REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

IZUMO CONTRACTORS, INC. rep. by CEDRIC LEE, JOHN K. ONG & JUDY GUTIERREZ LEE,
Accused.

CTA CRIM. CASE NOS. O-526, O-527, O-528 & O-529

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

JUL 24 2018 1:50 p.m.

x - x

RESOLUTION

For resolution of this Court are accused Cedric Lee and Judy Gutierrez Lee's **Demurrer to the Prosecution's Evidence**, filed on January 29, 2018, and accused John K. Ong's **Motion for Leave to File Demurrer to Evidence** with attached **Demurrer to Evidence** (the Honorable Court has issued an Order last January 24, 2018 allowing accused to file Demurrer to Evidence within five (5) days – hence, the filing of this Demurrer to Evidence is well within that five [5] day period granted to the accused), filed on January 29, 2018, both without prosecution's comment as per Records Verification dated February 20, 2018.

The Court shall first resolve accused John K. Ong's motion.

Accused John K. Ong's Motion for Leave to File Demurrer to Evidence

Accused John K. Ong manifests that after prosecution has rested its case, the Court issued an Order allowing him to file his Demurrer. Thus, accused John K. Ong seeks the Court's leave to file a demurrer to evidence on the ground that prosecution has failed to present clear and convincing evidence or proof beyond reasonable doubt that he is liable for the tax evasion charges as enumerated in the Informations.

Accused John K. Ong alleges that the only tangible documentary evidence against him was the 2012 General Information Sheet attached to the Joint Complaint Affidavit dated March 27, 2014. Accordingly, the same was not in existence at the time when the BIR filed its Joint Complaint Affidavit.

Moreover, accused John K. Ong, avers that he was never a corporate officer or employee of Izumo Contractors, Inc. (Izumo) during the subject taxable periods. Thus, there is no valid factual and legal bases to hold him liable for tax evasion.

Furthermore, accused John K. Ong claims that the prosecution failed to prove that the Final Assessment Notices were duly sent or that he was aware of Izumo's tax liabilities in order to impute upon him the required element of "willfulness".

Demurrer to the evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict.[1] A demurrer to evidence tests the sufficiency or insufficiency of the prosecution's evidence. As such, a demurrer to evidence or a motion for leave to file the same must be filed after the prosecution rests its case.[2]

The Court grants accused John K. Ong's Motion for Leave to File Demurrer to Evidence.

Section 23 of Rule 119 of the Rules of Criminal Procedure provides:

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[1] *People of the Philippines vs. Go, et al.,* G.R. No. 191015, August 6, 2014.
[2] *Valencia vs. The Sandiganbayan,* G.R. No. 165996, October 17, 2005.

> "**Section 23**. *Demurrer to evidence.* — After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.
>
> If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.
>
> The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.
>
> If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.
>
> The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by *certiorari* before judgment."

Based on the foregoing, the motion for leave of court to file demurrer evidence shall specifically state its grounds and must be filed within a non-extendible period of five (5) days after the prosecution rests its case.

Records show that in the hearing held on January 24, 2018, the Court granted accused John K. Ong a period of five (5) days within which to file his Motion for Leave to File Demurrer to Evidence. Thus, the instant motion was seasonably filed on January 29, 2018.

Furthermore, it must be noted that the judicial action to grant prior leave to file demurrer to evidence is discretionary upon the trial court.[3]

In view thereof, accused John K. Ong's **Motion for Leave to File Demurrer to Evidence** is **GRANTED**. Accordingly, his Demurrer to Evidence is **ADMITTED**.

The Court shall resolve the demurrer to evidence.

Accused Cedric Lee and Judy Gutierrez Lee's Demurrer to the Prosecution's Evidence, and accused John K. Ong's Demurrer to Evidence

Cedric Lee, John K. Ong and Judy Gutierrez Lee were accused through various Informations filed on June 15, 2015 under CTA Criminal Case Nos. O-526, O-527, O-528 and O-529 for violation of Sections 254 and 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, allegedly committed as follows:

CTA Criminal Case No. O-526

> "That on or about April 2010, in Quezon City, Metro Manila, within the jurisdiction of this Honorable Court, accused Cedric Lee, John K. Ong and Judy Gutierrez Lee, being the President/Chief Executive Officer, Vice President/Chief Operating Officer, and Chief Financial Officer, respectively, of Izumo Contractors, Inc., a domestic corporation registered as taxpayer with BIR Revenue District Office No. 40 – Cubao, Quezon City, and that time required by law, rules and regulations to pay taxes for the said corporation did then and there, confederating with each other, willfully and feloniously fail to supply correct and accurate information in the income tax returns of Izumo Contractors, Inc. for taxable year 2009 by did then and there not declaring therein the income payments derived from the City Government of Davao and the Municipality of Tagudin, Ilocos Sur

[3] *Bernardo vs. Court of Appeals*, et al., G.R. No. 119010, September 5, 1997.

amounting to ₱113,325,928.16 and ₱18,075,067.72, respectively, or a total of ₱131,400,995.88, thereby resulting in deficiency tax in the amount of TWENTY SEVEN MILLION THREE HUNDRED FIFTY-NINE THOUSAND EIGHT HUNDRED SIXTEEN AND SIXTY-ONE CENTAVOS (₱27,359,816.61), exclusive of surcharges and interest, to damage and prejudice of the government.

CONTRARY TO LAW."[4]

CTA Criminal Case No. O-527

"That on or about April 2007, in Quezon City, Metro Manila, within the jurisdiction of this Honorable Court, accused Cedric Lee, John K. Ong and Judy Gutierrez Lee, being the President/Chief Executive Officer, Vice President/Chief Operating Officer, and Chief Financial Officer, respectively, of Izumo Contractors, Inc., a domestic corporation registered as taxpayer with BIR Revenue District Office No. 40 – Cubao, Quezon City, and that time required by law, rules and regulations to pay taxes for the said corporation, did then and there, confederating with each other, willfully and feloniously fail to supply correct and accurate information in the income tax returns of Izumo Contractors, Inc. for taxable year 2006 by did then and there not declaring therein the income payments derived from the City Government of San Juan and the City Government of Butuan amounting to ₱46,309,939.33 and ₱48,015,291.50, respectively, or a total of ₱94,325.230.83, thereby resulting in deficiency tax in the amount of THIRTY ONE MILLION SIXTY-ONE THOUSAND SIX HUNDRED TWENTY-THREE PESOS AND THIRTY-EIGHT CENTAVOS (₱31,061,623.38), exclusive of surcharges and interest, to damage and prejudice of the government.

CONTRARY TO LAW."[5]

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[4] CTA Crim. Case No. O-526, Docket (Vol. I), p. 8.
[5] CTA Crim. Case No. O-527, Docket, p. 8.

CTA Criminal Case No. O-528

"That on or about April 2008, in Quezon City, Metro Manila, within the jurisdiction of this Honorable Court, accused Cedric Lee, John K. Ong and Judy Gutierrez Lee, being the President/Chief Executive Officer, Vice President/Chief Operating Officer, and Chief Financial Officer, respectively, of Izumo Contractors, Inc., a domestic corporation registered as taxpayer with BIR Revenue District Office No. 40 – Cubao, Quezon City, and that time required by law, rules and regulations to pay taxes for the said corporation, did then and there, confederating with each other, willfully and feloniously fail to supply correct and accurate information in the income tax returns of Izumo Contractors, Inc. for taxable year 2007 by did then and there not declaring therein the income payments derived from the City Government of San Juan and the City Government of Butuan amounting to ₱13,454.066.76 and ₱32,618,546.50, respectively, or a total of ₱46,072,613.26, thereby resulting in deficiency tax in the amount of TWELVE MILLION FIVE HUNDRED FIFTY-SEVEN THOUSAND TWO HUNDRED EIGHTY-THREE AND FORTY CENTAVOS (₱12,557,283.40), exclusive of surcharges and interest, to damage and prejudice of the government.

CONTRARY TO LAW."[6]

CTA Criminal Case No. O-529

"That on or about April 2009, in Quezon City, Metro Manila, within the jurisdiction of this Honorable Court, accused Cedric Lee, John K. Ong and Judy Gutierrez Lee, being the President/Chief Executive Officer, Vice President/Chief Operating Officer, and Chief Financial Officer, respectively, of Izumo Contractors, Inc., a domestic corporation registered as taxpayer with BIR Revenue District Office No. 40 – Cubao, Quezon City, and that time required by law, rules and regulations to pay taxes for the said corporation, did then and there, confederating with each other, willfully and feloniously fail

[6] CTA Crim. Case No. O-528, Docket, p. 8.

to supply correct and accurate information in the income tax returns of Izumo Contractors, Inc. for taxable year 2008 by did then and there not declaring therein the income payments derived from the City Government of Pasay City and the Municipality of Tagudin, Ilocos Sur amounting to ₱12,363,737.56 and ₱18,462,305.87, respectively, or a total of ₱30,826,043.43, thereby resulting in deficiency tax in the amount of THREE MILLION THREE HUNDRED TWENTY THOUSAND FIVE HUNDRED ELEVEN AND EIGHTY FIVE CENTAVOS (₱3,320,511.85), exclusive of surcharges and interest, to damage and prejudice of the government.

CONTRARY TO LAW."[7]

On September 14, 2015, accused John K. Ong voluntarily surrendered and submitted himself to the jurisdiction of this Court and posted his cash bail bond in the amount of ₱20,000.00 for CTA Crim. Case No. O-528. His arraignment for that case was set on October 7, 2015.[8]

The following day, September 15, 2015, accused John K. Ong voluntary surrendered and submitted himself to the jurisdiction of this Court and posted his cash bail bond in the amount of ₱20,000.00 for CTA Crim. Case Nos. O-526, O-527 and O-529. His arraignment for these cases was set on October 14, 2015.[9]

On September 16, 2015, the Court ordered the issuance of warrants of arrest against the accused Judy Gutierrez Lee and Cedric Lee for CTA Crim. Case Nos. O-526, O-527 and O-529.[10] Both accused voluntarily surrendered and posted their respective cash bail bonds of ₱20,000.00 on October 2, 2015. Their arraignment was also set on October 14, 2015.[11]

On October 7, 2015, CTA Criminal Case No. O-528 was consolidated with CTA Criminal Case No. O-526.[12] Meanwhile, on

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[7] CTA Crim. Case No. O-529, Docket, p. 8.
[8] CTA Crim. Case No. O-528, Docket, p. 159.
[9] Resolution dated September 15, 2015, CTA Crim. Case No. O-526, Docket (Vol. I), p. 152.
[10] Resolution dated September 16, 2015, CTA Crim. Case No. O-526, Docket (Vol. I), pp. 164-167.
[11] Resolution dated October 2, 2015, CTA Crim. Case No. O-526, Docket (Vol. I), p. 192.
[12] CTA Crim. Case No. O-528, Docket, p. 170.

October 9, 2015, CTA Criminal Case Nos. O-527 and O-529 were also consolidated with CTA Criminal Case No. O-526.[13]

On October 12, 2015, accused Judy Gutierrez Lee and Cedric Lee voluntarily surrendered and posted their respective cash bail bonds of ₱20,000.00 each for CTA Crim. Case No. O-528.[14]

Accused Cedric Lee and Judy Gutierrez Lee were arraigned on October 14, 2015 for the above-mentioned cases where they entered a plea of "NOT GUILTY".[15] On the other hand, accused John K. Ong was arraigned on November 11, 2015, wherein he also entered a plea of "NOT GUILTY".[16]

The Preliminary Conference[17] for accused John K. Ong was conducted on November 16, 2015, while the Preliminary Conference[18] for accused Cedric Lee and Judy Gutierrez Lee were conducted on January 20, 2016 and April 18, 2016. The Pre-Trial Order[19] for the consolidated cases was issued on June 23, 2016.

Trial ensued and the prosecution presented the following witnesses: (1) Ms. Gertrudes M. Eito, Intelligence Officer III of the Bureau of Internal Revenue (BIR); (2) Mr. Gary V. Atanacio, Intelligence Officer I of the BIR; (3) Ms. Mary Grace Parado-Alonzo, Revenue Officer I of the BIR; (4) Ms. Dinah A. Lamsen, Acting City Accountant of the City Government of San Juan; (5) Ms. Dorothy Joy C. Angeles-Ramos, Provincial Accountant of the Provincial Government of Davao Occidental; (6) Ms. Antonietta C. Abella, City Accountant of the City Government of Butuan City; (7) Ms. Leilani L. Cabañero, Municipal Accountant of Tagudin, Ilocos Sur; and (8) Mr. Pedro R. Ignacio, Administrative Assistant V, Office of the Secretariat of the City Government of Pasay. Their testimonies are summarized below.

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[13] Resolution dated October 9, 2015, CTA Crim. Case No. O-526, Docket (Vol. I), pp. 196-197.
[14] CTA Crim. Case No. O-528, Docket, p. 177.
[15] Minutes of Hearing dated October 14, 2015, CTA Crim. Case No. O-526, Docket (Vol. I), p. 210.
[16] Minutes of Hearing dated November 11, 2015, CTA Crim. Case No. O-526, Docket (Vol. I), p. 220.
[17] CTA Crim. Case No. O-526, Docket (Vol. I), pp. 225-229.
[18] CTA Crim. Case No. O-526, Docket (Vol. I), pp. 305-310 and 339-342.
[19] CTA Crim. Case No. O-526, Docket (Vol. II), pp. 430-438.

Ms. Gertrudes M. Eito[20]

Ms. Eito testified that she is employed as an Intelligence Officer III of the BIR and was part of the group that conducted the investigation of Izumo's tax liabilities, pursuant to the Letter of Authority SN: eLA201100060813/LOA-211-2014-00000051 dated February 13, 2014. Ms. Eito also stated that she was the one who served the Letter of Authority.

Mr. Gary V. Atanacio[21]

Mr. Atanacio testified that he is presently employed as Intelligence Officer I of the BIR and that his group conducted an investigation on the tax liabilities of Izumo.

Mr. Atanacio testified that, after the issuance of the LOA, his group sent a letter request to the local chief executives of the City of San Juan, Pasay City, Butuan City, Tagudin, Ilocos Sur, and to the Provincial Government of Davao del Sur for them to provide documents/certifications as to their income payments made to Izumo.

Mr. Atanacio stated that his group received the following the following:

"A15: We received the following:

1. Certification of Income Payments to Izumo Contractors, Inc. for taxable years 2006 and 2007 by City Accountant Alicia E. Cruz-Barazon of City of San Juan;

2. Certification of Income Payments to Izumo Contractors, Inc. for taxable years 2008 and 2010 by Pedro R. Ignacio of the Accounting Department of Pasay City;

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[20] Exhibits "P-48" and "P-48-A", Judicial Affidavit of Gertrudes M. Eito, CTA Crim. Case No. O-526, Docket (Vol. III), pp. 858-871.

[21] Exhibits "P-49" and "P-49-A", Judicial Affidavit of Gary V. Atanacio, CTA Crim. Case No. O-526, Docket (Vol. III), pp. 872-879.

3. Certification of Income Payments to Izumo Contractors, Inc. for taxable years 2006 and 2007 by City Accountant Antonietta C. Abella of Butuan City;

4. Certification of Income Payments to Izumo Contractors, Inc. for taxable years 2008 and 2009 by Municipal Accountant Leilani Vee L. Cabanero of the Municipality of Tagudin, together with the disbursement vouchers and official receipts issued by Izumo Contractors, Inc; and

5. Certification of Income Payments to Izumo Contractors, Inc. for taxable year 2009 by OIC-Provincial Accountant Dorothy Joy C. Angeles of the Provincial Government of Davao del Sur, together with the disbursement vouchers, advice to debit from the Landbank of the Philippines (LBP) and official receipts issued by Izumo Contractors, Inc."

Based thereon, they computed Izumo's gross income for taxable years 2006, 2007, 2008 and 2009 and compared the same with the Income Tax Returns filed by Izumo. By doing so, his group discovered that there was substantial under-declaration of taxable income by Izumo.

His group also accessed the Securities and Exchange Commission (SEC) registration of Izumo in order to determine its responsible corporate officers. In doing so, they were able to secure a copy of the Certificate of Incorporation, Articles of Incorporation, Treasurer's Affidavit, By-Laws and General Information Sheet of Izumo.

Mr. Atanacio testified that General Information Sheet of Izumo shows that its responsible corporate officers are the following: Cedric C. Lee as President, Judy Gutierrez Lee as Chief Financial Officer and John K. Ong as Vice-President/Chief Operating Officer (COO). Thus, his group filed a criminal case against the said officers.

Ms. Mary Grace Parado-Alonzo[22]

Ms. Parado-Alonzo testified that she is a Revenue Officer I of the BIR, that their group conducted an investigation on the tax liabilities of Izumo Contractors, Inc., and eventually filed a criminal complaint against the corporation and its responsible corporate officers.

Ms. Parado-Alonzo stated that she was the one who computed the income tax deficiencies of Izumo for taxable years 2006, 2007, 2008 and 2009. Accordingly, she deducted the declared expenses of the subject corporation per declaration of its ITRs for 2006, 2007, 2008 and 2009 from the total income payments made per certification of LGUs and not from the declared sales/revenues/receipts of Izumo.

Ms. Parado-Alonzo testified that when they filed a complaint as stated in its ITRs, the total tax due of Izumo for taxable year 2006 was ₱89,768,091.58, ₱33,779,092.35 for 2007, ₱8,268,074.51 for 2008, and ₱62,653,980.03 for taxable year 2009. Her reason for doing the same was due to the fact that the declared sales/revenues/receipts per ITR of Izumo were different from the income payments it received from its various customer LGUs as shown by the certifications issued by the LGUs concerned.

She computed the percentage of under-declaration of income by comparing the sales/revenues/receipts declared in ITR with the income payments received from the said LGUs and discovered that the under-declaration in 2006 was 1602%, 404% in 2007, 44% in 2008 and 227% in 2009.

Ms. Parado-Alonzo also testified that the ITR of Izumo Contractors Inc. for taxable year 2006 was filed by its Accountant, Susan M. Nace, while the ITRs for taxable years 2007, 2008 and 2009 were filed by its President, Cedric Lee. Ms. Parado-Alonzo identified several documents showing that the accused are the responsible officers of Izumo.

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[22] Exhibits "P-50" and "P-50-A", Judicial Affidavit of Mary Grace Parado-Alonzo, CTA Crim. Case No. O-526, Docket (Vol. III), pp. 880-897.

Ms. Dinah A. Lamsen[23]

Ms. Lamsen testified that she is the Acting City Accountant of the City Government of San Juan (CGSJ) and that her duties and responsibilities include overseeing the entire accounting functions including tax matters of CGSJ and other matters related to the records in the Accounting Division.

Ms. Lamsen stated that she received a call from the BIR, requesting her to testify on the certification issued by CGSJ's former City Accountant, Alicia E. Cruz-Barazon, concerning the income payments made by CGSJ to Izumo. She checked the accuracy of the amounts indicated in subject certification.

Ms. Dorothy Joy C. Angeles-Ramos[24]

Ms. Angeles-Ramos testified that she is the Provincial Accountant of the Provincial Government of Davao Occidental (PDO) and that her duties and responsibilities include overseeing the entire accounting functions including tax matters of the PDO and other matters related to the records in the Accounting Department.

Pursuant to the request of the BIR, she issued a Certification showing income payments made by PDDS to Izumo for taxable years 2006 to 2012. She based her certification on the office records of the office such as ledger, the books of accounts, the disbursement vouchers and the corresponding receipts issued by Izumo upon its receipt of the income payment that they made.

Ms. Antonietta C. Abella[25]

Ms. Abella testified that she is the City Accountant of the City Government of Butuan City (Butuan) and that her duties and responsibilities include overseeing the entire accounting functions including tax matters of Butuan and other matters related to the records in the accounting division. As per request of BIR, she issued

[23] Exhibits "P-59" and "P-59-A", Judicial Affidavit of Dinah A. Lamsen, CTA Crim. Case No. O-526, Docket (Vol. III), pp. 934-938.
[24] Exhibits "P-60" and "P-60-A", Judicial Affidavit of Dorothy Joy C. Angeles-Ramos, CTA Crim. Case No. O-526, Docket (Vol. III), pp. 939-944.
[25] Exhibits "P-61" and "P-61-A", Judicial Affidavit of Antonietta C. Abella, CTA Crim. Case No. O-526, Docket (Vol. III), pp. 945-949.

a Certification indicating income payments made by Butuan to Izumo for the years 2006 to 2012.

Ms. Leilani L. Cabañero[26]

Ms. Cabañero testified that she is the Municipal Accountant of Tagudin, Ilocos Sur (Tagudin) and that her duties and responsibilities include overseeing the entire accounting functions including tax matters of Tagudin and other matters related to the records in the Accounting Division.

She testified that she issued a Certification indicating the income payments made by Tagudin to Izumo for the years 2006 to 2012.

Mr. Pedro R. Ignacio[27]

Mr. Ignacio testified that he holds the position of Administrative Assistant V at the Office of the Secretariat of the City Government of Pasay (Pasay) and that prior to that, he served as Administrative Assistant V at the Accounting Department of Pasay from 1998 to March 27, 2016. He states that as part of his duties and responsibilities as Administrative Assistant V of the Accounting Department, he acts as the supervising officer for administrative services at the Accounting Department. He testified that he was designated by the City Accountant to certify and verify documents pertaining to the accounting records of Pasay.

Mr. Ignacio testified that he issued a Certification indicating the income payments made by Pasay to Izumo for the years 2006 to 2012.

On October 9, 2017, petitioner filed, through registered mail, its Formal Offer of Evidence[28].

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[26] Exhibits "P-62" and "P-62-A", Judicial Affidavit of Leilani L. Cabañero, CTA Crim. Case No. O-526, Docket (Vol. III), pp. 950-955.
[27] Exhibits "P-63" and "P-63-A", Judicial Affidavit of Pedro R. Ignacio, CTA Crim. Case No. O-526, Docket (Vol. III), pp. 956-960.
[28] CTA Crim. Case No. O-526, Docket (Vol. III), pp. 765-783.

This was resolved by the Court in the Resolution[29] dated December 1, 2017, wherein the Court admitted Exhibits "P-1", "P-3", "P-3-a", "P-3-b", "P-3-c", "P-3-d", "P-3-e", "P-4", "P-5", "P-6", "P-7", "P-7-a", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-17", "P-34", "P-48", "P-48-a", "P-49", "P-49-A", "P-50", "P-50-A", "P-59", "P-59-A", "P-60", "P-60-A", "P-61", "P-61-A", "P-62", "P-62-A", "P-63", and "P-63-A". However, the Court denied the admission of Exhibits "P-15", and "P-16" for failure to have the exhibits identified; and Exhibits "P-2", "P-14", "P-18", "P-19", "P-20", "P-21", "P-22", "P-23", "P-24", "P-25", "P-26", "P-27", "P-28", "P-29", "P-30", "P-31", "P-32", "P-33", "P-35", "P-36", "P-37", "P-38", "P-39", "P-40", "P-41", "P-42", "P-43", "P-44", "P-45", "P-46", "P-47", "P-51", "P-52", "P-52-A", "P-53", "P-53-A", "P-54", "P-54-A", "P-55", "P-56", and "P-57", for failure to present their originals for comparison.

On January 24, 2018, accused Cedric Lee and Judy Gutierrez Lee filed a Motion for Leave to File Demurrer of Evidence[30], which was granted by the Court during the hearing on January 24, 2018.[31] Thereafter, accused Cedric Lee and Judy Gutierrez Lee filed their Demurrer to the Prosecution's Evidence[32] on January 29, 2018.

Meanwhile, on January 29, 2018, accused John K. Ong, filed a Motion for Leave to File Demurrer of Evidence[33]. This was granted earlier and his Demurrer to Evidence[34] was admitted.

Hence, this resolution.

Both accused Cedric Lee and Judy Gutierrez-Lee argue that the prosecution's evidence did not prove the elements of the offense charged, as well as their culpability.

They contend that: (1) there is no evidence presented by the prosecution showing that the accused were officers of Izumo at the time material in the subject Informations; (2) there is no evidence presented by the prosecution establishing the specific participation of

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[29] CTA Crim. Case No. O-526, Docket (Vol. III), pp. 1000-1001.
[30] CTA Crim. Case No. O-526, Docket (Vol. III), pp. 1002-1004.
[31] Order and Minutes of the Hearing dated January 24, 2018, CTA Crim. Case No. O-526, Docket (Vol. III), pp. 1006-1007 and 1005.
[32] CTA Crim. Case No. O-526, Docket (Vol. III), pp. 1008-1025.
[33] CTA Crim. Case No. O-526, Docket (Vol. III), pp. 1026-1029.
[34] CTA Crim. Case No. O-526, Docket (Vol. III), pp. 1030-1040.

the accused in the alleged tax evasion, and (3) there was no final assessment made at the time of the filing of the complaint.

They argue that complainant did not issue a formal assessment against Izumo, which is required before the filing of a criminal complaint for tax evasion. Hence, the instant case was prematurely filed, and consequently, the case should be dismissed.

Moreover, accused Cedric Lee and Judy Gutierrez Lee contend that their constitutional right to due process was violated when the BIR hurriedly filed the instant complaint without issuing any final notice and demand.

Furthermore, they claim that being merely the officers of Izumo by itself, is not enough to hold them criminally liable considering that they have no personal participation in the alleged tax evasion.

Lastly, accused Cedric Lee and Judy Gutierrez Lee allege that there is no proof that they willfully and deliberately intended to commit tax evasion.

On the other hand, accused John K. Ong, in his Demurrer to Evidence, argues that the BIR has no cause of action to file these tax evasion cases because it has not issued any final notice of assessment upon him. He contends that the failure of the prosecution to prove that assessment notices were actually sent to him or that he was aware of Izumo's tax liabilities is fatal to its case.

Accused John K. Ong also argues that the only document produced and attached by the BIR investigators to their Joint Complaint Affidavit was the General Information Sheet covering the period March 1, 2012, which, accordingly, is totally irrelevant and immaterial to the criminal charges since its existence is beyond the four-year period covered by the criminal Informations.

Finally, accused Ong contends that the evidence of prosecution has proven that he was not among the officials responsible for the said tax evasion.

The Court now proceeds to resolve the Demurrers to Evidence.

The question in a demurrer to evidence is whether there is competent or sufficient evidence to establish a prima facie case to sustain the indictment or support a verdict of guilt.[35] Section 1, Rule 33 of the Revised Rules of Court reads as follows:

"RULE 33

Demurrer to Evidence

Section 1. Demurrer to evidence. - After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that **upon the facts and the law the plaintiff has shown no right to relief**. If his motion is denied, he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence." (*Emphasis Supplied.*)

Demurrer to the evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is **competent** or **sufficient** evidence to sustain the indictment or to support a verdict of guilt.[36]

There is no merit to the accused's argument that there is no cause of action since the BIR failed to issue a formal assessment notice, which, accordingly is required before filing a complaint for tax evasion.

The Supreme Court in *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, et al.*[37], held that an assessment is not necessary before filing a criminal complaint, to wit:

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[35] *Nicolas vs. Sandiganbayan*, G.R. Nos. 175930-31 & 176010-11, February 11, 2008.
[36] *Gutib v. Court of Appeals*, G.R. No. 131209, August 13, 1999.
[37] G.R. No. 128315, June 29, 1999.

"Private respondents maintain that the filing of a criminal complaint must be preceded by an assessment. This is incorrect, because **Section 222 of the NIRC specifically states that in cases where a false or fraudulent return is submitted or in cases of failure to file a return such as this case, proceedings in court may be commenced without an assessment.** Furthermore, Section 205 of the same Code clearly mandates that the civil and criminal aspects of the case may be pursued simultaneously. In *Ungab v. Cusi*, petitioner therein sought the dismissal of the criminal Complaints for being premature, since his protest to the CTA had not yet been resolved. The Court held that such protests could not stop or suspend the criminal action which was independent of the resolution of the protest in the CTA. This was because the commissioner of internal revenue had, in such tax evasion cases, discretion on whether to issue an assessment or to file a criminal case against the taxpayer or to do both.

Private respondents insist that Section 222 should be read in relation to Section 255 of the NLRC, which penalizes failure to file a return. They add that a tax assessment should precede a criminal indictment. We disagree. To reiterate, said Section 222 states that **an assessment is not necessary before a criminal charge can be filed**. This is the general rule. Private respondents failed to show that they are entitled to an exception. Moreover, the criminal charge need only be supported by a *prima facie* showing of failure to file a required return. This fact need not be proven by an assessment." (*Emphasis supplied*)

In the case of *Adamson, et al. vs. Court of Appeals, et al.*[38], the Supreme Court, likewise, ruled that the law is clear, when fraudulent taxes are involved, a proceeding in court for the collection of such tax may be begun even without assessment, *viz*:

"Thus, the applicability of *Ungab v. Cusi* is evident to the cases at bar. In this seminal case, this Court ruled

[38] G.R. Nos. 120935 & 124557, May 21, 2009.

that there was no need for precise computation and formal assessment in order for criminal complaints to be filed against him. It quoted Merten's Law of Federal Income Taxation, Vol. 10, Sec. 55A.05, p. 21, thus:

> **An assessment of a deficiency is not necessary to a criminal prosecution for willful attempt to defeat and evade the income tax. A crime is complete when the violator has knowingly and willfully filed a fraudulent return, with intent to evade and defeat the tax. The perpetration of the crime is grounded upon knowledge on the part of the taxpayer that he has made an inaccurate return, and the government's failure to discover the error and promptly to assess has no connections with the commission of the crime.**" (*Emphasis supplied*)

Clearly, regardless of whether or not an assessment has been issued, a crime shall be considered complete when the violator has knowingly and willfully filed a false or fraudulent return, with intent to evade and defeat the tax.

In the instant consolidated cases, the accused are charged for violation of Section 255 of the NIRC of 1997, as amended because they allegedly failed to supply correct and accurate information in the AITRs for taxable years 2006 to 2009.

Section 255 of the NIRC of 1997, as amended, reads as follows:

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

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

In connection with the foregoing, Section 52(A) of the NIRC of 1997, as amended, provides that if the taxpayer is not a natural person but one created by legal fiction, the obligations cited in the above provision rest upon the shoulder of its president, vice-president, or other principal officers of the corporation, thus:

"SEC. 52. *Corporation Returns.* –

(A) Requirements. – Every corporation subject to the tax herein imposed, except foreign corporations not engaged in trade or business in the Philippines shall render, in duplicate, a true and accurate quarterly income tax return and final or adjustment return in accordance with the provisions of Chapter XII of this Title. The return shall be filed by the **president, vice-president or other principal officer**, and shall be sworn to by such officer and by the treasurer or assistant treasurer." (*Emphasis supplied*)

In case of infraction or non-compliance with any of the obligations imposed under Section 255 by the association, partnership or corporation, the penalty shall be imposed upon its responsible officers, namely, its president, general manager, branch manager, treasurer, officer-in-charge or responsible employees who shall be indicted pursuant to Sections 253(d) and 256 of the NIRC of 1997, as amended, thus:

"SEC. 253. *General Provisions.* –

xxx xxx xxx

> (d) In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation."
>
> "SEC. 256. *Penal Liability of Corporations*. – Any corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees, shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (₱50,000) but not more than One hundred thousand pesos (₱l00,000)."

Based on the foregoing provisions of law, to sustain a conviction for failure to supply correct and accurate information in the return under Section 255 of the NIRC of 1997, as amended, the following elements must be established:

1. The accused is a person required to supply correct and accurate information;

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

3. That the failure to supply correct and accurate information was willful; and

4. In case of corporate taxpayers, that the accused is the responsible officer.[39]

To prove the guilt of the accused, the prosecution presented and formally offered testimonial and documentary evidence. However, out of the documents offered, only the following were admitted as per the Court's Resolution[40] dated December 1, 2017:

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[39] Rogelio A. Tan vs. People of the Philippines, CTA EB Crim. Nos. 022 and 023, November 18, 2014.
[40] CTA Crim. Case No. O-526, Docket (Vol. III), pp. 1000-1001.

P-1	Letter-referral dated March 27, 2014 addressed to Secretary of Justice Leila De Lima from BIR Commissioner Kim S. Jacinto-Henares consisting of two (2) pages
P-3	Izumo Contractors Inc.'s Securities and Exchange Commission (SEC) registration consisting of eighteen (18) pages
P-3-a	Cover Sheet from SEC
P-3-b	Certificate of Incorporation
P-3-c	Articles of Incorporation consisting of six (6) pages
P-3-d	Treasurer's Affidavit
P-3-e	By-Laws of Izumo Contractors Inc. consisting of nine (9) pages
P-4	Izumo Contractors Inc. SEC General Information Sheet consisting of six (6) pages
P-5	Izumo Contractors Inc. BIR Registration
P-6	NID Memo Assignment No. KJH/SCD 2014-02-12-0078 dated February 12, 2014
P-7	Letter of Authority No. SN: Ela201100060813 dated February 13, 2014 with its attached List of Requirements
P-7-a	List of Requirements attached to the Letter of Authority dated February 17, 2014 consisting of two (2) pages
P-8	Letter dated February 13, 2014 addressed to Ho. Guia Gomez, City Mayor of San Juan
P-9	Letter dated February 13, 2014, addressed to Hon. Antonino G. Calixto, City Mayor of Pasay City
P-10	Letter dated February 13, 2014 addressed to Butuan City Tourism Council
P-11	Letter dated February 13, 2014 addressed to Atty. Jose V. Bonuan, Jr., Municipal Mayor of Tagudin
P-12	Letter dated February 13, 2014 addressed to Hon. Claude Bautista, Governor of Davao del Sur
P-13	Certificate of Income payments made to Izumo Contractors Incorporated by the City of San Juan dated 21 March 2014 issued by Alicia E. Cruz-Barazon, City Accountant II

P-17	Certificate of Income payments made to Izumo Contractors Incorporated by the Municipal Government of Tagudin, Ilocos Sur dated 31 March 2014 issued by Leilani Vee L. Cabanero, Municipal Accountant
P-34	Certificate of Income payments made to Izumo Contractors Incorporated by the Provincial Government of Davao del Sur
P-48 and P-48-A	Judicial Affidavit of Gertrudes M. Eito
P-49 and P-49-A	Judicial Affidavit of Gary V. Atanacio
P-50 and P-50-A	Judicial Affidavit of Mary Grace Parado-Alonzo
P-59 and P-59-A	Judicial Affidavit of Dinah A. Lamsen
P-60 and P-60-A	Judicial Affidavit of Dorothy Joy C. Angeles-Ramos
P-61 and P-61-A	Judicial Affidavit of Antonietta C. Abella
P-62 and P-62-A	Judicial Affidavit of Leilani L. Cabañero
P-63 and P-63-A	Judicial Affidavit of Pedro R. Ignacio

The first element of Section 255 is present. Records reveal that accused corporation, Izumo Contractors, Inc., is a domestic corporation engaged in the business of general contractor of construction of houses, condominiums, and other buildings, streets, bridges and other civil works.[41] It is duly registered with the Bureau of Internal Revenue with Tax Identification No. 201-054-268-000.[42]

However, the prosecution failed to prove the second and third elements. It was unable to prove that the accused failed to supply correct and accurate information, at the time or times required by law, or rules and regulations.

To recall, in order to ascertain the true income of Izumo, the BIR presented several Certifications of Income Payments, Disbursement Vouchers, Official Receipts and Advice of Debits issued

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[41] Exhibits "P-3", "P-3-a", "P-3-b", "P-3-c", "P-3-d" and "P-3-e".
[42] Exhibit "P-5".

by Izumo's clients for taxable years 2006 to 2009. However, only three (3) documents were admitted by the Court, to wit:

1. Certificate of Income payments made to Izumo Contractors Incorporated by the City of San Juan dated 21 March 2014 issued by Alicia E. Cruz-Barazon, City Accountant II;[43]

2. Certificate of Income payments made to Izumo Contractors Incorporated by the Municipal Government of Tagudin, Ilocos Sur dated 31 March 2014 issued by Leilani Vee L. Cabanero, Municipal Accountant;[44] and

3. Certificate of Income payments made to Izumo Contractors Incorporated by the Provincial Government of Davao del Sur dated 1 April 2014 issued by Dorothy Joy C. Angeles, OIC-Provincial Accountant.[45]

The other Certifications of Income Payments, as well as the Disbursement Vouchers, Official Receipts and Advice of Debits were denied for failure to identify the same and for failure to present the originals for comparison.

Moreover, the Annual Income Tax Return of Izumo for taxable years 2006 to 2009 presented and offered by the prosecution were also denied admission by the Court for failure to present the originals for comparison, pursuant to the "best evidence rule" stated in Section 320, Rule 130 of the Revised Rules of Court, that is, the original document must be produced whenever its contents are the subject of inquiry. Here, the prosecution offers no explanation as to why it was not able to present the originals of the said documents.

Considering that the very documents relied upon by the BIR in ascertaining the undeclared income of Izumo for taxable years 2006 to 2009 were indeed not admitted in evidence, the prosecution, therefore, cannot prove that the accused herein indeed failed to supply correct and accurate information in the subject AITRs.

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[43] Exhibits "P-13".
[44] Exhibits "P-17".
[45] Exhibits "P-34".

Finally, the prosecution also failed to prove that accused Cedric Lee, Judy Gutierrez Lee and John K. Ong were the responsible officers of Izumo at the time material to the incident subject of this case.

Records reveal that even the General Information Sheets[46] presented by the prosecution showing the names of accused Cedric Lee, Judy Gutierrez and John K. Ong as the responsible officers of Izumo Contractors, Inc. were, likewise, denied admission by the Court for failure to present the originals for comparison.

Moreover, the prosecution cannot also rely even on the admitted 2012 General Information Sheet[47] of Izumo Contractors, Inc. as the same only establishes the fact that, at the time of the filing of the complaint, accused Cedric Lee, Judy Gutierrez Lee and John K. Ong were the responsible officers of Izumo Contractors Inc. It does not in any way prove that they were the responsible corporate officers of Izumo Contractors, Inc. at the time material to the commission of the acts complained of (taxable years 2006 to 2009).

It must be emphasized that this being a criminal case, it is for the prosecution to establish the guilt of an accused on the strength of its own evidence. Its case must rise on its own merits. The prosecution carries the burden of establishing guilt beyond reasonable doubt; it cannot merely rest on the relative likelihood of its claims.[48] Any doubt shall be resolved in favor of the accused.[49]

The prosecution was not able to prove that the accused failed to supply correct and accurate information in the AITRs of Izumo Contractors. Inc. for taxable years 2006 to 2009. Accordingly, the Court finds that the evidence presented is not sufficient to sustain the conviction of all the accused since the prosecution failed to discharge the burden to prove all the essential elements of the crime charged against them.

WHEREFORE, premises considered, the accused Cedric Lee and Judy Gutierrez Lee's **Demurrer to the Prosecution's**

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[46] Exhibits "P-55", "P-56", "P-57.
[47] Exhibit "P-4".
[48] *Macayan, Jr. vs. People of the Philippines*, G.R. No. 175842, March 18, 2015.
[49] People of the Philippines vs. Cruz y Tecson, G.R. No. 194234, June 18, 2014.

Evidence, and accused John K. Ong's **Demurrer to Evidence** are **GRANTED**.

Accordingly, accused Cedric Lee, Judy Gutierrez Lee and John K. Ong are **ACQUITTED** of the offenses charged for failure of the prosecution to establish the guilt of the accused beyond reasonable doubt, and without civil liability. Accordingly, the instant consolidated cases are **DISMISSED**.

SO ORDERED.

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

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice