REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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KINGSAM EXPRESS INCORPORATION and SAMUEL S. SANTOS Petitioners,	**CTA EB CRIM. No. 054** (CTA Crim. Case Nos. O-522, O-523, O-525, & O-554)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** JJ.
PEOPLE OF THE PHILIPPINES, Respondent.	***Promulgated:*** OCT 16 2020 10:32 a.m.

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RESOLUTION

UY, J.:

For resolution are the following:

1) Petitioner's "**MOTION TO RESOLVE**"[1] filed on September 23, 2020; and

2) Petitioners' "**MOTION FOR RECONSIDERATION**"[2] filed on November 19, 2019, without respondent's Comment, despite due notice thereof, as per Records Verification[3] dated July 22, 2020. In the said Motion, petitioners pray for the reconsideration and setting aside of the Court *En Banc's* Decision dated October 24, 2019, the dispositive portion of which reads:

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[1] Docket (Vol. II), pp. 553 to 557.
[2] Docket (Vol. I), pp. 493 to 524.
[3] Docket (Vol. II), p. 549.

> "**WHEREFORE,** in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit. The Decision dated March 12, 2018 and the Resolution dated May 30, 2018 are hereby **AFFIRMED.**
>
> **SO ORDERED.**"

In support of their Motion for Reconsideration, petitioners argue that:

1. The Decision of the CTA in Division is null and void for failure to arraign accused Kingsam Express Incorporation;

2. Accused Kingsam Express Incorporation and Samuel Santos were deprived of due process. The amounts of the alleged deficiency income taxes as alleged in the four Informations were mere estimates. Thus, accused were deprived of their right to be informed of the charges against them.

3. The assailed Decision gravely erred in ruling that the filing of the criminal case before the DOJ barely two (2) days after the LOA was issued did not deprive the accused of his constitutional right to due process.

4. Mere increase in expense should not give rise to a presumption of tax evasion. The constitutional right to be presumed innocent must lead to the acquittal of the petitioners.

5. Newly discovered evidence show that the BIR initially acknowledged that the sources for the acquisition of bus units did not come from unreported revenue, thus casting doubt on the guilt of the petitioners.

6. The assailed Decision gravely erred in not applying the equipoise rule and acquitting the accused.

THE COURT *EN BANC'S* RULING

Petitioners' Motion for Reconsideration lacks merit.

After a careful examination and consideration of the petitioners' Motion for Reconsideration, it is noted that the arguments raised in the said Motion, with regard to the following: 1) alleged deprivation of due process due to the filing of the criminal case before the DOJ within two (2) days after the LOA was issued; and 2) the use of the expenditure method, are mere reiterations of matters which have already been considered, weighed and resolved in the assailed Decision. Thus, We shall not belabor, in this Resolution, to repeat the disquisitions made therein.

Anent, however, petitioners' contention that the Decision of the Court in Division is null and void for failure to arraign the accused corporation, this Court finds the same to be without merit.

In support of their argument, petitioners cite the case of *Alfredo Ching vs. Secretary of Justice, et. al.,*[4] which states:

> "If the crime is committed by a corporation or other juridical entity, the directors, officers, employees or other officers thereof responsible for the offense shall be charged and penalized for the crime, precisely because of the nature of the crime and the penalty therefor. A corporation cannot be arrested and imprisoned; hence, cannot be penalized for a crime punishable by imprisonment. <u>However, a corporation may be **charged and prosecuted** for a crime if the imposable penalty is fine. Even if the statute prescribes both fine and imprisonment as penalty, a corporation may be prosecuted and, if found guilty, may be fined."</u>

According to the petitioners, since the accused corporation was not subjected to an arraignment, its right to due process was violated and trampled upon.

We are not convinced.

The foregoing case cited by the petitioners, states that "a corporation may be ***charged*** **and** ***prosecuted*** for a crime if the imposable penalty is fine." By definition, to ***prosecute*** means "to bring suit against, in a court, for redress of wrong or punishment of a crime; to proceed against judicially; to begin and carry on a legal proceeding."[5] It also means "to commence and continue a criminal suit, prosecuting it to final judgment on behalf of the State or Government, as by indictment or information. It consists of the series

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[4] G.R. No. 164317, February 6, 2006.
[5] Philippine Law Dictionary, Third Edition, © 1988, p. 758.

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of proceedings from the time when the formal accusation is made by the filing of an information in the criminal court until the proceedings are terminated."[6]

In other words, the requirement that a corporation be *charged and prosecuted* for a crime, only means that a suit must be brought against the corporation in court, or that a criminal suit be brought against the corporation, by indictment or information.

However, this Court notes that there is nothing in the said case that would suggest that the arraignment of a corporation is a condition *sine qua non* for the Court to acquire jurisdiction over the accused corporation. In fact, petitioners fail to point out any law, jurisprudence, rules and regulations that would require the arraignment of a corporation.

Considering that the subject Informations sufficiently charged and prosecuted both of the accused, Kingsam Express Incorporation and Samuel S. Santos, the same is considered consistent with the ruling in the said case of *Alfredo Ching vs. Secretary of Justice, et. al.*[7]

Petitioners likewise contend that the amounts of alleged deficiency incomes taxes stated in the four Informations were mere estimates, and the amounts were vague, unclear, and without definiteness necessary for them to be informed of the charges against them. Thus, they were deprived of their right to be informed of the charged against them.

We are not swayed.

The sufficiency of the allegations in an Information should conform with Section 9, Rule 110 of the Revised Rules on Criminal Procedure, which states:

> "**SEC. 9. *Cause of the accusation*.** – The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as

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[6] *Id.*
[7] *Id.*

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well as its qualifying and aggravating circumstances and for the court to pronounce judgment."

In the case of *People of the Philippines vs. Armando Delector,*[8] it was held that an Information must sufficiently give the accused the knowledge of what he or she allegedly committed, to wit:

> "To enable 'a person of common understanding to know what offense is intended to be charged," as Section 9 further required, the courts should be mindful that the accused should be presumed innocent of wrongdoing, and was thus completely unaware of having done anything wrong in relation to the accusation. The information must then sufficiently give him or her the knowledge of what he or she allegedly committed.
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> xxx xxx xxx
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> In *People v. Dimaano,*[9] the Court has reiterated the foregoing guideline thuswise:
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>> **<u>For complaint or information to be sufficient, it must state the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed.</u>** What is controlling is not the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violated, these being mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited. The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment. **No information for a crime will be sufficient if it does not accurately and**

[8] G.R. No. 200026, October 4, 2017.
[9] G.R. No. 168168, September 14, 2005.

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> **clearly allege the elements of the crime charged. Every element of the offense must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense. The presumption is that the accused has no independent knowledge of the facts that constitute the offense."** *(Emphasis supplied.)*

In this case, the subject Informations stated the name of the accused, the designation of the offense given by the statute, the acts or omissions complained of as constituting the offense, the offended party, the approximate time of the commission of the offense, and the place where the offense was committed. It specifically alleged the elements of the crime charged, which enabled the petitioners to adequately prepare for their defense. Thus, there is no merit to petitioners' contention that the details alleged in the subject Informations were deficient in informing them of the charges against them.

On the contrary, the subject Informations were specific with regard to the amount of deficiency income tax claimed, to wit:

Case No.	Deficiency Income Tax
CTA Crim. Case No. O-522	Php4,095,000.00
CTA Crim. Case No. O-523	Php10,800,000.00
CTA Crim. Case No. O-525	Php10,800,000.00
CTA Crim. Case No. O-554	Php4,095,000.00

It bears stressing that it is the ***principal*** amount of deficiency income tax sought to be collected that is required to be indicated in the subject Informations.

First, it is this ***principal*** amount of taxes and fees claimed, ***exclusive*** of charges and penalties, which determines if the CTA has jurisdiction over the case, pursuant to Section 7 (b) (1) of R.A. No. 1125, as amended by R.A. No. 9282.

Second, it is this ***principal*** amount of taxes and fees claimed, ***exclusive*** of charges and penalties, which is the subject of the crime charged. To be specific, the principal amount of taxes and fees claimed are: 1) the amount the petitioners are accused of attempting to evade or defeat the payment of; and 2) the amount that petitioners willfully failed to supply correctly and accurately in its ITR.

Thus, petitioners have no basis in claiming that they were deprived of their right to be informed of the charges against them, because the amount of taxes claimed in the Information were exclusive of charges and penalties.

Petitioners also allege that there is newly discovered evidence, which shows that the BIR initially acknowledged that the sources of money for the acquisition of bus units did not come from unreported revenue.

We are not convinced.

A perusal of the attached document shows that it is a *Memorandum* dated **October 24, 2016**. Thus, the subject document constitutes "forgotten" evidence, or evidence already in existence or available before or during a trial.

In the case of *Office of the Ombudsman, Represented by Hon. Simeon V. Marcelo vs. Carmencita D. Coronel*,[10] it was held that the presentation of forgotten evidence is disallowed, because it results in a piecemeal presentation of evidence, and only serves to delay the proceedings, to wit:

> "Forgotten evidence refers to evidence already in existence or available before or during a trial; known to and obtainable by the party offering it; and could have been presented and offered in a seasonable manner, were it not for the sheer oversight or forgetfulness of the party or the counsel. Presentation of forgotten evidence is disallowed, because it results in a piecemeal presentation of evidence, a procedure that is not in accord with orderly justice and serves only to delay the proceedings. A contrary ruling may open the floodgates to an endless review of decisions, whether through a motion for reconsideration or for a new trial, in the guise of newly discovered evidence."

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[10] G.R. No. 164460, June 27, 2006.

In this case, the document petitioners sought to present before this Court is a document already in existence as of October 24, 2016. Thus, the late presentation thereof before the Court cannot be countenanced, as it would merely cause delay in the proceedings, when it already had the opportunity to present it during its Formal Offer of Evidence on August 22, 2017, or at any time during trial. However, petitioners elected to attach the subject *Memorandum* only to their Motion for Reconsideration before the Court *En Banc.*

In addition, this Court notes that said document lacks probative value being a mere photocopy.

Assuming *arguendo*, that the subject document is admitted into evidence, this Court notes that it still fails to contradict the other evidence on record, which proves the guilt of the petitioners beyond reasonable doubt. The subject internal *Memorandum,* the main purpose of which was to recommend the issuance of a PAN against the accused corporation, is insufficient basis for the reversal of the Decision of this Court, which upheld the finding of guilt against the petitioners for the crimes charged against them.

Finally, petitioners argue that the Court erred in failing to apply the equipoise rule and acquitting the accused.

We are not swayed.

In the case of *People of the Philippines vs. Ulysses M. Cawaling, et al,*[11] the equipoise rule was described as follows:

> "Once again, albeit in effect a supportive and cumulative consideration in view of the preceding disquisition, the equipoise rule finds application in this case, that is, if the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty, and is not sufficient to support a conviction."

Based on the foregoing, if the inculpatory facts and circumstances are capable of two or more explanations, then the accused must be acquitted. However, this is only to say that

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[11] G.R. No. 117970, July 28, 1998; citing *People vs. Lagnas,*222 SCRA 745, 762, May 28, 1993. *ND*

evidence in equipoise does not constitute the quantum of evidence required for conviction of a crime, i.e., evidence of guilt beyond reasonable doubt.[12]

In this case, however, the evidence on record is not in equipoise. On the contrary, the evidence on record is consistent with the finding of the Court in Division that the petitioners are guilty beyond reasonable doubt of the charges against them. Thus, there is no basis to apply the equipoise rule in this case.

WHEREFORE, premises considered, petitioner's **MOTION TO RESOLVE** is deemed **GRANTED**. However, petitioners' Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(I maintain my Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[12] *People of the Philippines vs. John Lloyd Sarol y Sagandoy,* G.R. No. 75506, June 19, 1991.