussed in detail as follows:

> "1. Net Worth or Inventory Method or Net Worth & Expenditure Method
>
> This is a method of reconstructing income based on the theory that if the taxpayer's net worth has increased in a given year in an amount larger than his reported income, he had understated his income for that year.
>
> xxx
>
> *Circumstance and conditions necessary to warrant the use of the indirect method in establishing a prima facie case of fraud:*
>
> xxx
>
> (4) The need for evidence of the source of income under this method:
>
> > "In all the leading cases on this matter, courts are unanimous in holding that when the tax case is civil in nature, direct proof of sources of income is not essential. . . . **However, when a taxpayer is criminally prosecuted for tax evasion, the need for evidence of a likely source of income becomes a pre-requisite for a successful prosecution** . . ." RMC No. 43-74.
>
> This proof of a likely source of income may be shown by any of the following:
>
> (1) Demonstrating that there were specific omissions of income items by the taxpayer in his income tax return.
>
> (2) A showing that the nature of the taxpayer's business is such that it has capacity of generating a substantial income.
>
> (3) Proofs of underdeclaration of income by the existence of unregistered sales invoices, which were not recorded in the books;
>
> (4) Findings of unrecorded purchases;
>
> (5) Existence of business permits, license from government agencies as to the types of businesses the taxpayer is engaged in;
>
> (6) Keeping separate sets of books — one registered and the other reflecting the correct transactions of a business.

(7) Use of false invoices or documents, and

(8) Willful destruction of accounting records." *(Emphasis supplied)*

Clearly, the plaintiff must also show the likely source of income or funding for the expenditures it identified during the investigation.

In the case at bar, plaintiff based its finding of undeclared income from the expenditures alone of accused Napoles in TYs 2004, 2006, 2008 and 2009. Records are bereft of any effort to show circumstances similar to the above. For instance, there was no showing that the nature of the accused's business is such that it has the capacity of generating a substantial income or that specific income items were omitted by the accused in her ITRs. In fact, when plaintiff's witness was asked if they were able to determine if the source of her money (for the expenditures) was her income and if they have proof of such fact, witness responded in this wise:

"Atty. Encarnacion:

Final question for this witness, Your Honor. Madam Witness, in your investigation of Mrs. Napoles, **were you able to determine the source of her money if this was her income**?

Ms. Madera:

Based on the documents that we have gathered with regard to the conduct of our preliminary investigation and formal investigation from third party as well as certification from the Revenue District Officer and Collection Officers are concerned that **she failed to file returns for 2010, 2011 and 2012 and reported no income for 2009**.

Atty. Encarnacion:

I think, Your Honor, the witness is not answering my question. My question is simple, **were you able to determine if the expenses that you attributed to Mrs. Napoles were sourced from her income**?

Ms. Madera:

Yes, sir.

Atty. Encarnacion:

Were you able to determine that they came from her income?

Ms. Madera:

The expenditure, sir?

Atty. Encarnacion:

Yes.

Ms. Madera:

No, sir.

Atty. Encarnacion:

What is your proof that it is her income?

Ms. Madera:

Based on the documents that we have gathered in the conduct of our investigation, we were able to secure certification from the Assistant Commissioner that the no taxes were paid by Mrs. Napoles as to estate tax, capital gains tax, final taxes...

JUSTICE LIBAN:

Excuse me. **The question is only proof of that income.**

Ms. Madera:

Yes, Your Honor. We were able to establish that the expenditure came from her undeclared income.

JUSTICE UY:

And your proof?

Ms. Madera:

Proof, Your Honors, is based on the documents that we have gathered in the conduct of our investigation." *(Emphasis supplied)*

A perusal of the records reveals that the documents being referred to by Ms. Madera were the certifications, TCTs, GIS, Deeds of Absolute Sale, and LTO car registration which are hardly evidence of a likely source of income. In addition, while plaintiff presented various registration documents of the companies/foundations in which accused Napoles invested, no other evidence was presented to show the capacity of these entities to generate income from which accused Napoles may have sourced substantial income which she failed to declare in her ITR. Even assuming that accused earned income from these investments, such income will be in the nature of dividends which is considered passive income. In that case, the passive income is not required to be declared in her ITR as the same is subject to final tax.[243]

In addition, for TY 2006, accused apparently had a source of cash which was not considered by the examiners in their investigation. This was disclosed during the hearing held on June 14, 2022 wherein the parties stipulated that the accused encashed/withdrew all her premium payments for investment-linked insurance policies for years 2004 and 2006 with AXA Life Insurance Corporation (AXA). The premiums paid in 2004 were withdrawn in 2006 while the premiums paid in 2006 were withdrawn in 2011. The pertinent portions of the TSN taken during the said hearing read:[244]

"JUSTICE LIBAN:

Atty. Encarnacion and Atty. Tortoles, have you talked to each other, compared, etc.?

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[243] Section 24(B)(2) of the NIRC of 1997, as amended, provides that cash dividends received by a resident citizen from domestic corporations are subject to final tax of 10%. In relation thereto, Section 2.57(A) of RR No. 2-1998, or the Withholding Tax Regulations, provide:

"(A) *Final Withholding Tax.* — Under the final withholding tax system the amount of income tax withheld by the withholding agent is constituted as a full and final payment of the income tax due from the payee on the said income. **The liability for payment of the tax rests primarily on the payor as a withholding agent.** Thus, in case of his failure to withhold the tax or in case of under withholding, the deficiency tax shall be collected from the payor/withholding agent. **The payee is not required to file an income tax return for the particular income.**" *(Emphasis supplied)*

[244] TSN, June 14, 2022, pp. 2 to 4.

Atty. Encarnacion:

Yes, Your Honor, outside we talked.

Atty. Tortoles:

However, Your Honors, I am confused with the documents because it was first time to be confronted with such documents.

JUSTICE LIBAN:

I understand that she was your witness?

Atty. Tortoles:

Yes, Your Honor.

JUSTICE LIBAN:

What did she identify?

Atty. Tortoles:

She identified the certification which was issued by the ACSA. It's all **about the premium paid by the accused for the year 2004 and 2006**.

JUSTICE LIBAN:

What do you want to prove in his testimony now?

Atty. Encarnacion:

I'm just requesting from the previous witness Ms. Katherine Rees a certification as regards the current status of the insurance policies of Mrs. Napoles.

JUSTICE LIBAN:

What kind of insurance is this?

Atty. Encarnacion:

This is an investment link insurance.

JUSTICE LIBAN:

What is it that you want to prove?

Atty. Encarnacion:

Because according to the documents that was submitted today, I just saw it today. **The policies of Mrs. Napoles had already been encashed as early as 2006 and 2011**.

Atty. Tortoles:

As to that, Your Honors, if that would be the purpose of the presentation, we are willing to stipulate considering that the position of the BIR is that accused Napoles paid the premiums on 2000 for 2006, with regard to the withdrawal of such, it is I think for the BIR, it is irrelevant.

JUSTICE LIBAN:

She is willing to stipulate that the..

Atty. Tortoles:

The status of the policies or the premium paid for the policies which was acquired in years 2004 and 2006.

JUSTICE LIBAN:

And the certification is merely that?

Atty. Encarnacion:

The certification and the witness will identify the certification that they have prepared the summary.

Atty. Tortoles:

We are willing to stipulate, Your Honors.

JUSTICE LIBAN:

She is willing to accept that document.

Atty. Tortoles:

But, Your Honors, may I be allowed to read it because it was just presented today.

JUSTICE UY:

Who is the witness who supposed to identify?

Atty. Encarnacion:

Katherine Rees. She was our witness way back in 2017.

JUSTICE LIBAN:

She brought with her the documents subject of subpoena duces tecum.

JUSTICE UY:

Certification as to what? as to the payment of premium or the encashment?

JUSTICE LIBAN:

That there was an insurance?

Atty. Tortoles:

Yes, Your Honors, there was an insurance in year 2004 and the premium for that insurance was paid in 2004. We are referring here, Your Honor, with regard to the policies acquired in 2004, it was encashed in 2006. With regard to the premium for the policies paid for 2006, the premiums were paid in 2006 and they were encashed in 2011. We are willing to stipulate.

Atty. Encarnacion:

They were withdrawn, I think the accurate insurance term is withdrawn. It was a full withdrawal.

Atty. Tortoles:

We are willing to stipulate, Your Honors.

JUSTICE UY:

So you are marking the documents?

Atty. Encarnacion:

Yes, Your Honors, I would like to request the certification dated June 13, 2022 addressed to the Honorable Erlinda P. Uy, Associate Justice and Chairperson and signed by Ailyn Puerto, Regional Head, Metro Manila, Policy services and Branch Operation of Philippine ACSA Life Insurance Corporation consisting of several documents showing the receipts of payment made by the accused and the summary ledger prepared by Dennis Colico, Medlyn Bravo, Macey Joy Lastrilla, reviewed by CJ Armada and approved by Aileen Puerto showing the details of the various policies, the 13 insurance policies procured by Janet Lim Napoles and her family members for the years 2004 and 2006.

JUSTICE UY:

Exhibit? U

Atty. Encarnacion:

The Certification is Exhibit A-43 and the Summary is A-44. This one I'll just include it as a bundle A-43 and the attached official receipts.

JUSTICE UY:

So, you are through with this witness?

Atty. Encarnacion:

Yes, Your Honor."

Records show that the accused procured series of life and investment-linked insurance policies with AXA for the years 2004 and 2006,[245] with the following payments of insurance premiums:

Owner	Insured	Transaction Date	Amount of Premium Paid
NAPOLES JANET LIM	NAPOLES JAMES CHRISTOPHER LIM	01/15/2004	USD 10,001.00
NAPOLES JANET LIM	NAPOLES JO CHRISTINE LIM	01/15/2004	USD 10,001.00
NAPOLES JANET LIM	NAPOLES JANE CATHERINE LIM	01/15/2004	USD 10,001.00
NAPOLES JANET LIM	NAPOLES JOHN CHRISTIAN LIM	04/05/2004	USD 5,000.00
NAPOLES JANET LIM	NAPOLES JOHN CHRISTIAN LIM	04/05/2004	USD 5,000.00
NAPOLES JANET LIM	NAPOLES JANE CATHERINE LIM	04/05/2004	USD 5,000.00
NAPOLES JANET LIM	NAPOLES JANE CATHERINE LIM	04/05/2004	USD 5,000.00
Subtotal - 2004 [USD]			**USD 50,003.00**
NAPOLES JANET LIM	NAPOLES JEANE CATHERINE LIM	01/19/2006	USD 30,000.00
NAPOLES JANET LIM	NAPOLES JOHN CHRISTIAN LIM	01/19/2006	USD 40,000.00
NAPOLES JANET LIM	NAPOLES JAMES CHRISTOPHER LIM	03/06/2006	USD 20,000.00
NAPOLES JANET LIM	NAPOLES JOHN CHRISTIAN LIM	03/06/2006	USD 10,000.00
Subtotal - 2006 [USD]			**USD 100,000.00**
NAPOLES JANET LIM	NAPOLES JANET LIM	12/28/2006	Php 5,000,000.00
NAPOLES JANET LIM	NAPOLES JANET LIM	12/28/2006	Php 5,000,000.00
Subtotal - 2006 [PHP]			**Php 10,000,000.00**

Since the premiums paid in 2004 were all withdrawn in the year 2006, the accused will have an estimated return of premiums of US$50,003.00.

Nonetheless, the proceeds from withdrawal of premium payments on insurance policies are not income. Section 32(B) of the NIRC of 1997, as amended, clearly excludes return of premium from what are considered income.[246]

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[245] Exhibits "P-10 to P-10-M", Docket – Vol. 4 (CTA Crim. Case No. O-485), pp. 1398-1399.

[246] SEC. 32. Gross Income. –

xxx

(B) Exclusions from Gross Income. - The following items shall not be included in gross income and shall be exempt from taxation under this Title:

(1) Life Insurance. - The proceeds of life insurance policies paid to the heirs or beneficiaries upon the death of the insured, whether in a single sum or otherwise, but if such amounts are held by the insurer under an agreement to pay interest thereon, the interest payments shall be included in gross income.

(2) **Amount Received by Insured as Return of Premium. - The amount received by the insured, as a return of premiums paid by him under life insurance, endowment, or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon surrender of the contract.**

xxx

In fact, prosecution's witness, Ms. Madera, agreed during the June 14, 2022 hearing that proceeds from the withdrawal of premiums are not income, to wit:[247]

> "JUSTICE UY:
>
> What is your question?
>
> Atty. Encarnacion:
>
> **Would you consider the proceed as income of the insurance**?
>
> JUSTICE UY:
>
> Let the witness answer.
>
> Witness:
>
> **No, sir,** Our investigation got only expenditure method that's why we focused on her expenses and expenditure."

Based on all the foregoing, plaintiff was unsuccessful in proving the *second* element that accused failed to pay income tax or to supply correct and accurate information in her ITRs for TYs 2004, 2006, 2008 and 2009. In the absence of proof showing accused's likely source of income for TYs 2004, 2006, 2008 and 2009, this Court cannot consider the amounts computed through the Expenditure Method as the undeclared income of the accused for the questioned TYs nor can we consider the insurance premiums withdrawn in 2006 as taxable income.

Third Element* — *Such failure to pay such tax, make such return or supply correct and accurate information is willful.

As it is, with the *second* element not proven, there is no act or omission which the Court may characterize as willful. As such, the *third* element is also not satisfied herein.

Even assuming *arguendo* that the *first* and *second* elements were present, this Court finds that the *third* element was still lacking.

In *People vs. Mendez*,[248] the Supreme Court discussed that the term *willful* as defined in the Ninth Edition of Black's Law Dictionary means voluntary and intentional, but not necessarily malicious. The term *willfully* was also construed as voluntary, intentional violation of a known legal duty. Hence, the Supreme Court held that the prosecution must prove that the taxpayer knew his legal duty to file an ITR, yet, the taxpayer knowingly, voluntarily, and intentionally neglected to do so. It must be stressed that the

[247] TSN, June 14, 2022, pp.38.
[248] G.R. Nos. 208310-11 & 208662, March 28, 2023.

willful neglect to file the required tax return cannot be presumed. It must be established fully as a fact and cannot be attributed to a mere inadvertent or negligent act.

Here, the accused filed her ITRs for TYs 2004, 2006, 2008 and 2009 wherein she declared her taxable income and paid the tax due thereon (if any). For her alleged other income from investments, accused claims that the same was subject to final tax, hence, she believed that the same was no longer required to be declared in her ITR. On the other hand, aside from the expenditures identified in their examination, plaintiff did not proffer any other evidence that accused willfully failed to supply correct information in her ITRs in relation to her alleged undeclared income.

In sum, plaintiff failed to prove beyond reasonable doubt that accused willfully failed to file return, pay tax and to supply correct and accurate information.

Accordingly, accused must be acquitted in CTA Crim. Case Nos. O-485, O-486, O-487 and O-488.

SECTION 255 OF THE NIRC OF 1997, AS AMENDED: CTA CRIM. CASE NO. O-498

Accused is likewise charged with violation of Section 255 of the NIRC of 1997, as amended, for her willful failure to file her ITR for TY 2011. What may be peculiar in this TY from the earlier discussed criminal cases is that, in the earlier TYs, accused was still engaged in business; in TY 2011, however, accused ceased to engage in business. Specifically, on September 7, 2010, the registration of "Napoles, Janet L/Jo-Chris Trading" had ended due to "Cessation of Registration".

First Element* — *The accused is a person required under the NIRC or rules and regulations to pay any tax, make a return or supply correct and accurate information.

As discussed, accused is registered with the BIR as the sole proprietor of Jo-Chris Trading. The registration of the said business was cancelled in the BIR registry system on September 7, 2010. The said cancellation means that,

beginning August 10, 2010, accused was no longer engaged in business as the sole proprietor of Jo-Chris Trading.

As cited earlier, Section 51(A)(2)(a) of the NIRC of 1997, as amended, provides that an individual whose gross income does not exceed his total personal and additional exemptions for dependents is not required to file an ITR; however, a citizen of the Philippines engaged in business within the Philippines shall file an ITR, regardless of the amount of gross income.

Consequently, for TYs 2011 and 2012, accused may no longer be required to file an ITR if her gross income does not exceed her total personal and additional exemptions. Stated otherwise, since accused is no longer engaged in business, she is not automatically required to file an ITR, regardless of her gross income.

Based on the foregoing, to establish if the *first* element is present, it is necessary to determine whether the accused's gross income during the subject TY exceeded her total personal and additional exemptions thereby qualifying as a person required to file an ITR.

In computing the accused's allegedly undeclared income for TY 2011, the plaintiff, using the Expenditure Method, arrived at a deficiency income tax of ₱3,139,405.43.

As already discussed earlier, in criminal cases, when the Expenditure Method is used, plaintiff must also show the likely source of income or funding for the expenditures identified during the investigation. Plaintiff, however, failed to present proof of accused's likely source of income. The only clear source of cash of the accused was the proceeds received when the 2006 insurance premiums were withdrawn in 2011. Nonetheless, such amount is not considered income. For this reason, we cannot consider the income derived from amount of expenditures alone as equivalent to undeclared income subject to income tax.

Evidently, plaintiff failed to show any income of accused in an amount exceeding her total personal and additional exemptions. Accordingly, the *first* element was not satisfied.

Second Element *— The accused failed to pay such tax, make such return or supply correct and accurate information, at the time or times required by law or rules and regulations.*

Since plaintiff failed to show any income of accused in an amount exceeding her total personal and additional exemptions, the *second* element is likewise not present in this case considering that there was no established gross income for TY 2011 which the accused failed to declare in her ITR and, consequently, no income tax she failed to pay.

Third Element *— Such failure to pay such tax, make such return or supply correct and accurate information is willful.*

As it is, with the *first* and *second* elements not proven, there is no act or omission which the Court may characterize as willful. As such, the *third* element is also not satisfied herein.

Even assuming *arguendo* that the *first* and *second* elements were present, the *third* element was still lacking.

As discussed earlier, the prosecution must prove that the taxpayer knew of his legal duty to file an ITR, yet, the taxpayer knowingly, voluntarily, and intentionally neglected to do so. It must be stressed that the willful neglect to file the required tax return cannot be presumed. It must be established fully as a fact and cannot be attributed to a mere inadvertent or negligent act.[249]

Here, the accused no longer filed her ITR for TY 2011 since she was no longer engaged in business as a sole proprietor beginning 2010. For her alleged other income from investments, accused claims that the same was subject to final tax; hence, she believed that the same was no longer required to be declared in her ITR. On the other hand, aside from the expenditures identified in their examination, plaintiff did not proffer any other evidence that accused willfully failed to supply correct information in her 2011 ITR in relation to her alleged undeclared income.

[249] *Ibid,* see note 248.

In sum, plaintiff failed to prove beyond reasonable doubt that accused willfully failed to file return, pay tax and to supply correct and accurate information.

Accordingly, accused must be acquitted in CTA Crim. Case No. O-498.

SECTION 254 OF THE NIRC OF 1997, AS AMENDED: CTA CRIM. CASE NOS. O-493, O-494, O-495 and O-496

Accused is also charged with violation of Section 254[250] of the NIRC of 1997, as amended, for TYs 2009, 2008, 2006, and 2004 (CTA Crim. Case Nos. O-493, O-494, O-495 and O-496, respectively). During these TYs, accused was still engaged in business as the sole proprietor of Jo-Chris Trading.

First Element* – *The accused is liable to pay tax under the NIRC of 1997, as amended.

As discussed previously, Section 24(A)(1)(a) of the NIRC of 1997, as amended, imposes income tax on income derived from all sources within and without the Philippines by every individual citizen of the Philippines residing therein. In addition, an individual citizen engaged in business or practice of profession within the Philippines shall file an ITR, regardless of the amount of gross income.

Pursuant thereto, accused, being registered with the BIR RDO No. 43A and doing business through her sole proprietorship, Jo-Chris Trading, at that time, was subject to income tax, required to file her ITR, regardless of her gross income, and pay the corresponding taxes thereon (if any).

Clearly, the *first* element has been complied with.

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[250] To recall, for there to be violation of Section 254 of the NIRC of 1997, as amended, the following elements must be present:
1. A tax is imposed under the NIRC, and a person, natural or juridical, is liable for the said tax;
2. There is an attempt in any manner to evade or defeat any tax imposed under the NIRC or the payment thereof; and,
3. Such attempt to evade or defeat tax or the payment thereof is willful.

Second Element – The accused attempted in any manner to evade or defeat any tax imposed under the NIRC of 1997, as amended, or the payment thereof.

Tax evasion is "a scheme used outside of those lawful means".[251] The term tax evasion "connotes fraud thru the use of pretenses and forbidden devices to lessen or defeat taxes".[252] In order to constitute tax evasion, the following factors must be proven:

(1) the end to be achieved, i.e., the payment of less than that known by the taxpayer to be legally due, or the non-payment of tax when it is shown that a tax is due;

(2) an accompanying state of mind which is described as being evil, in bad faith, willful, or deliberate and not accidental; and,

(3) a course of action or failure of action which is unlawful.

The existence of the above factors is intertwined with the determination by the plaintiff of the undeclared income of the accused.

Plaintiff posits that accused had undeclared income for TYs 2004, 2006, 2008 and 2009 on the basis of the excess of her expenditures over her declared income per ITR.

As already enunciated above, when using the Expenditure Method, proof of the likely source of unreported or undeclared income is a pre-requisite if the taxpayer is being criminally prosecuted for tax evasion. Plaintiff, however, was not able to present sufficient evidence of herein accused's likely source of income.

Section 32 of the NIRC of 1997, as amended, enumerates what constitutes gross income and what are the exclusions therefrom, *viz*:

"SEC. 32. *Gross Income.* -

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[251] *Commissioner of Internal Revenue vs. Estate of Benigno P. Toda*, Jr., G.R. No. 147188, September 14, 2004.
[252] *Yutivo Sons Hardware Company vs. Court of Tax Appeals*, G.R. No. L-13203, January 28, 1961.

(A) General Definition. - Except when otherwise provided in this Title, gross income means all income derived from whatever source, including (but not limited to) the following items:

(1) Compensation for services in whatever form paid, including, but not limited to fees, salaries, wages, commissions, and similar items;

(2) Gross income derived from the conduct of trade or business or the exercise of a profession;

(3) Gains derived from dealings in property;

(4) Interests;

(5) Rents;

(6) Royalties;

(7) Dividends;

(8) Annuities;

(9) Prizes and winnings;

(10) Pensions; and

(11) Partner's distributive share from the net income of the general professional partnership.

(B) **Exclusions from Gross Income**. - The following items shall not be included in gross income and shall be exempt from taxation under this Title:

> (1) Life Insurance. - The proceeds of life insurance policies paid to the heirs or beneficiaries upon the death of the insured, whether in a single sum or otherwise, but if such amounts are held by the insurer under an agreement to pay interest thereon, the interest payments shall be included in gross income.
>
> **(2) Amount Received by Insured as Return of Premium. - The amount received by the insured, as a return of premiums paid by him under life insurance, endowment, or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon surrender of the contract**. xxx" *(Emphasis supplied)*

Based on the foregoing, gross income means all income derived from whatever source. In addition, Section 36 of Revenue Regulations (RR) No. 2-40, otherwise known as the Income Tax Regulations, provides that income, in the broad sense, means all wealth which flows into the taxpayer other than as a mere return of capital.

In order for income to be taxable, there must be a gain realized or received by the taxpayer, which is not excluded by law or treaty from taxation.[253] Income is also "*defined as an amount of money coming to a person or corporation within a specified time, whether as payment for services, interest or profit from investment. Unless otherwise specified, it means cash or its equivalent. Income can also be thought of as a flow of the fruits of one's labor.*"[254]

A perusal of the evidence presented reveals that the plaintiff fell short in proving accused's likely source of income. Moreover, the amounts received as a return of premium are not considered income as elucidated above. There was also no showing that the funds used by the accused to cover her expenditures did not come from her savings or other assets.

In the absence of proof showing accused's likely source of income in TYs 2004, 2006, 2008 and 2009, this Court cannot consider the amounts computed through the Expenditure Method as the undeclared income of the accused for the questioned TYs.

Inasmuch as there was no duly established or proven undeclared income, it cannot be said that accused, with willful intent and through unlawful means, evaded to pay income tax legally due for TYs 2009, 2008, 2006, and 2004.

***Third Element* — Such attempt to evade or defeat tax or the payment thereof is willful.**

As it is, with the *second* element not proven, there is no act or omission which the Court may characterize as willful. As such, the *third* element is also not satisfied herein.

Even assuming *arguendo* that the *first* and *second* elements were present, this Court finds that the *third* element was still lacking.

As previously shown, the prosecution must prove that the taxpayer knew of his legal duty to file an ITR, yet, the taxpayer knowingly, voluntarily, and intentionally neglected to do so. Willful neglect to file the required tax

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[253] *Chamber of Real Estate Builders' Association, Inc. vs. Romulo*, G.R. No. 160756, March 9, 2010.
[254] *Conwi vs. Court of Tax Appeals*, G.R. Nos. 48532 & 48533, August 31, 1992, 213 SCRA 83, 87-88; citation omitted. Cited in *Commissioner of Internal Revenue vs. Shinko Electric Industries Co., Ltd.*, G.R. No. 226287, July 6, 2021.

return cannot be presumed. It must be established fully as a fact and cannot be attributed to a mere inadvertent or negligent act.[255]

Here, the accused filed her ITRs for TYs 2004, 2006, 2008 and 2009 wherein she declared her taxable income and paid the tax due thereon (if any). As earlier pointed out, accused claims that her alleged other income from investments was subject to final tax; hence, she believed that she was not required to declare the same in her ITR. Plaintiff, on the other hand, did not proffer any other evidence that accused willfully attempted to evade or defeat tax or payment thereof in relation to her alleged undeclared income, other than the expenditures identified in their examination.

Verily, plaintiff failed to prove beyond reasonable doubt that accused attempted to evade or defeat the payment of tax.

Accordingly, accused must be acquitted in CTA Crim. Case Nos. O-493, O-494, O-495 and O-496.

SECTION 254 OF THE NIRC OF 1997, AS AMENDED: CTA CRIM. CASE NOS. O-490, O-491 and O-492

Accused is likewise charged with violation of Section 254 of the NIRC of 1997, as amended, for TYs 2012, 2011, and 2010 (CTA Crim. Case Nos. O-490, O-491 and O-492, respectively). During these TYs, accused was no longer engaged in business as the sole proprietor of Jo-Chris Trading.

First Element* – *The accused is liable to pay tax under the NIRC of 1997, as amended.

The question now is whether the cancellation of registration of the accused's sole proprietorship business exempts her from paying income tax for TYs 2010, 2011 and 2012.

We answer in the negative.

As earlier cited, under Section 24 of the NIRC of 1997, as amended, a resident individual citizen is liable to pay income tax on his/her taxable income as defined in Section 31 thereof, derived for each taxable year from

[255] *Ibid*, see note 248.

all sources within and without the Philippines. This is irrespective of whether such individual is registered with the BIR or not. Furthermore, the income subject to final tax under Subsections (B), (C) and (D) of Section 24 of the NIRC of 1997, as amended, is no longer required to be included in the ITR, to wit:

> "SEC. 24. *Income Tax Rates.*-
>
> **(A) Rates of Income Tax on Individual Citizen and Individual Resident Alien of the Philippines**
>
> xxx
>
> ***(B) Rate of Tax on Certain Passive Income:*** -
>
> ***(1) Interests, Royalties, Prizes, and Other Winnings***. – A final tax at the rate of twenty percent (20%) is hereby imposed upon the amount of interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements; royalties, except on books, as well as other literary works and musical compositions, which shall be imposed a final tax of ten percent (10%); prizes (except prizes amounting to Ten thousand pesos (P10,000) or less which shall be subject to tax under Subsection (A) of Section 24; and other winnings (except Philippine Charity Sweepstakes and Lotto winnings), derived from sources within the Philippines: Provided, however, That interest income received by an individual taxpayer (except a nonresident individual) from a depository bank under the expanded foreign currency deposit system shall be subject to a final income tax at the rate of seven and one-half percent (1 1/2%) of such interest income: Provided, further, That interest income from long-term deposit or investment in the form of savings, common or individual trust funds, deposit substitutes, investment management accounts and other investments evidenced by certificates in such form prescribed by the Bangko Sentral ng Pilipinas (BSP) shall be exempt from the tax imposed under this Subsection: Provided, finally, That should the holder of the certificate pre-terminate the deposit or investment before the fifth (5th) year, a final tax shall be imposed on the entire income and shall be deducted and withheld by the depository bank from the proceeds of the long-term deposit or investment certificate based on the remaining maturity thereof:
>
> xxx
>
> ***(2) Cash and/or Property Dividends***. - A final tax at the following rates shall be imposed upon the cash and/or property dividends actually or constructively received by an individual from a domestic corporation or from a joint stock company, insurance or mutual fund companies and regional operating headquarters of multinational companies, or on the share of an individual in the distributable net income after tax of a partnership (except a general professional partnership) of which he is a partner, or on the share of an individual in the net income after tax of an association, a joint account. or a joint venture or consortium taxable as a corporation of which he is a member or co-venturer:
>
> xxx

> ***(C) Capital Gains from Sale of Shares of Stock not Traded in the Stock Exchange.*** - The provisions of Section 39(B) notwithstanding, a final tax at the rates prescribed below is hereby imposed upon the net capital gains realized during the taxable year from the sale, barter, exchange or other disposition of shares of stock in a domestic corporation, except shares sold, or disposed of through the stock exchange.
>
> xxx
>
> ***(D) Capital Gains from Sale of Real Property.*** –
>
> ***(1) In General.*** - The provisions of Section 39(B) notwithstanding, a final tax of six percent (6%) based on the gross selling price or current fair market value as determined in accordance with Section 6(E) of this Code, whichever is higher, is hereby imposed upon capital gains presumed to have been realized from the sale, exchange, or other disposition of real property located in the Philippines, classified as capital assets, including *pacto de retro* sales and other forms of conditional sales, by individuals, including estates and trusts: Provided, That the tax liability, if any, on gains from sales or other dispositions of real property to the government or any of its political subdivisions or agencies or to government-owned or controlled corporations shall be determined either under Section 24(A) or under this Subsection, at the option of the taxpayer; xxx"

The accused did not file her ITRs for TYs 2010, 2011 and 2012 in view of the cancellation of her business registration. Plaintiff concluded that based on the findings of the ROs, accused amassed real properties, insurance investment policies, and had infused capital in different corporations; and therefore, had income to report for TYs 2010 to 2012.

Using the Expenditure Method, the ROs determined the taxable income of the accused for TYs 2010, 2011 and 2012, as follows:

	2010	2011	2012
LAND AND CONDOMINIUM			
PANGASINAN, TCT 26-2013001383/82	-	-	1,493,333.33
KIDAPAWAN CITY, TCT NO. 152-2012000752	-	-	250,000.00
INSURANCE			
1. THE INSULAR LIFE ASSURANCE CO., LTD.			
POLICY NO: A002020138, P1,581,400 /YR	1,581,400.00	1,581,400.00	1,581,400.00
POLICY NO: A001818843, P1,549,700 /YR	1,549,700.00	1,549,700.00	1,549,700.00
POLICY NO: A002169130, P1,517,000 /YR	1,517,000.00	1,517,000.00	1,517,000.00
2. PHIL. AMERICAN LIFE & GENERAL INSURANCE CO., INC.			
POLICY NO: 1000275165	167,676.26	167,676.26	167,676.26
POLICY NO. 0231460872	166,005.40	166,005.40	166,005.40
POLICY NO: 0231460863	161,462.54	161,462.54	161,462.54
VEHICLES		-	-
SHARES OF STOCK		-	-
JLN Corporation (Additional capital in 2010)	1,187,500.00		
MAGDALENA LUY LIMCHU CHARITY FDTN		500,000.00	-
TOTAL ACQUISITION PER INVESTIGATION	6,330,744.20	5,643,244.20	6,886,577.53
ADD: TAXABLE INCOME PER RETURN	0.00	0.00	0.00
ADD/LESS:			
Accum Disposable Income as of Dec. 31, 2003			
PERSONAL EXEMPTION	(50,000.00)	(50,000.00)	(50,000.00)
Disposable income current year	0.00	0.00	0.00
TOTAL TAXABLE INCOME PER INVESTIGATION	**6,280,744.20**	**5,593,244.20**	**6,836,577.53**

The above findings were based on documents collated by the ROs from different insurance companies, Registry of Deeds, Land Transportation Office, and Securities and Exchange Commission; thus, resulting in their conclusion that accused's purchases/expenditures for TYs 2010, 2011, and 2012 were income which were not declared.

Accused, on the other hand, alleged that, as a member of the board of directors of several domestic corporations, she received *per diems* and dividends as stockholder. The dividends were allegedly subjected to final tax.

The use of the Expenditure Method did not provide for a solid basis for ascertaining the undeclared taxable income of the accused for TYs 2010, 2011, and 2012. As have been repeatedly discussed, proof of a likely source of income is a pre-requisite in a criminal prosecution for tax evasion.

After a careful evaluation of the evidence presented by plaintiff, the Court still finds that it failed to establish the likely source of income for CTA Crim. Case Nos. O-490, O-491 and O-492. No evidence was offered to show that the expenditures for TYs 2010, 2011 and 2012 came from undeclared taxable income of the accused. The evidence proffered, such as certifications, TCTs, GIS, Deeds of Absolute Sale, and LTO car registration do not show the likely source of income. Thus, the Court cannot ascertain beyond reasonable doubt that the expenditures are tantamount to undeclared taxable income.

As already discussed, with the 2006 premiums withdrawn in 2011, the accused will have an estimated return of premiums of US$100,000.00 and ₱10,000,000.00. Accused, thus, had approximately ₱14,331,310.00[256] in cash derived from the said premiums withdrawn in 2011.

The amount of ₱14,331,310.00 is sufficient for the accused to purchase insurance policies in the years 2011 and 2012, infuse capital to Magdalena Luy Limchu Charity Foundation, and purchase lots in Pangasinan and Kidapawan City. These investments based on the examiner's computation have a total cost of ₱12,529,821.73.

Clearly, the *first* element was not satisfied.

[256] Computed as follows:

Particulars	Amount
Amount of 2006 premiums paid in US$	100,000.00
Multiply by: Average *Bangko Sentral ng Pilipinas* (BSP) exchange rate for 2011	43.3131
Amount of 2006 premiums paid in US$ - equivalent PHP amount	4,331,310.00
Add: Amount of 2006 premiums paid in PHP	10,000,000.00
Total Amount of Premium Withdrawn in 2011	**14,331,310.00**

Assuming *arguendo* that the likely source of income can be determined, plaintiff still failed to satisfy the *second* element as shown hereafter.

***Second Element** – The accused attempted in any manner to evade or defeat any tax imposed under the NIRC of 1997, as amended, or the payment thereof.*

As discussed earlier, in order to constitute tax evasion, the following factors must be proven: (1) the end to be achieved, i.e., the payment of less than that known by the taxpayer to be legally due, or the non-payment of tax when it is shown that a tax is due; (2) an accompanying state of mind which is described as being evil, in bad faith, willful, or deliberate and not accidental; and, (3) a course of action or failure of action which is unlawful.

The existence of the aforesaid factors depends on the determination by the plaintiff of the undeclared income of the accused.

Based on the foregoing, to establish if there was ever any tax legally due which accused willfully evaded through unlawful means, it is necessary to determine whether the accused's gross income during the questioned TYs exceeded her total personal and additional exemptions which would have resulted in income tax due.

As already established in the discussion of the *first* element, this Court cannot consider the amounts computed through the Expenditure Method as the undeclared income of the accused for TYs 2010, 2011, and 2012 in the absence of proof of likely source of income. This Court, thus, cannot determine beyond reasonable doubt that accused's gross income during the questioned TYs exceeded her total personal and additional exemptions thereby resulting in deficiency income tax.

Fraud is a question of fact that should be alleged and duly proven. The willful neglect to file the required tax return or the fraudulent intent to evade the payment of taxes, considering that the same is accompanied by legal consequences, cannot be presumed.[257] Fraud must be proven by clear and convincing evidence and cannot be based on mere speculation.[258]

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[257] *Commissioner of Internal Revenue vs. Fitness By Design, Inc.*, G.R. No. 215957, November 9, 2016.
[258] *Commissioner of Internal Revenue vs. The Hong Kong Shanghai Banking Corporation - Philippine Branch*, G.R. No. 227121, December 9, 2020.

Thus, for there to be a violation of Section 254 of the NIRC of 1997, as amended, it is necessary for the prosecution to prove the existence of fraud through the use of pretenses and forbidden devices committed or done by the accused to lessen or defeat taxes, by clear and convincing evidence.

Inasmuch as there was no duly established or proven undeclared income of the accused, it cannot be said that accused, with willful intent and through unlawful means, evaded to pay income tax legally due for TYs 2010, 2011, and 2012.

Third Element* — *Such attempt to evade or defeat tax or the payment thereof is willful.

As in the previous cases already discussed, the *second* element was not proven in this case; hence, there is no act or omission which may be characterized as willful. Such being the case, the *third* element was likewise not met.

Even assuming *arguendo* that the *first* and *second* elements were present, this Court finds that the *third* element was still lacking.

As we have repeatedly explained, it is for the prosecution to prove that the taxpayer knew of his legal duty to file an ITR but such taxpayer knowingly, voluntarily, and intentionally neglected to do so. It must be stressed that the willful neglect to file the required tax return cannot be presumed. It must be established fully as a fact and cannot be attributed to a mere inadvertent or negligent act.[259]

Here, the accused no longer filed her ITRs for TYs 2010, 2011, and 2012 since she was no longer engaged in business as a sole proprietor beginning 2010. Similar with our finding in CTA Crim. Case No. O-498, the accused no longer declared in her ITRs her alleged other income from investments since the same was already subjected to final tax. Plaintiff did not proffer any other evidence, other than the expenditures identified in their examination, that accused's alleged attempt to evade or defeat tax or payment thereof was willful.

In sum, plaintiff failed to prove beyond reasonable doubt that accused attempted to evade or defeat the payment of tax.

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[259] *Ibid.* see note 248

Accordingly, accused must be acquitted in CTA Crim. Case Nos. O-490, O-491 and O-492.

CIVIL ASPECT

Anent the civil aspect of the cases, the same is deemed simultaneously instituted with the criminal action pursuant to Section 7(b)(1) of R.A. No. 9282, which provides:

> "Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> a. xxx
>
> b. Jurisdiction over cases involving criminal offenses as herein provided:
>
> 1. Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs: Provided, however, That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (₱1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate. Any provision of law or the Rules of Court to the contrary notwithstanding, **the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filling of such civil action separately from the criminal action will be recognized**." *(Emphasis supplied)*

In *Manuel y Cadiz vs. People*,[260] the Supreme Court, citing *Dayap vs. Sendiong, et al.*,[261] held that, as a general rule, acquittal of the accused in the criminal case does not automatically preclude a judgment against him on the civil aspect of the case, to wit:

> "As a general rule, the acquittal of the accused does not automatically preclude a judgment against him on the civil aspect of the case. The extinction of the penal action does not carry with it the extinction of the civil liability where: (a) the acquittal is based on reasonable doubt as

[260] G.R. No. 213640, April 12, 2023.
[261] G.R. No. 177960, January 29, 2009.

> only preponderance of evidence is required; (b) the court declares that the liability of the accused is only civil; and (c) the civil liability of the accused does not arise from or is not based upon the crime of which the accused is acquitted."

Based on the foregoing, civil liability may still be imposed, notwithstanding the acquittal of the accused, under certain circumstances. However, as we have lengthily discussed, plaintiff failed to establish the existence of undeclared income and its likely source which can be the basis for a tax assessment and for the civil liability of the accused. This Court, thus, has no other recourse but to hold that the accused is not civilly liable.

Furthermore, after careful consideration of the documentary evidence, this Court also finds that the BIR failed to comply with the due process requirements in the conduct of their examination of the accused.

Section 205 of the NIRC of 1997, as amended, provides that in a criminal case, the payment of taxes may also be ordered as finally decided by the CIR, to wit:

> "SEC. 205. *Remedies for the Collection of Delinquent Taxes.* — The civil remedies for the collection of internal revenue taxes, fees or charges, and any increment thereto resulting from delinquency shall be:
>
> xxx
>
> (b) By civil or criminal action.
>
> The judgment in the criminal case shall not only impose the penalty but **shall also order payment of the taxes subject of the criminal case as finally decided by the Commissioner**." *(Emphasis supplied)*

The final decision of the CIR pertained to above may be in the form of tax assessment which has attained finality.

In relation to assessments, Section 6 of the NIRC of 1997, as amended, requires an authority from the CIR or from his duly authorized representatives before an examination of a taxpayer may be done. Furthermore, Section 13 thereof provides that an RO assigned to conduct an audit examination of a taxpayer may do so pursuant to an LOA issued by the Regional Director. Clearly, there must be a grant of authority before any RO can conduct an examination of a taxpayer's books.

Pertinent thereto is RAMO No. 1-00 which requires that an LOA should be served within thirty (30) days from the time of its issuance; otherwise, the same becomes void.

In the instant case, the LOA was issued on August 27, 2013 and allegedly constructively served upon accused at her registered address in Discovery Centre on August 28, 2013.

The question now is whether there was valid service of the LOA upon the accused.

We rule in the negative.

RAMO No. 1-00 does not specifically provide whether the LOA may be constructively served upon the accused. However, Section 3.1.7 of RR No. 12-99, the prevailing rule at the time the LOA was served on August 28, 2013, provides for the requirements of a valid constructive service of tax assessment notices, to wit:

> "SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —
>
> xxx xxx xxx
>
> 3.1.7 **Constructive Service**. — If the notice to the taxpayer herein required is served by registered mail, and no response is received from the taxpayer within the prescribed period from date of the posting thereof in the mail, the same shall be considered actually or constructively received by the taxpayer. If the same is personally served on the taxpayer or his duly authorized representative who, however, refused to acknowledge receipt thereof, the same shall be constructively served on the taxpayer. **Constructive service thereof shall be considered effected by leaving the same in the premises of the taxpayer and this fact of constructive service is attested to, witnessed and signed by at least two (2) revenue officers other than the revenue officer who constructively served the same. The revenue officer who constructively served the same shall make a written report of this matter which shall form part of the docket of this case.**" *(Emphasis supplied)*

Applying the above rule to the instant case, there was no valid constructive service of LOA to the accused as there was no clear showing that the service was witnessed by two (2) ROs other than the RO constructively serving the same. In addition, the LOA was signed by two (2) barangay officials and a private individual (i.e., Project Security Manager of the building where the registered office of accused was located) who are not among the witnesses required under the above rules. Furthermore, records

reveal that there was no written report of the matter of constructive service of the LOA. In fine, the LOA was not properly served; hence, the assessment is void due to violation of accused's right to due process.

Well-settled is the rule that a void assessment bears no fruit.[262] Consequently, there can be no final decision of the CIR upon which the civil liabilities of the accused may be derived. Without any other evidence proving the civil aspect of the case, this Court has no basis for the imposition of civil liability upon the accused.

Conclusion: Plaintiff failed to prove beyond reasonable doubt the crimes charged against accused Napoles.

Under Section 2 of Rule 133 of the Rules of Court, proof beyond reasonable doubt is required to support a conviction in criminal cases, to wit:

> "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."

The Supreme Court, in the case of *Diosdado Sama and Bandy Masanglay vs. People of the Philippines*,[263] held that, in practice, there is proof beyond reasonable doubt where the judge can conclude: "*All the above, as established during trial, lead to no other conclusion than the commission of the crime as prescribed in the law.*"[264]

Relevantly, it must be borne in mind that an accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden, the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as, excluding the possibility of error, produce absolute certainty. Moral certainty only is required, or that degree of

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[262] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
[263] G.R. No. 224469, January 5, 2021.
[264] *Dinamling vs. People of the Philippines*, G.R. No. 199522, June 22, 2015.

proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.[265]

Prosecution bears the burden of proving beyond reasonable doubt that an accused is guilty of the offense charged. Should it fail, the presumption of innocence prevails and, ultimately, the accused shall be acquitted. Requiring proof beyond reasonable doubt is consistent with our constitutionally guaranteed rights.[266]

After careful consideration of the evidence presented by the plaintiff and the accused, the Court finds that the plaintiff failed to discharge the burden to prove the elements of the crimes charged against accused with proof beyond reasonable doubt.

With respect to the civil aspect, as we have lengthily discussed, inasmuch as the assessment was void due to the invalid service of the LOA upon the accused, this Court, has no basis for the imposition of civil liability upon the accused.

WHEREFORE, premises considered, CTA Crim. Case Nos. O-485, O-486, O-487, O-488, O-490, O-491, O-492, O-493, O-494, O-495, O-496 & O-498 are **DISMISSED** for failure of plaintiff to prove the guilt of accused beyond reasonable doubt. Accordingly, accused, **JANET L. NAPOLES** is **ACQUITTED** of the crimes charged.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

I CONCUR:

(with Separate Concurring Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[265] *Boac, et al. vs. People of the Philippines*, G.R. No. 180597, November 7, 2008, 570 SCRA 533 citing *People vs. Ganguso*, G.R. No 115430, November 23, 1995, 250 SCRA 268, 274-275.
[266] *People of the Philippines vs. Alan Banding*, G.R. No. 233470, August 14, 2019.

(with Dissenting Opinion)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Division Chairperson

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Second Division

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM. CASE NOS. - O-485, O-486, O-487, O-488, O-490, O-491, O-492, O-493, O-494, O-495, O-496 & O-498**
-versus-	**Members: RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
JANET LIM NAPOLES, *Accused.*	**Promulgated:** MAR 21 2024

x----------x

11:05 a.m.

SEPARATE CONCURRING OPINION

RINGPIS-LIBAN, J.:

> The law, being a creature of justice, is blind towards both the guilty and the innocent. The Court, as justice incarnate, must then be relentless in exacting the standards laid down by our laws - in fact, the Court can do no less. For when the fundamental rights of life and liberty are already hanging in the balance, it is the Court that must, at the risk of letting the guilty go unpunished, remain unforgiving in its calling. And if the guilty does go unpunished, then that is on the police and the prosecution - that is for them to explain to the People.[1]

I concur with the Decision penned by my esteemed colleague Associate Justice Corazon G. Ferrer-Flores, which acquitted accused Janet Lim Napoles for failure of the prosecution to prove her guilt beyond reasonable doubt in CTA Crim. Case Nos. O-485, O-486, O-487, O-488, O-490, O-491, O-492, O-493, O-494, O-495, O-496 and O-498.

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[1] *People of the Philippines v. William Calleja y Caganda*, G.R. No. 250865, June 16, 2021 *citing People of the Philippines v. Richael Luna y Torsilino*, G.R. No. 219164, March 21, 2018.

This Concurring Opinion serves merely to stress the insufficiency of evidence presented by the prosecution to hold accused liable for violation of Sections 254 and 255 of the National Internal Revenue Code (NIRC) of 1997, as amended.

In CTA Criminal Case Nos. O-485, O-486, O-487, O-488 and O-498, accused was charged for violation of Section 255 of the NIRC of 1997, as amended for taxable years 2004, 2006, 2008, 2009, and 2011, respectively.

Section 255 of the NIRC of 1997, as amended provides:

> **"Sec. 255. Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.** – Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by laws 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 (P10,000.00) 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, 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 (P10,000.00) but not more than Twenty thousand pesos (P20,000.00) and suffer imprisonment of not less than one (1) year but not more than three (3) years."

The following are the elements of the crime for violation of Section 255 that must be proven by the prosecution:

1. The accused is the person required under the tax code or by rules and regulations to file a return, to pay the tax and supply correct and accurate information;
2. The accused failed to file a return, to pay the tax and supply correct and accurate information at the time required by law; and

3. Such failure was willful.

As stated in the Amended Information of the instant cases, accused failed to supply correct and accurate information in her annual income tax returns (ITRs) for taxable year 2004, 2006, 2008, and 2009 thereby substantially under-declaring her income for the subject taxable years which resulted to basic deficiency income taxes. As for 2011, accused was charged of failure to file annual ITR. The said cases are summarized below:

Case Number	Taxable Year	Alleged Violation	Charge Committed	Alleged Deficiency Income Tax
O-485	2004	Section 255	failure to supply correct and accurate information in the Annual ITR	₱1,094,642.03
O-486	2006	Section 255	failure to supply correct and accurate information in the Annual ITR	₱7,088,205.69
O-487	2008	Section 255	failure to supply correct and accurate information in the Annual ITR	₱1,333,734.48
O-488	2009	Section 255	failure to supply correct and accurate information in the Annual ITR	₱3,096,375.74
O-498	2011	Section 255	failure to file annual ITR	₱1,754,838.14

On the other hand, in CTA Criminal Case Nos. O-496, O-495, O-494, O-493, O-492, O-491 and O-490, accused was charged for violation of Section 254 of the NIRC of 1997, as amended, for taxable years 2004, 2006, 2008, 2009, 2010 and 2011, respectively.

Section 254 of the NIRC of 1997, as amended provides:

> "**Sec. 254.** ***Attempt to Evade of Defeat Tax.*** – Any person who wilfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment thereof shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Thirty thousand pesos (P30,000.00) but not more than One hundred thousand pesos (P100,000.00) and suffer imprisonment of not less than two (2) years but not more than four (4) years; *Provided,* That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes."

There is violation of Section 254 when the following are present:

1. The end to be achieved, i.e. the payment of less than that known by the taxpayer to be legally due, or the non-payment of tax when it is shown that a tax is due;
2. An accompanying state of mind which is described as being "evil," "in bad faith," "willful"" or deliberate and not accidental";
3. A course of action or failure of action which is unlawful.[2]

As stated in the Amended Information of the instant cases, accused attempted for taxable years 2004, 2006, 2008, 2009, 2010 and 2011 to evade or defeat tax by substantially under-declaring her income in the ITRs which resulted to deficiency income taxes. Meanwhile in taxable year 2012, specifically CTA Crim. Case No. O-490, the charge was that accused failed to declare any income in her ITR. A table summarizing the cases for easy reference can be found below:

Case Number	Taxable Year	Alleged Violation	Charge Committed	Alleged Deficiency Income Tax
O-496	2004	Section 254	substantial under-declaration of income	₱1,094,642.03
O-495	2006	Section 254	substantial under-declaration of income	₱7,088,205.69
O-494	2008	Section 254	substantial under-declaration of income	₱1,333,734.48
O-493	2009	Section 254	substantial under-declaration of income	₱3,096,375.74
O-492	2010	Section 254	substantial under-declaration of income	₱1,974,838.14
O-491	2011	Section 254	substantial under-declaration of income	₱1,754,838.14
O-490	2012	Section 254	failure to declare any income	₱2,152,704.81

[2] *Commissioner of Internal Revenue vs. The Estate of Benigno P. Toda, Jr.* , G.R. No. 147188, September 14, 2004, citing De Leon, Fundamentals of Taxation 53 (1988 ed.), citing Batter, Fraud under Federal Tax Law 15 (1953 ed.).

It must be noted that the same pieces of evidence were presented by the prosecution for all the alleged crimes.

The following documentary evidence were offered by the prosecution to prove the material allegations in the Information of the instant cases, *viz.*:

Exhibit	Description
P-1	BIR ITS Printout for Janet Lim Napoles
P-2	Certification issued by Florante R. Aninag, Revenue District Officer of BIR RDO No. 42-A dated September 23, 2013
P-3	Deed of Absolute Sale between City and Land Developers Inc. and Janet L. Napoles, married to Jaime G. Napoles, dated November 5, 2004
P-3-A	Condominium Certificate of Title No. PT-41730
P-4	Deed of Absolute Sale dated May 9, 2006 between City and Land Developers Inc. and Janet L. Napoles, married to Jaime G. Napoles
P-4-A	Condominium Certificate of Title No. PT-45292
P-5	Deed of Absolute Sale between Oakridge Properties Inc. and Sps. Jaime G. Napoles and Janet Lim Napoles dated November 12, 2009
P-5-A	Condominium Certificate of Title No. 011-2010000869
P-6	Deed of Absolute Sale between Conrado B. Estella Jr. and Janet L. Napoles, Jaime G. Napoles, Jo Christine L. Napoles, James Christopher L. Napoles, Jeane Catherine L. Napoles. John Christian L. Napoles, Reynald L. Lim, Ana Marie D. Lim and Jose Emmanuel A. Lim ("Buyers") dated January 12, 2012.
P-6-A	Transfer Certificate of Title No. 026-2013001382
P-6-B	Transfer Certificate of Title No. 026-2013001383
P-7	Deed of Absolute Sale dated May 2, 2012
P-7-A	Transfer Certificate of Title No. 152-2012000752
P-8-A to P-8-E	Letter of Atty. Ione Fay S. Canto, Head of Compliance of PHILAMLIFE, dated September 18, 2013 with Attached Policy Details and History of Payments issued by Maria Christia P. Acedera.
P-9, P-9-A, P-9-B, P-9-C	Four (4) Certifications of Uldarico Pe Aure Jr. of Insular Life Assurance Co. Ltd. dated September 11, 2012
P-9-D, P-9-D-1, P- 9-E, P-9-E-1, P-9- F, P-9-F-1, P-9-G, P-9-G-1	Application Forms of Insular Life
P-10 to P-10-M	Letter of Calvin L. Kohchet-Chua, Head of Legal and Compliance, of AXA Philippines dated September 11, 2013.

P-12	Land Transportation Office O.R. No. 8803156-5
P-12-A	Land Transportation Office C.R. No. 8803156-5 dated August 3, 2009
P-12-B	Honda Cars Quezon City Vehicle Sales Invoice No. 003976 dated May 23, 2006
P-12	Land Transportation Office CR. No. 9172790 dated August 4, 2009
P-13-A	Land Transportation Office O.R. No. 783941340 dated August 4, 2009
P-13-B	PGA Cars Inc. Vehicle Sales Invoice dated June 17, 2008
P-14, P-14-A	Certificate of Filing of Amended Incorporation Articles of with Attachments of Magdalena Luy Lim Foundation Inc. (Formerly Lim Luy Kim Giok Foundation Inc.) dated June 18, 2008
P-15, P-15-A	SEC Certificate Incorporation Construction of JLN and Development Corporation with Attachments
P-16, P-16-A	SEC Certificate of Incorporation of Magdalena Luy Limchu Charity Foundation in the Service of Divine Mercy Inc. dated March 4, 2011 with Attachments
P-20	Certification of Florante R. Aninag dated September 10, 2013
P-21 to P-21-H	BIR Returns Processing System Printouts with a BIR Collections Reconciliation Printout and Bank System
P-22	Annual Income Tax Return of Janet L. Napoles for 2008
P-23	Certification of Florante R. Aninag dated September 10, 2013
P-24	Annual Income Tax Return of Janet L. Napoles for 2009
P-25 to P-25-C	Real Property Tax Clearance TC No. A1-5275 dated April 16, 2010, City License Receipt, O.R. No. 5755475, Tax Clearance Certificate OCN3TA0000343402, No. Certificate Authorizing Registration No. CAR 2009 00257010
P-26	Letter of Sixto C. Dy, Jr. dated September 11, 2013 addressed to Philippine AXA Life Insurance Corporation
P-27	Certificate of Incorporation of Lim Luy Kim Giok Foundation Inc. dated April 10, 2008 with Attachments
P-27-A, P-27-B and P-27-C	General Information Sheets of Magdalena Luy Lim Foundation Inc./Lim Luy Kim Giok Foundation Inc. for 2011, 2009 and 2010
P-28, P-28-A	Certificate of Incorporation of Asia Pacific Gun Club Inc. with Attachments

P-29, P-30	General Information Sheets of JLN Corporation for 2009 and 2010
P-32, P-33, P-34	Computation of Deficiency Income Tax, Annual Summary of Acquisition and Disposable Income of Janet L. Napoles

For both violation of Sections 254 and 255 of the NIRC of 1997, as amended, the prosecution claims that accused has "undeclared income" because based on accused's declarations in her ITRs, and the properties she acquired during the subject taxable years, it is improbable that accused was able to acquire the said properties even though she has not declared any income or substantial amount of income for the subject taxable years. For convenience, please see below:

Case Number	Taxable Year	Alleged Violation	Charge committed	Plaintiff's allegation how it was committed
O-496	2004	Section 254	substantial under-declaration of income	accused has "undeclared income"
O-495	2006	Section 254	substantial under-declaration of income	accused has "undeclared income"
O-494	2008	Section 254	substantial under-declaration of income	accused has "undeclared income"
O-493	2009	Section 254	substantial under-declaration of income	accused has "undeclared income"
O-492	2010	Section 254	substantial under-declaration of income	accused has "undeclared income"
O-491	2011	Section 254	substantial under-declaration of income	accused has "undeclared income"
O-490	2012	Section 254	failure to declare any income	accused has "undeclared income" but did not declare it
O-485	2004	Section 255	failure to supply correct and accurate information in the Annual ITR	accused has "undeclared income"

O-486	2006	Section 255	failure to supply correct and accurate information in the Annual ITR	accused has "undeclared income"
O-487	2008	Section 255	failure to supply correct and accurate information in the Annual ITR	accused has "undeclared income"
O-488	2009	Section 255	failure to supply correct and accurate information in the Annual ITR	accused has "undeclared income"
O-498	2011	Section 255	failure to file annual ITR	accused has "undeclared income" but did not file ITR

In the appreciation of evidence in criminal cases, it is a basic tenet that the prosecution has the burden of proof in establishing the guilt of the accused for the offense with which he or she is charged. *Ei incumbit probation qui dicit non qui negat; i.e.*, "he [or she] who asserts, not he [or she] who denies, must prove." **Thus, the prosecution has the duty to convince the court that the accused is guilty beyond all reasonable doubt, based on the evidence it presented during trial.** The evidence presented must pass the test of moral certainty. Where doubt lingers, the Court is mandated to uphold the presumption of innocence guaranteed by our Constitution to the accused.[3]

In fact, it is recognized in our jurisdiction that this burden of proof remains with the prosecution without any regard to the nature of the defense which the accused may raise.[4] Section 23 of Rule 119 of the Revised Rules of Criminal Procedure allows the accused to file a demurrer to evidence after the prosecution rests its case. And if the prosecution failed to discharge the burden, the accused can already be acquitted at that point in time, even without the necessity of presenting evidence for the defense.

In the case at bar, **the burden of proof lies with the prosecution to prove that** there was indeed "unreported income" per taxable year for which accused should be held accountable for; that **there is a tax due from the accused per taxable year** for 2004, 2006, 2008, 2009, 2011 and 2012.

This the prosecution had to prove, but unfortunately failed to do so.

[3] *Aurea R. Monteverde v. People of the Philippines*, G.R. No. 139610, August 12, 2002.
[4] *Aurea R. Monteverde v. People of the Philippines*, G.R. No. 139610, August 12, 2002.

First, the theory of the prosecution is that based on the computation using expenditure method, it appears that accused has an unaccounted source of cash. For this reason alone, accused was already guilty of the crimes charged.

The expenditure method is a method of reconstructing a taxpayer's income by deducting the aggregate yearly expenditures from the declared yearly income. The concept of this method is that when the amount of the money that a taxpayer spends during a given year exceeds his or her reported or declared income and the source of such money is unexplained, it may be inferred that such expenditure represents unreported or undeclared income.[5]

To attribute to accused the crimes of "willful failure to file income tax return, and to pay the corresponding tax" and "willful failure to supply correct accurate information in the annual income tax return and to pay the corresponding tax" it must be shown that such failure or omission by accused was done knowingly, intentionally and with the specific intent not to file the ITR and pay the tax and that she willfully supplied inaccurate information in her ITR. In other words, **"it must be shown that accused was aware" of her obligation to file the ITR, to supply correct and accurate information in the ITR, pay the tax, but she nevertheless voluntarily, knowingly and intentionally failed to do the same.**

However, **the presumption that there was undeclared income on the part of the accused is not enough to warrant her conviction.** The totality of the evidence presented by the prosecution merely showed that in the subject taxable years, accused obtained a significant number of expenditures. **And yet the pieces of evidence presented by the prosecution regarding accused's undeclared income is incomplete since the same pertain only to her expenditures.** The plaintiff did not present evidence of the source of the alleged unreported income or cash. The plaintiff **only presumed** that the cash used for the expenditures was not declared as income in the subject taxable years.

For instance, "Exhibit A-43" of accused which was mentioned during the hearing on June 14, 2022, is a Certification attesting that the insurance premiums were paid in 2004 and withdrawn in years 2006 and 2011. Said exhibit was not offered, nor did it exist in the records of the cases. There was also no Judicial Affidavit of plaintiff's/accused's witnesses identifying said Certification. The said exhibit was merely stipulated during the hearing by the plaintiff's counsel, Atty. Tortoles and Atty. Encarnacion that (1) the insurance in year 2004 and the premium for that insurance was paid in 2004, (2) the 2004 policies were withdrawn in 2006, and (3) regarding the premium for the policies paid for in 2006, the premiums were paid in 2006 and were withdrawn in 2011. **Notably, this exhibit is a mere certification and it is not clear how much money**

[5] *Bureau of Internal Revenue, as represented by the Commissioner of Internal Revenue vs. Court of Appeals, Spouses Antonio Villan Manly, and Ruby Ong Manly*, G.R. No. 197590, November 24, 2014.

(*i.e.,* insurance premiums) was returned. How the Bureau of Internal Revenue (BIR) computed the amount of cash accused had during taxable years 2006 and 2011 remains a mystery to this Court.

Moreover, the alleged purchase by accused of the condominium units and parking lot in City and Land Developers, Inc., condominium unit in Discovery Centre Condominium Project, parcels of land in Bayambang, Pangasinan and Lanao, Kidapawan City, Insurance Policies from PhilAm Life, Insular Life Assurance Co., and AXA Philippines, Honda Civic, Porsche Cayenne, investment in Magdalena Luy Lim Foundation, Inc., investments in JLN Construction and Development Corp., Magdalena Luy Limchu Charity Foundation and Asia Pacific Gun Club Inc. **could not be assumed as arising from her alleged unreported income in 2004, 2006, 2008, 2009, 2010, 2011, and 2012 since the consideration in purchasing the said properties may likewise be presumed to have been obtained from her income in the previous years or other income subjected to final tax.**

Second, the Computation of Deficiency Income Tax,[6] Annual Summary of Acquisition Schedule A,[7] and Disposable Income Schedule- B[8] prepared by Nilda T. Se, Marites P. Arias and Josephine D. Madera are not competent enough to support the verdict of guilt. The Court cannot consider the said computation in establishing that accused has undeclared income because the testimonies of Marites P. Arias and Josephine D. Madera **failed to prove that the source of cash for the expenditures for the subject taxable years came from the undeclared income for that particular taxable year.**

Ms. Marites P. Arias made the following declarations during her cross-examination and re-cross examination:[9]

Cross-examination-

"ATTY. ENCARNACION

> Q I just have few questions for you and I am going to go straight to the point. In your Judicial Affidavit you have identified several documents particularly those that pertain to purchases made by the accused, the insurance claims, as well as the shares of contributions for the shares of stock. Would you confirm that you do not have any personal knowledge as regards the preparation, the due execution, as well as the attendant circumstances of how and why the said documents were executed in favor of the accused? You do not have any personal knowledge?

[6] Exhibit "P-32".
[7] Exhibit "P-33".
[8] Exhibit "p-34".
[9] TSN dated June 6, 2018, pp. 12-27.

JUSTICE VICTORINO

Insofar as the execution.

MS. ARIAS

A We requested for the...

JUSTICE VICTORINO

Did you understand the question?

xxx xxx xxx

ATTY. ENCARNACION

Q You do not have any personal knowledge as regards the execution of the said documents?

JUSTICE VICTORINO

Those documents you identified in your Judicial Affidavit, specifically what because there are several.

ATTY. ENCARNACION

Yes, your Honor, specifically, your Honor, those that pertain to the purchases made by the accused, her contributions in the shares of stocks, as well as the insurance premiums that she had paid.

MS. ARIAS

A That was part of our investigation.

ATTY. ENCARNACION

Q But you do not have personal knowledge as to the preparation of those documents?

MS. ARIAS

A The preparation?

ATTY. ENCARNACION

Q None, right?

MS. ARIAS

A Because we requested...

ATTY. ENCARNACION

Q Just answer yes or no. You do not have personal knowledge, yes?

MS. ARIAS

A We just received after...

ATTY. ENCARNACION

Q All right, thank you. You also do not have any personal knowledge as regards the attendant facts and circumstances of how and why those documents were issued to my client, particularly the Deed of Sale?

MS. ARIAS

A Of course none.

ATTY. ENCARNACION

Q All right. You do not also have any personal knowledge as regards the attendant facts and surrounding circumstances as regards her contribution in the corporations that were identified in your Judicial Affidavit, correct?

MS. ARIAS

A Yes.

ATTY. ENCARNACION

Q And you also do not have any personal knowledge as regards the attendant circumstances and surrounding facts as regards her insurance premiums are concerned, am I correct?

MS. ARIAS

A But it is part of our investigation.

ATTY. ENCARNACION

Yes, I know, ma'am. Please just answer my question.

JUSTICE VICTORINO

You are just asking her if she has any personal knowledge as to the attendant facts and surrounding circumstances pertaining to the purchases?

MS. ARIAS

A That are the results of our investigation when we find the acquisitions of Ms. Napoles.

JUSTICE VICTORINO

So all these documents were merely issued to you?

MS. ARIAS

A Yes.

ATTY. ENCARNACION

Q So your assumption that in 2004 all of these were paid for in cash by Mrs. Napoles and her husband, correct?

MS. ARIAS

A Yes.

ATTY. ENCARNACION

Q But it does not discount the fact that if there were prior [installments] paid, they would not be reflected in your 2004 investigation, correct? It was not stated?

MS. ARIAS

A It was not stated.

ATTY. ENCARNACION

Q Likewise, in 2006 the same facts, you made the result of your investigation is because that the Deed of Sale indicated the entire amount for 2006, am I correct?

MS. ARIAS

A But there was already a transfer.

ATTY. ENCARNACION

Q Yes, so you mean to tell this Honorable Court that the basis of your investigation is the Final Deed and that is the basis of your investigation again as regards my client, correct?

MS. ARIAS

A Yes.

ATTY. ENCARNACION

Q But it does not discount the fact and your investigation does not show that if prior payments or [installments] were made for the purchase of this property, they were not included?

MS. ARIAS

A It is absolute when there is Transfer of Title.

MS. ARIAS

A After, yes, your Honor.

JUSTICE VICTORINO

Which became the basis of your investigation?

MS. ARIAS

A Yes, your Honor, after our access.

ATTY. ENCARNACION

Q May I proceed again, your Honor? Thank you very much.

In Question No. 25 of your Judicial Affidavit particularly page no. 6 may I invite your attention to that, Madam, because you keep on harping upon investigation. Now, the results of your investigation as testified to in your Judicial Affidavit states that in 2004 the accused together with her husband purchased a condominium unit in City & Land Mega Plaza for P1,767,037.70, correct?

MS. ARIAS

A Yes, sir.

ATTY. ENCARNACION

Q And in 2006, the accused together with her husband bought a parking lot in City & Land Mega Plaza for P563,931.50, am I correct?

MS. ARIAS

A Yes, sir.

ATTY. ENCARNACION

Q I would like to zero in on those two purchases for the meantime. The findings of your investigation is because there was a Deed of Sale issued in 2004 for the accused for the total price of P 1,767,037.70, correct?

MS. ARIAS

A Yes, sir.

ATTY. ENCARNACION

Q And that Deed of Sale was the basis of your investigation for Mrs. Napoles, am I correct?

ATTY. ENCARNACION

Q But if a property is purchased on [installment], wouldn't you agree that instalment payments were made for prior years?

MS. ARIAS

A If there is a Transfer of Title, the office presumed it as fully paid.

ATTY. ENCARNACION

Q Fully paid for that particular year?

MS. ARIAS

A Yes.

ATTY. ENCARNACION

Q But if there were [installments] made the prior years?

MS. ARIAS

A It is not affected by the computation.

ATTY. ENCARNACION

Q In 2009, Madam Witness, the same investigation was also made as regards the purchase of condominium units in Discovery Centre, am I correct?

MS. ARIAS

A Yes.

ATTY. ENCARNACION

Q And the basis is the Final Deed of Absolute Sale that was issued by the Discovery Centre, right?

MS. ARIAS

A Yes.

ATTY. ENCARNACION

Q But if there were Contracts to Sell or if the property was purchased on [installment], it wouldn't appear on your records because you made your decision based solely on the Final Deed of Sale, correct?

MS. ARIAS

A Yes.

ATTY. ENCARNACION

Q Would that be the same assumption as in 2012 for the purchase of the Bayambang, Pangasinan properties? The Thirteen Million Four Hundred Forty Thousand is based upon the Final Deed of Absolute Sale that was entered into by the seller and my clients, am I correct?

MS. ARIAS

A Yes.

ARTY ENCARNACION

Q But again if the property was sold for on [installment], it would not be the purchase basis of your investigation?

MS. ARIAS

A We were not able to know that but... (Interrupted)

ATTY. ENCARNACION

Q All right. Again, you would not be able to know that?

MS. ARIAS

A But if there's a chance.. (Interrupted)

ATTY. ENCARNACION

Okay, thank you very much.

JUSTICE VICTORINO

Your counsel would know what to ask later.

ATTY. ENCARNACION

Q In page 7 of the same Question No. 25, in 2006 accused purchased Honda Civic for P1,102,000.00, am I right?

JUSTICE VICTORINO

This is Question No. 25 also?

ATTY. ENCARNACION

Same question, your Honor, Question No. 25 this is letter "I".

JUSTICE VICTORINO

Honda Civic?

ATTY. ENCARNACION

Honda Civic, your Honor.

Q But isn't it correct, Madam Witness, that in the document that your you have earlier identified in you Judicial Affidavit particularly the Certificate of Registration of the said Honda Civic, it would show that the owner is identified as Jo-Chris Trading owned by Janet Lim Napoles?

MS. ARIAS

A Yes.

ATTY. ENCARNACION

Q Madam Witness, what was your participation in the investigation of my client?

MS. ARIAS

A My participation in the investigation and the results, we're the one who gathered the documents, the acquisitions.

ATTY. ENCARNACION

Q I am talking about because there is a team, correct? You, Ms. Madera and Ms. Se. What was your particular role between you three?

MS. ARIAS

A In service of the LOA, all of us served them and after the service of the LOA, investigation conducted, the group also...

ATTY. ENCARNACION

Wait. Your Honor, the witness is not answering.

Q I am asking about your own role?

JUSTICE VICTORINO

Your particular role in the investigation.

MS. ARIAS

A I am more particularly the one who served and get the documents.

JUSTICE VICTORINO

So, you served the LOA and then you secured all the documents. You received them personally these documents?

MS. ARIAS

A Yes.

JUSTICE VICTORINO

From different government agencies?

MS. ARIAS

A Yes.

JUSTICE VICTORINO

What about the purchase of Honda Civic?

MS. ARIAS

A It was sent to our office.

JUSTICE VICTORINO

It was sent to your office?

MS. ARIAS

A To our office.

JUSTICE VICTORINO

To the office of the BIR?

MS. ARIAS

A Yes.

JUSTICE VICTORINO

And how were you able to get that?

MS. ARIAS

A We have access to records addressed to the LTO on the purchase of her vehicle.

JUSTICE VICTORINO

Next question.

ATTY. ENCARNACION

A As regards the computation, you were the one who prepared it, right? Ms. Se was one?

MS. ARIAS

A Yes, Ms. Se was the one.

ATTY. ENCARNACION
No further questions, your Honor."

Recross-examination-

"ATTY. ENCARNACION

Q Madam Witness, during your redirect examination the good counsel said about the possibility that you did not entertain the possibility that the properties were purchased on [installment], right? Because the Final Deeds of Sale for those properties were your sole basis and you attributed the full purchase price for that particular taxable years, right?

MS. ARIAS

A Yes, sir.

ATTY. ENCARNACION

Q But again, it does not discount the possibility that there were prior payments made? I am just asking you, it does not discount the possibility that for example a reservation fee was made for the purchase of the property, as well as deposits, it does not discount that possibility that there could have been prior payments made, not during those taxable years?

MS. ARIAS

A It may.

ATTY. ENCARNACION

It may, thank you very much.

Q Lastly on the last point, good counsel for the BIR said that you attributed the ownership of the Honda Civic solely to Mrs. Napoles because as per your records, she is the owner of Jo-Chris Trading, a sole proprietorship, right?

MS. ARIAS

A Yes.

ATTY. ENCARNACION

Q But isn't it also not possible that the purchase price of the car was sourced from the business funds of Jo-Chris Trading as it was named for the said business enterprise?

MS. ARIAS

A That's the reason why we computed the tax deficiency. . .

ATTY. ENCARNACION

Please answer my question.

Q You do not also discount the possibility that the purchase price for the Honda Civic was sourced from the business funds of Jo-Chris Trading precisely the reason why it was named after Jo-Chris Trading?

MS. ARIAS

A Of course."

Ms. Josephine Madera made the following declaration during her direct testimony as witness for the accused:[10]

"Atty. Encarnacion:

Final question for this witness, Your Honor. Madam Witness, in your investigation of Mrs. Napoles, were you able to determine the source of her money if this was her income?

Witness:

Based on the documents that we have gathered with regard to the conduct of our preliminary investigation and formal investigation from third party as well as certification from the Revenue District Officer and Collection Officers are concerned that she failed to file returns for 2010, 2011 and 2012 and reported no income for 2009.

Atty. Encarnacion:

I think. Your Honor, the witness is not answering my question. My question is simple, were you able to determine if the expenses that you attributed to Mrs. Napoles were sourced from her income?

A: Yes, sir.

Q: Were you able to determine that they came from her income?

A: The expenditure, sir?

Q: Yes.

A: No, sir.

Q: What is your proof that it is her income?

[10] TSN dated June 14, 2022, pp. 38-40.

A: Based on the documents that we have gathered in the conduct of our investigation, we were able to secure certification from the Assistant Commissioner that the no taxes were paid by Mrs. Napoles as to estate tax. capital gains tax, final taxes...

JUSTICE LIBAN:

Excuse me. income. The question is only proof of that

Witness:

Yes, Your Honor. We were able to establish that the expenditure came from her undeclared income.

JUSTICE UY:

And your proof?

A: Proof, Your Honors, is based on the documents that we have gathered in the conduct of our investigation."

Since it is not directly testified to by Ms. Arias and Ms. Madera the possible source of cash/income used to buy the subject properties for the particular taxable year in question, therefore it casts doubt on the veracity or correctness of the computation itself.

The presumption of correctness in the assessment and investigation of taxpayer's accounts being a "mere presumption," cannot be made to rest on another presumption.[11]

Accusation is not synonymous with guilt.[12] Suspicion, no matter how strong, must never sway judgment.[13] The court is a trier of facts based on evidence presented. Surmises and conjectures have no place in a judicial inquiry and thus are shunned in criminal prosecution.[14]

Additionally, accused cannot be held guilty as charged in CTA Crim. Case No. O-492, because the Information charged accused for substantially under-declaring her income in her ITR for taxable year 2010. But records show that no ITR was filed for taxable year 2010 since accused claims that she need not file an ITR considering that Jo-Chris Trading ceased its operation during that taxable year. Accused should have been charged for violation of Section 255 (*i.e.,* failure to file an Annual ITR), not for violation of Section 254 since Jo-Chris Trading ceased operation only on September 7, 2010.

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[11] *Collector of Internal Revenue v. Alberto D. Benipayo*, G.R. No. L-13656, January 31, 1962.
[12] *People of the Philippines v. Edwin Larillo*, G.R. No. L-13656, January 31, 1962.
[13] *People of the Philippines v. Willington Rodriguez y Hermosa*, G.R. No. 211721, September 20, 2017.
[14] *Richard Balina y Lanuzo v. People of the Philippines*, G.R. No. 205950, January 12, 2021 *citing Ricardo Alcantara v. Hon. Court of Appeals and People of the Philippines*, G.R. No. 147259, November 24, 2003.

Finally, this Court cannot take judicial notice of the alleged illegal activities for which the accused had been convicted by the Sandiganbayan.

In *Expertravel & Tours, Inc. v. Court of Appeals*[15], the Supreme Court enumerated the three material requisites for matters of judicial notice, as follows:

> "Generally speaking, matters of judicial notice have three material requisites: **(1) the matter must be one of common and general knowledge; (2) it must be well and authoritatively settled and not doubtful or uncertain; and (3) it must be known to be within the limits of the jurisdiction of the court.** The principal guide in determining what facts may be assumed to be judicially known is that of notoriety. Hence, it can be said that judicial notice is limited to facts evidenced by public records and facts of general notoriety. Moreover, a judicially noticed fact must be one not subject to a reasonable dispute in that it is either: (1) generally known within the territorial jurisdiction of the trial court; or (2) capable of accurate and ready determination by resorting to sources whose accuracy cannot reasonably be questionable."[16]

The recent decision by the Sandiganbayan is not yet final and executory and may still be overturned by the Supreme Court. As such, the alleged unlawful activities, which was presented in the proceedings before the Sandiganbayan, cannot be a basis for the conviction of the accused in this Court.

The rule on judicial notice under Rule 129 of the Revised Rules on Evidence is the exception to the general rule that matters and facts must be proven by evidence. The general rule where proof is necessary, is an intrinsic part of proceedings in the trial court as it is a trier of facts. The exception (*i.e.*, take judicial notice) only applies when the matter is incontrovertible and conclusive, which is not the case here.

To reiterate, the pieces of evidence before this Court clearly shows that there is no basis for the Court to rule that accused employed fraud in declaring her income in the subject ITRS and that she had unreported income for the subject taxable years for which she may be held liable for violation of Sections 254 and 255 of the NIRC of 1997, as amended.

What is clear in the instant cases is that there is no direct evidence per each case that particularly identifies that accused committed the crimes charged. Considering the ambiguity of the computation and the schedules showing the

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[15] G.R. No. 152392, May 26, 2005.
[16] *Emphasis and underscoring supplied.*

alleged income and deficiency taxes, the plaintiff failed to produce in the mind of the Court a moral certainty of accused's guilt.

As stated by the Supreme Court in People of the Philippines vs. PO1 Dennis Jess Esteban Lumikid,[17] "[i]n this jurisdiction, no less than proof beyond reasonable doubt is required to support a judgment of conviction. While the law does not require absolute certainty, the evidence presented by the prosecution must produce in the mind of the Court a moral certainty of the accused's guilt. When there is even a scintilla of doubt, the Court must acquit."

It is for the reasons above that I concur with the *ponencia.*

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[17] G. R. No. 242695, June 23, 2020

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIM. CASE NOS. O-485, O-486, O-487, O-488, O-490, O-491, O-492, O-493, O-494, O-495, O-495, & O-498**
	Members:
-versus-	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES** *JJ.*
	Promulgated:
JANET LIM NAPOLES, Accused.	MAR 2 1 2024

x ---------- x

11:05 A.M.

DISSENTING OPINION

MODESTO-SAN PEDRO, J.:

Both the Decision and Concurring Opinion penned by my esteemed colleagues found for acquittal of the accused chiefly because of the failure of the prosecution to identify any likely source of income.

I respectfully disagree.

A reading of the Decision would show that in so ruling, the ponencia relied on the case of *Bureau of Internal Revenue v. Court of Appeals*[1] ("*BIR*") and on *Revenue Audit Memorandum Order (RAMO) No. 1-00.*

In my opinion, however, *RAMO No. 1-00* has no basis in law or jurisprudence to require evidence of a likely source of income, much less make it a prerequisite when a criminal case is filed and the Net Worth & Expenditure Method is used.

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[1] G.R. No. 197590, November 24, 2014.

The crimes charged in the instant cases are for violations of *Sections 254 and 255 of the National Internal Revenue Code of 1997, as amended* ("*NIRC*"), which provide as follows—

> **SEC. 254. Attempt to Evade or Defeat Tax**. - Any person who willfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment thereof shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine not less than Five hundred thousand pesos (P500,000) but not more than Ten million pesos (P10,000,000) and suffer imprisonment of not less than six (6) years but not more than Ten (10) years: Provided, That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes.
>
> **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 the 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.
>
> 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 internal revenue office wherein the same was actually filed shall, upon conviction therefore, 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.

As enumerated in the Decision, the elements to be established to sustain a conviction under *Section 254 of the NIRC* are simply as follows—

1. A tax is imposed under the NIRC, and a person, natural or juridical, is liable for the said tax;
2. There is an attempt in any manner to evade or defeat any tax imposed under the NIRC or the payment thereof; and
3. Such attempt to evade or defeat tax or the payment thereof is willful.[2]

As for *Section 255*, the elements enumerated were—

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[2] Decision, p. 46.

1. The accused is a person required under the NIRC or rules and regulations to pay any tax or make a return or supply correct and accurate information;
2. The accused failed to pay such tax, make such return or supply correct and accurate information, at the time or times required by law or rules and regulations; and,
3. Such failure to pay such tax, make such return or supply correct and accurate information is willful.[3]

Certainly, evidence of likely source of income is not mentioned as an element in the law nor even in the list of elements outlined in the Decision.

Neither does jurisprudence require the same.

A reading of the case of *BIR* cited in the Decision will reveal that the Supreme Court merely overturned the Court of Appeals finding that there was no showing of a likely source of income. As quoted in the Decision, the discussion was—

> In Ungab v. Judge Cusi, Jr., we ruled that tax evasion is deemed complete when the violator has knowingly and willfully filed a fraudulent return with intent to evade and defeat a part or all of the tax. Corollarily, an assessment of the tax deficiency is not required in a criminal prosecution for tax evasion. However, in Commissioner of Internal Revenue v. Court of Appeals, we clarified that although a deficiency assessment is not necessary, the fact that a tax is due must first be proved before one can be prosecuted for tax evasion.
>
> In the case of income, for it to be taxable, there must be a gain realized or received by the taxpayer, which is not excluded by law or treaty from taxation. The government is allowed to resort to all evidence or resources available to determine a taxpayer's income and to use methods to reconstruct his income. **A method commonly used by the government is the expenditure method, which is a method of reconstructing a taxpayer's income by deducting the aggregate yearly expenditures from the declared yearly income.** The theory of this method is that when the amount of the money that a taxpayer spends during a given year exceeds his reported or declared income and the source of such money is unexplained, it may be inferred that such expenditures represent unreported or undeclared income.
>
> In the case at bar, petitioner used this method to determine respondent spouses' tax liability. Petitioner deducted respondent spouses' major cash acquisitions from their available funds. Thus:
>
> . . . .

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[3] Id., p. 47. These elements were so enumerated in *People v. Mendez*, G.R. Nos. 208310-11 & 208662, March 28, 2023.

And since the underdeclaration is more than 30% of respondent spouses' reported or declared income, which under Section 248(B) of the NIRC constitutes as prima facie evidence of false or fraudulent return, petitioner recommended the filing of criminal cases against respondent spouses under Sections 254 and 255, in relation to Section 248(B) of the NIRC.

The CA, however, found no probable cause to indict respondent spouses for tax evasion. It agreed with Acting Justice Secretary Devanadera that **petitioner failed** to make "a categorical finding of the exact amount of tax due from [respondent spouses]" and **"to show sufficient proof of a likely source of [respondent spouses'] income that enabled them to purchase the real and personal properties** adverted to x x x."

We find otherwise.

. . . .

The revenue officers also identified the likely source of the unreported or undeclared income in their Reply-Affidavit. The pertinent portion reads:

> 7. ...
>
> [Respondent spouses] are into rental business and the net profit for six (6) years before tax summed only to ₱1,238,938.32 (an average of more or less Php200,000.00 annually). We asked respondent [Antonio] if we can proceed to his rented property to [appraise] the earning capacity of the building [for] lease/ rent, but he declined our proposition. Due to such refusal made by the respondent, [petitioner], thru its examiners, took pictures of the subject property and came up with the findings that indeed the unexplained funds sought to have been used in acquiring the valuable property in Tagaytay x x x came from the underdeclaration of rental income.

Apparently, the revenue officers considered respondent Antonio's rental business to be the likely source of their unreported or undeclared income due to his unjustified refusal to allow the revenue officers to inspect the building.
(Citations omitted; emphasis in original)

In doing so it did not state in categorical terms that evidence of likely source of income was necessary. On the other hand, it went on to emphasize as follows—

> Moreover, by just looking at the tables presented by petitioner, there is a manifest showing that respondent spouses had underdeclared their income. The huge disparity between respondent Antonio's reported or declared annual income for the past several years and respondent spouses' cash acquisitions for the years 2000, 2001, and 2003 cannot be ignored. In

> fact, it makes us wonder how they were able to purchase the properties in cash given respondent Antonio's meager income.
>
> In view of the foregoing, we are convinced that there is probable cause to indict respondent spouses for tax evasion as petitioner was able to show that a tax is due from them.

In the present case, the accumulated gross sales or revenue receipts of accused from 1999 to 2009 amounted to ₱81,830,941.59 while her ITRs for the same period only reflected a net taxable income of ₱3,748,232.66.

Comparing the declared incomes of accused in her ITRs for 1999-2009[4] vis-à-vis her expenses and acquisitions from 2004-2012[5] and reviewing the Computation of Deficiency Income Tax, Annual Summary of Acquisition and Disposable Income[6] of accused convinces the undersigned, in the words of *BIR*, that accused "undeclared her income" and that indeed, "the huge disparity" between her declared incomes and her acquisitions "cannot be ignored" and makes one wonder how she was able to acquire such properties given her declared income.

True, the accused may possibly have incurred allowable deductions of substantial amounts which led to a thin net taxable income margin. However, even assuming said deductions are valid, the reported net taxable income aggregating to only ₱3,748,232.66 for ten years (1999-2009) is still too thin to explain away the total expenses and property acquisitions from 2004-2012 in the whopping aggregate amount of ₱59,503,736.40.[7] Indeed, one can only wonder how the accused obtained the funds to make significant acquisitions and investment despite exhibiting low net earning capacity.

Furthermore, in the recent case of *Kingsam Express, Inc. v. People*[8] ("*KIngsam*"), there was still no mention of such a requirement

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[4] Exhibits P-21, P-22, P-24, inclusive of sub-markings; Records (CTA Case No. O-485), Vol. 3, pp. 1423 to 1442 and 1444 to 1445.

[5] Exhibits P-3 to P-10, P-12 to P-16, P-27 to P-30, all inclusive of sub-markings; Records (CTA Case No. O-485), Vols. 3 to 4, pp. 1383 to 1420, 1454 to 1473 and 1544 to 1573.

[6] Exhibits P-32, P-33 and P-34; Records (CTA Case No. O-485), Vol. 3, pp. 1475 to 1479.

[7] Exhibit P-33 (Annual Summary of Acquisition and Disposable Income), summarized as follows:

Year	Amount
2004	₱ 4,166,179.29
2006	22,292,017.78
2008	4,349,424.20
2009	9,835,549.20
2010	6,330,744.20
2011	5,643,244.20
2012	6,886,577.53
Total	**₱59,503,736.40**

[8] G.R. No. 254086 (Notice), September 7, 2022.

> Section 6 (B) of the NIRC empowers the CIR to assess a taxpayer based on the best evidence obtainable when there is reason to believe that there is fraud. Pursuant thereto, the CIR issued Revenue Audit Memorandum Order (RAMO) No. 1-2000, which authorizes the use of indirect approaches to investigation.
>
> A method commonly used by the government is the expenditure method, which is a method of reconstructing a taxpayer's income by deducting the aggregate yearly expenditures from the declared yearly income. *The theory of this method is that when the amount of the money that a taxpayer spends during a given year exceeds his reported or declared income and the source of such money is* ***unexplained****, it may be inferred that such expenditures represent unreported or undeclared income.* Of course, the taxpayer may show that this excess resulted from non-taxable items, such as loans, gifts, inheritance or assets on hand at the beginning of the period.
>
> The use of the expenditure method is not at all novel. In Collector of Internal Revenue v. Jamir, We approved the resort to the expenditure method by the CTA. We thus affirm the use of the cash expenditure method in proving petitioners' guilt.
> (Citations omitted; emphasis supplied.)

Instead, it is emphasized that "when the amount of the money that a taxpayer spends during a given year exceeds his reported or declared income and the source of such money is *unexplained*, it may be inferred that such expenditures represent unreported or undeclared income."

The Expenditure Method may accordingly be used when the prosecution is unable to explain an accused's source of income, as in this case. Indeed, a lack of information regarding an accused's sources of income is precisely why the Expenditure Method is used at all, *i.e.*, why the government would go through the complicated process of reconstructing a taxpayer's income from its expenditures, rather than simply and straightforwardly determining said income from its known, reported, and declared sources.

Given the foregoing, the burden of evidence shifted and the accused should have explained away the source of funds used to make the expenditures and acquisitions. Although the burden of proof does not shift to the defense, the burden of evidence, on the other hand, shifts from party to party depending upon the exigencies of the case.[9]

As illuminated in *Fernandez v. People*[10]

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[9] *See People v. XXX*, G.R. No. 232294 (Notice), October 19, 2022, *citing Bautista v. Sarmiento*, 223 Phil. 181, 186 (1985).

[10] G.R. No. 249606, July 6, 2022.

> The burden of evidence is defined as that logical necessity which rests on a party at any particular time during a trial to create a *prima facie* case in his own favor, or to overthrow one when created against him. It is determined by the progress of the trial, and shifts to one party when the other party has produced sufficient evidence to be entitled as a matter of law to a ruling in his favor. It may also be determined by the provisions of the substantive law or procedural rules, which may relieve the party from presenting evidence on the fact alleged, *i.e.*, presumptions, judicial notice, and admissions. In People v. Galam, We provided the following depiction of burden of proof and burden of evidence:
>
> > As for Lito, *People v. Villanueva* ordains that the prosecution's burden of proof does not shift to the defense but remains in the prosecution throughout the trial, except in case of self-defense. **When the prosecution, however, has succeeded in discharging the burden of proof by presenting evidence sufficient to convince the Court of the truth of the allegations in the information or has established a *prima facie* case against the accused, as in this case, the burden of evidence shifts to the accused making it incumbent upon him or her to adduce evidence in order to meet and nullify, if not to overthrow, that *prima facie* case.** Here, just like his brother Dante, Lito failed to discharge such burden of evidence. As it was, Lito did not even offer any defense on his behalf since the trial court heard the case up until now.
> > (Emphasis in the original; citations omitted)

Accused had every opportunity to explain away the source of funds used to make the expenditures and acquisitions, but it is indisputable that the source of funds remained ***unexplained***. Accused did not even bother to file any Formal Offer of Evidence. As *Kingsam* pronounced, "since the source of such money is unexplained, it may be inferred that such expenditures represent unreported or undeclared income."

Just last year, the failure of an accused to similarly account for the source of his expenditures led the Supreme Court to conclude that the monies spent were derived from undisclosed income,[11] to wit—

> In CTA Crim. Case No. O-013 — willful failure to file ITR for the taxable year 2002, the prosecution proved that first, Joel is a Filipino citizen engaged in business and the practice of profession required to file a return on income derived from all sources. On this point, we affirm the prosecution's use of the expenditures method in identifying Joel's likely source of undeclared or unreported income. In *Bureau of Internal Revenue v. Court of Appeals*, the Court held that:
>
> > [T]he government is allowed to resort to all evidence or resources available to determine a taxpayer's income and to use methods to reconstruct his income. A method

[11] *People vs. Mendez*, supra note 3.

> commonly used by the government is the expenditure method, which is a method of reconstructing a taxpayer's income by deducting the aggregate yearly expenditures from the declared yearly income. The theory of this method is that when the amount of the money that a taxpayer spends during a given year exceeds his reported or declared income and the source of such money is unexplained, it may be inferred that such expenditures represent unreported or undeclared income. (Emphasis supplied; citations omitted)

Of course, the taxpayer may justify that the expenses were sourced from other funds, such as personal wealth, donations, borrowings or loans, and other income.

Here, the prosecution proved that Joel spent a large amount of money on rentals and advertisements, purchases of vehicles, and foreign travel in 2002. The Contract of Lease dated July 12, 2001, for a 220-square meter health clinic and gallery at No. 31-G A. Roces Avenue, Quezon City, showed a monthly rental of P27,000.00 for the period of August 15, 2001, to August 24, 2007. Joel and his witness, lessor Ma. Lita D. Gregorio never disputed the payment of rentals. They merely claimed that the clinic's operation was suspended in 2002 because of a lack of building permit. Moreover, Joel did not contest the prosecution's claim that he spent P1,385,108.78 for advertisement placements with *PhilStar Daily, Inc.* and P1,702,871.41 with *Philippine Daily Inquirer*, that Joel acquired several vehicles, and he had frequent travels abroad. *Joel's failure to account for the source of his expenditures leads us to conclude that the monies spent were derived from undisclosed income* from the operation of his business and the practice of his profession in 2002.
(Citations omitted; emphasis supplied.)

Granting, without conceding, that the likely source of income is required from the prosecution, the undersigned finds this to have been established. The Articles of Incorporation and/or General Information Sheets of the corporations in which accused invested capital show that she was an officer of said corporations from 2008 to 2010.[12] This implies that she received compensation for assuming such roles, sources of income which she failed to report in her ITR.

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[12] *See* Exhibit P-15, Records (CTA Case No. O-485), Vol. 4, pp. 1544 to 1554; *see also* Exhibits P-29 to P-30, Records (CTA Case No. O-485), Vol. 4, pp. 1562-1573. The relevant positions are summarized below:

Corporation	*Position of Accused*	*Year*
JLN Construction and Development Corporation	Treasurer	2008
JLN Corporation	Chairman of the Board, Member of Audit Committee	2009
JLN Corporation	Member of the Board, President, Member of the Compensation and Audit Committees	2010

The Court can even take judicial notice of the illegal activities for which the accused had been convicted by the Sandiganbayan[13] and take these as proof of such likely sources of income during the taxable years subject of these cases. After all, *Sections 31 and 32 of the NIRC* defines gross income as coming from whatever source and may, thus, include proceeds from unlawful activities.

In taking judicial notice of the convictions of the accused, the undersigned takes her cue from the pronouncement in *Calleja v. Executive Secretary*,[14] as follows—

> Generally speaking, matters of judicial notice have three material requisites: **(1) the matter must be one of *common and general knowledge*; (2) it must be *well and authoritatively settled* and not doubtful or uncertain; and (3) it must be *known to be within the limits of the jurisdiction of the court.*** The principal guide in determining what facts may be assumed to be judicially known is that of notoriety. Hence, it can be said that judicial notice is limited to facts evidenced by public records and facts of general notoriety. Moreover, a judicially noticed fact must be one not subject to a reasonable dispute in that it is either: (1) generally known within the territorial jurisdiction of the trial court; or (2) capable of accurate and ready determination by resorting to sources whose accuracy cannot reasonably be questionable.

Here, it cannot be denied that the involvement of the accused in the pork barrel scam is one of common and general knowledge, having been prominently discussed in both traditional[15] and social media.[16] The Sandiganbayan convictions against the accused arc also well and authoritatively settled and not doubtful or uncertain and known to be within

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[13] *See People v. Revilla, et al.*, Crim. Case No. SB-14-CRM-0240, December 7, 2018; *see also People v. Jaraula, et al.*, Crim. Case nos. SB-15-CRIM-0016-0018, SB-15-CRM-0019-0021, & SB-15-CRM-0022-0024, February 5, 2021; *see also People v. Valdez, et al.*, Crim. Case No. SB-15-CRM-0008, October 2, 2023; *see also People v. Pingoy, et al.*, Crim. Case Nos. SB-16-CRM-0254, SB-16-CRM-0255, SB-16-CRM-0256, SB-16-CRM-0257, SB-16-CRM-0258, SB-16-CRM-0259, SB-16-CRM-0260, SB-16-CRM-0261, SB-16-CRM-0262, & SB-16-CRM-0263, October 20, 2023; *see also People v. Estrada, et al.*, Crim Case No. SB-14-CRM-0239, January 19, 2024.

[14] G.R. Nos. 252578, 252579, 252580, 252585, 252613, 252623, 252624, 252646, 252702, 252726, 252733, 252736, 252741, 252747, 252755, 252759, 252765, 252767, 252768, 16663, 252802, 252809, 252903, 252904, 252905, 252916, 252921, 252984, 253018, 253100, 253118, 253124, 253242, 253252, 253254, 254191, & 253420, December 7, 2021.

[15] *See the following examples:* https://www.gmanetwork.com/news/topstories/specialreports/341906/janet-napoles-and-the-unraveling-of-the-pork-barrel-scandal/story/; https://www.rappler.com/nation/43070-napoles-senate-appearance/; https://legacy.senate.gov.ph/photo_release/2013/1107_03.asp; https://www.gmanetwork.com/news/topstories/nation/334391/senate-rejects-napoles-bid-to-go-into-executive-session/story/; https://www.rappler.com/nation/43100-napoles-senate-hearing/; https://www.philstar.com/headlines/2018/03/16/1797337/janet-lim-napoles-now-enjoying-partial-witness-protection; https://www.rappler.com/nation/198311-ombudsman-morales-janet-napoles-witness-protection-no-effect-cases/; https://www.pna.gov.ph/articles/1036491

[16] *See* PHILIPPINES: Social Media Slaps Sticky Fingers in 'Pork Barrel Scam', *https://asiamedia.lmu.edu/2013/09/05/philippines-social-media-propels-protest-against-pork-barrel-issue/*, last accessed March 7, 2024; From Facebook to Luneta: Anti-pork protest spills into streets August 26; https://www.gmanetwork.com/news/topstories/nation/322566/from-facebook-to-luneta-anti-pork-protest-spills-into-streets-august-26/story/, last accessed March 7, 2024.

the limits of the jurisdiction of the court. As well, the fact of conviction of the accused by the Sandiganbayan is not subject to a reasonable dispute since it is generally known within the territorial jurisdiction of this court and certainly capable of accurate and ready determination by resorting to sources whose accuracy cannot reasonably be questionable—the Sandiganbayan records themselves.

Given all the foregoing, it is the opinion of the undersigned that accused must be convicted of the crimes charged against her.

To summarize, given the Computation of Deficiency Income Tax, Annual Summary of Acquisition and Disposable Income of accused[17] and upon the comparison of her Expenses and Acquisitions from 2004-2012[18] vis a vis her Declared incomes in ITRs of 1999 to 2009[19] and her Non Filing of ITR for 2010, 2011 and 2012,[20] accused' violation of Sections 254 and 255 of the NIRC has been established.

Premises considered, I vote for the conviction of the accused for all charges against her.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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17 Exhibits P-32, P-33 and P-34; Records (CTA Case No. O-485), Vol. 3, pp. 1475 to 1479.

18 Exhibits P-3 to P-10, P-12 to P-16, P-27 to P-30, all inclusive of sub-markings; Records (CTA Case No. O-485), Vols. 3 to 4, pp. 1383 to 1420, 1454 to 1473 and 1544 to 1573.

19 Exhibits P-21, P-22, P-24, inclusive of sub-markings; Records (CTA Case No. O-485), Vol. 3, pp. 1423 to 1442 and 1444 to 1445.

20 Exhibit P-2; Records (CTA Case No. O-485), Vol. 3, p. 1382.