REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case Nos. O-679 to O-682**
	Members:
-versus-	**DEL ROSARIO**, *P.J., Chairperson,* **MANAHAN**, **BACORRO-VILLENA**[1], and **REYES-FAJARDO**, *JJ.*
RAPPLER HOLDINGS CORPORATION/ MARIA A. RESSA, *Accused.*	Promulgated: JAN 18 2023 8:38a.m.

x- x

DECISION

MANAHAN, J.:

These are consolidated criminal cases filed by plaintiff, People of the Philippines (plaintiff) against accused Rappler Holdings Corporation (RHC) and Maria A. Ressa for violations of Sections 254 and 255 of the 1997 National Internal Revenue Code (NIRC), as amended. The accusatory portions in the respective original Informations and Second Amended Informations read as follows:

CTA Crim. Case No. O-679:

INFORMATION

"The undersigned Assistant State Prosecutor of the Department of Justice, Padre Faura St., Manila, hereby accuses **MARIA A. RESSA** of violation of Section 255 of the National Internal Revenue Code of 1997, as amended, committed as follows:

'That on or about October 2015, and subsequent thereto, in Pasig City, and within the jurisdiction of this Honorable Court, the above-named accused, being the President of Rappler Holdings Corporation (RHC), a domestic corporation holding business at Level 3, Northwing, Estancia Offices, Capitol Commons, Pasig

[1] Special Member. cm

City, and registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 43-Pasig City, with Tax Identification No. (TIN) 008-923-940-000, did then and there, willfully and unlawfully, fail to supply correct and accurate information in the quarterly value-added tax return of RHC for the third (3rd) quarter of tax year 2015, by then and there, failing to report therein the total quarterly sales receipts coming from the issue and sale by RHC of Philippine Depositary Receipts (PDRs), as a dealer in securities to NBM Rappler L.P., in the total amount of One Hundred Nine Million Twenty-Two Thousand Three Hundred Ninety-Nine Pesos and Twenty-Three Centavos (Php109,022,399.23), thereby resulting in deficiency value-added tax in the amount of Thirteen Million Eighty-Two Thousand Six Hundred Eighty-Seven Pesos and Ninety-One Centavos (Php13,082,687.91), exclusive of surcharge and interest, to the damage and prejudice of the government.

CONTRARY TO LAW."

"**SECOND AMENDED INFORMATION**

The undersigned Assistant State Prosecutor of the Department of Justice, Padre Faura St., Manila, hereby accuses **RAPPLER HOLDINGS CORPORATION/MARIA A. RESSA** of violation of Section 255 of the National Internal Revenue Code of 1997, as amended, committed as follows:

'That on or about October 2015, and subsequent thereto, in Pasig City, and within the jurisdiction of this Honorable Court, the above-named accused, Maria A. Ressa, being the President of accused Rappler Holdings Corporation (RHC), a domestic corporation holding business at Level 3, Northwing, Estancia Offices, Capitol Commons, Pasig City, and registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 43-Pasig City, with Tax Identification No. (TIN) 008-923-940-000, did then and there, willfully and unlawfully, fail to supply correct and accurate information in the quarterly value-added tax return of RHC for the third (3rd) quarter of tax year 2015, by then and there, failing to report therein the total quarterly sales receipts coming from the issue and sale by RHC of Philippine Depositary Receipts (PDRs), as a dealer in securities to NBM Rappler L.P., in the total amount of One Hundred Nine Million Twenty-Two Thousand Three Hundred Ninety-Nine Pesos and Twenty-Three Centavos (Php109,022,399.23), thereby resulting in deficiency value-added tax in the amount of Thirteen Million Eighty-Two Thousand Six Hundred Eighty-Seven

Pesos and Ninety-One Centavos (Php13,082,687.91), exclusive of surcharge and interest, to the damage and prejudice of the government.

CONTRARY TO LAW."[2]

CTA Crim. Case No. O-680:

INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice, Padre Faura St., Manila, hereby accuses **MARIA A. RESSA** of violation of Section 254 of the National Internal Revenue Code of 1997, as amended, committed as follows:

'That on or about April 2016, and subsequent thereto, in Pasig City, and within the jurisdiction of this Honorable Court, the above-named accused, being the President of Rappler Holdings Corporation (RHC), a domestic corporation holding business at Level 3, Northwing, Estancia Offices, Capitol Commons, Pasig City, and registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 43-Pasig City, with Tax Identification No. (TIN) 008-923-940-000, did then and there, willfully and unlawfully attempt to evade or defeat tax, by deliberately and calculatedly not declaring in the tax returns filed by RHC for tax year 2015, trading income derived from its issue and sale of Philippine Depositary Receipts (PDRs) as a dealer in securities, to NBM Rappler L.P. and Omidyar Network Fund LLC in the total amount of One Hundred Sixty-Two Million Four Hundred-Twelve Thousand and Seven Hundred Eighty-Three Pesos and Sixty-Seven Centavos (Php162,412,783.67), representing the difference between the aggregate book value of the underlying stocks of said PDRs (Php14,245,975.00) and the total consideration paid for the said PDRs (Php181,658,758.67), fraudulently concealing its true income earnings for the same TAX year, and defeating payment of the corresponding tax thereon in the amount of Forty-Eight Million Seven Hundred Twenty-Three Thousand and Eight Hundred Thirty-Five Pesos (Php48,723,835.00), exclusive of interests, penalties and surcharges, to the damage and prejudice of the government.

CONTRARY TO LAW."

---

[2] Docket – Vol. VI, pp. 3535 to 3537.

"SECOND AMENDED INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice, Padre Faura St., Manila, hereby accuses **RAPPLER HOLDINGS CORPORATION/MARIA A. RESSA** of violation of Section 254 of the National Internal Revenue Code of 1997, as amended, committed as follows:

> 'That on or about April 2016, and subsequent thereto, in Pasig City, and within the jurisdiction of this Honorable Court, the above-named accused, Maria A. Ressa, being the President of accused Rappler Holdings Corporation (RHC), a domestic corporation holding business at Level 3, Northwing, Estancia Offices, Capitol Commons, Pasig City, and registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 43-Pasig City, with Tax Identification No. (TIN) 008-923-940-000, did then and there, willfully and unlawfully attempt to evade or defeat tax, by deliberately and calculatedly not declaring in the income tax returns filed by RHC for the tax year 2015, trading income derived from its issue and sale of Philippine Depositary Receipts (PDRs) as a dealer in securities, to NBM Rappler L.P. and Omidyar Network Fund LLC in the total amount of One Hundred Sixty-Two Million Four Hundred-Twelve Thousand and Seven Hundred Eighty-Three Pesos and Sixty-Seven Centavos (Php162,412,783.67), representing the difference between the aggregate book value of the underlying stocks of said PDRs (Php19,245,975.00) and the total consideration paid for the said PDRs (Php181,658,758.67), fraudulently concealing its true income earnings for the same year, and defeating payment of the corresponding income tax thereon in the amount of Forty-Eight Million Seven Hundred Twenty-Three Thousand and Eight Hundred Thirty-Five Pesos and Ten Centavos (Php48,723,835.10), exclusive of interest, penalties and surcharges, to the damage and prejudice of the government.

CONTRARY TO LAW."[3]

CTA Crim. Case No. O-681:

INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice, Padre Faura St., Manila, hereby accuses **MARIA A. RESSA** of violation of Section 255 of the National Internal Revenue Code of 1997, as amended, committed as follows:

---

[3] Docket – Vol. VI, pp. 3538 to 3540.

'That on or about February 2016, and subsequent thereto, in Pasig City, and within the jurisdiction of this Honorable Court, the above-named accused, being the President of Rappler Holdings Corporation (RHC), a domestic corporation holding business at Level 3, Northwing, Estancia Offices, Capitol Commons, Pasig City, and registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 43-Pasig City, with Tax Identification No. (TIN) 008-923-940-000, did then and there, willfully and unlawfully, by then and there, fail to supply correct and accurate information in the quarterly value added tax return of RHC for the fourth (4th) quarter of tax year 2015, by failing to report therein the total quarterly sales receipts coming from the issue and sale by RHC of Philippine Depositary Receipts (PDRs), as a dealer in securities, to Omidyar Network Fund LLC in the total amount of Seventy Million One Hundred Eighty-Four Thousand and Two Hundred Four Pesos and Fifty-Seven Centavos (Php70,184,204.57), thereby resulting in deficiency value-added tax in the amount of Eight Million Four Hundred Twenty-Two Thousand One Hundred Four Pesos and Fifty-Five Centavos (Php8,422,104.55), exclusive of surcharge and interest, to the damage and prejudice of the government.

CONTRARY TO LAW."

"SECOND AMENDED INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice, Padre Faura St., Manila, hereby accuses **RAPPLER HOLDINGS CORPORATION/MARIA A. RESSA** of violation of Section 255 of the National Internal Revenue Code of 1997, as amended, committed as follows:

'That on or about February 2016, and subsequent thereto, in Pasig City, and within the jurisdiction of this Honorable Court, the above-named accused Maria A. Ressa, being the President of accused Rappler Holdings Corporation (RHC), a domestic corporation holding business at Level 3, Northwing, Estancia Offices, Capitol Commons, Pasig City, and registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 43-Pasig City, with Tax Identification No. (TIN) 008-923-940-000, did then and there, wilfully and unlawfully, by then and there, fail to supply correct and accurate information in the quarterly value added tax return of RHC for the fourth (4th) quarter of tax year 2015, by failing to report therein the total quarterly sales receipts coming from the issue and sale by RHC of Philippine Depositary Receipts (PDRs), as a dealer in om securities, to Omidyar Network Fund LLC in the total amount of Seventy Million One Hundred Eighty-Four Thousand and Two Hundred Four Pesos and Fifty-Seven Centavos (Php70,184,204.57), thereby resulting in deficiency value-added tax in the amount of Eight Million Four Hundred Twenty-Two Thousand One Hundred Four Pesos and Fifty-Five Centavos (Php8,422,104.55), exclusive of surcharge and interest, to the damage and prejudice of the government.

CONTRARY TO LAW."[4]

<u>CTA Crim. Case No. O-682</u>:

INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice, Padre Faura St., Manila, hereby accuses **MARIA A. RESSA** of violation of Section 255 of the National Internal Revenue Code OF 1997, as amended, committed as follows:

'That on or about April 2016, and subsequent thereto, in Pasig City, and within the jurisdiction of this Honorable Court, the above-named accused, being the President of Rappler Holdings Corporation (RHC), a domestic corporation holding business at Level 3, Northwing, Estancia Offices, Capitol Commons, Pasig City, and registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 43-Pasig City, with Tax Identification No. (TIN) 008-923-940-000, did then and there, willfully and unlawfully, fail to supply correct and accurate information in the income tax return of RHC for tax year 2015, by then and there not reporting therein trading income from the issue and sale by RHC of Philippine Depositary Receipts (PDRs) as a dealer in securities, to NBM Rappler L.P. and Omidyar Network Fund LLC, in the total amount of One Hundred Sixty-Two Million Four Hundred Twelve Thousand Seven Hundred Eighty-Three Pesos and Sixty-Seven Centavos (Php162,412,783.67), representing the difference between the aggregate book value of the underlying stocks of said PDRs (Php14,245,975.00) and the total consideration paid for the said PDRs (Php181,658,758.67), fraudulently concealing its true income earnings for the same year, and defeating payment of the corresponding tax thereon in the amount of Forty-Eight Million Seven Hundred Twenty-Three Thousand and Eight Hundred Thirty-Five Pesos

---
[4] Docket – Vol. VI, pp. 3541 to 3543.

(Php48,723,835.00), exclusive of interest, penalties and surcharges, to the damage and prejudice of the government.

CONTRARY TO LAW."

"**SECOND AMENDED INFORMATION**

The undersigned Assistant State Prosecutor of the Department of Justice, Padre Faura St., Manila, hereby accuses **RAPPLER HOLDINGS CORPORATION/MARIA A. RESSA** of violation of Section 255 of the 1997 National Internal Revenue Code (NIRC), as amended, committed as follows:

'That on or about April 2016, and subsequent thereto, in Pasig City, and within the jurisdiction of this Honorable Court, the above-named accused Maria A. Ressa, being the President of accused Rappler Holdings Corporation (RHC), a domestic corporation holding business at Level 3, Northwing, Estancia Offices, Capitol Commons, Pasig City, and registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 43-Pasig City, with Tax Identification No. (TIN) 008-923-940-000, did then and there, willfully and unlawfully, fail to supply correct and accurate information in the income tax return of RHC for tax year 2015, by then and there not reporting therein trading income from the issue and sale by RHC of Philippine Depositary Receipts (PDRs) as a dealer in securities, to NBM Rappler L.P. and Omidyar Network Fund LLC, in the total amount of One Hundred Sixty-Two Million Four Hundred Twelve Thousand and Seven Hundred Eighty-Three Pesos and Sixty-Seven Centavos (Php162,412,783.67), representing the difference between the aggregate book value of the underlying stocks of said PDRs (Php19,245,975.00) and the total consideration paid for the said PDRs (Php181,658,758.67), fraudulently concealing its true income earnings for the same year, and defeating payment of the corresponding income tax thereon in the amount of Forty-Eight Million Seven Hundred Twenty-Three Thousand and Eight Hundred Thirty-Five Pesos and Ten Centavos (Php48,723,835.10), exclusive of interest, penalties and surcharges, to the damage and prejudice of the government.

CONTRARY TO LAW."[5]

The accused, Maria A. Ressa is the President of RHC since 2015 up to the present.[6]

---

[5] Docket – Vol. VI, pp. 3544 to 3546.

Accused RHC is a domestic corporation organized under the laws of the Republic of the Philippines and was incorporated[7] with the Securities and Exchange Commission (SEC) on December 12, 2014.[8] Its primary purpose is to acquire by purchase, exchange, assignment, gift or otherwise, and to hold, own and use for investment or otherwise, and to sell, assign, transfer, exchange, lease, let, develop, mortgage, pledge, traffic, deal in and with and otherwise operate, enjoy and dispose of real and personal properties of every kind and description and wherever situated, as and to the extent permitted by law, including but not limited to, shares of capital stock, bonds, debentures, promissory notes, or other securities or obligations, created, negotiated or issued by any corporation, association, or other entity, foreign or domestic, and real estate, whether improved or unimproved, and any interest or right therein, as well as buildings, tenements, warehouses, factories, edifices and structures and other improvements, and while the owner, holder or possessor thereof, to exercise any and all rights, powers and privileges of ownership or any other interest therein, including the right to vote on any proprietary or other interest on any shares of capital stock, and upon any bonds, debentures, or other securities having voting power, so owned or held and the right to receive, collect and dispose of, any and all rentals, dividends, interests and income derived therefrom, except the management of fund portfolios and similar assets of such managed entities; Provided it shall not act as a stockbroker or dealer of securities.[9]

RHC is registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 43- Pasig City with registered address at Level 3, North Wing Estancia Offices, Capitol Commons, Barangay Oranbo, Pasig City 1605 under Tax Identification Number 008-923-940-000.[10]

The investigation against the accused was prompted by a National Investigation Division (NID) Memo Assignment No. CRD/AJDG 2018-01-024-0083 dated January 24, 2018,[11] issued by Atty. Abigael Joy D. Gamboa, Officer-in-Charge (OIC)-Chief, NID of the BIR, directing Group Supervisor (GS)

---

[6] *Par. 3, Order (Re: Arraignment) and Pre-Trial Order,* Docket – Vol. V, p. 3483.
[7] Exhibits "P-7" and "A-1", Docket – Vol. V, pp. 3321 to 3329.
[8] *Par. 5, Order (Re: Arraignment) and Pre-Trial Order,* Docket – Vol. V, p. 3483.
[9] Exhibits "P-7-A" and "A-1-1", Docket – Vol. V, p. 3324.
[10] Exhibit "A-3", Docket Vol. V, p. 3031; *Par. 7, Order (Re: Arraignment) and Pre-Trial Order,* Docket – Vol. V, p. 3483.
[11] Exhibit "P-2", Docket – Vol. V, p. 3285.

Editha Quilantang, and Revenue Officers (ROs) Rosanna Berba and Ed Al Renzie Salles, to conduct a preliminary investigation on the accused RHC.

On March 2, 2018, a Letter of Authority (LOA) eLa201600007402 was issued to accused RHC by the CIR authorizing complainants GS Quilantang and ROs Berba and Salles to audit accused's books of accounts and accounting records for the taxable year (TY) 2015[12]

Accused RHC received LOA eLA201600007402 dated March 2, 2018 from the BIR on March 5, 2018.[13]

Complainants Salles, Berba and Quilantang filed a criminal complaint against RHC and Maria A. Ressa with the Department of Justice (DOJ) on March 8, 2018.[14]

On March 8, 2018, then CIR Caesar R. Dulay wrote a letter to then Secretary of the DOJ Vitaliano N. Aguirre II,[15] referring the Joint Complaint-Affidavit executed by GS Quilantang and ROs Berba and Salles,[16] for preliminary investigation and the filing of appropriate Information in court, if the evidence so warrants.

The said Joint Complaint-Affidavit averred, *inter alia*, that:

"34. Considering that failure of RHC to pay the correct amount of Income Tax and Value-Added Tax Return from the transactions of buying and selling securities, the aggregate income tax liabilities of RHC amount to **One Hundred Thirty-Three Million Eight Hundred Forty-One Thousand Three Hundred Five Pesos and 75/100 (₱133,841,305.75)** for deficiency income taxes and value added taxes for taxable year 2015, inclusive of surcharges and interests, are broken down as follows:

DEFICIENCY INCOME TAX	2015
Taxable Income per Investigation	162,412,783.67
Multiply: Tax Rate (30%)	30%
Deficiency Tax Due	48,723,835.10
50% Surcharge	24,361,917.55

[12] Exhibit "P-16" and "A-112", Docket – Vol. X, p. 6815; *Par. 11, Order (Re: Arraignment) and Pre-Trial Order*, Docket – Vol. V, p. 3484.
[13] *Par. 13, Order (Re: Arraignment) and Pre-Trial Order*, Docket – Vol. V, p. 3484.
[14] *Par. 12, Order (Re: Arraignment) and Pre-Trial Order*, Docket – Vol. V, p. 3484.
[15] Exhibit "P-17", Docket – Vol. V, pp. 3444 to 3446.
[16] Exhibit "P-18", Docket – Vol. I, pp. 428 to 443.

Interest (up to 2/28/18)	18,234,728.42
Total Deficiency Income Tax	**91,320,481.08**
DEFECIENCY VALUE ADDED TAX	2015
a. 264,601 PDRs issued on 29 May 2015 to NBM Rappler, L.P.	2,452,152.87
Multiply: VAT Rate (12%)	12%
Deficiency VAT	294,258.58
50% Surcharge	147,129.29
Interest (up to 2/28/18)	153,041.46
Deficiency Value Added Tax	**594,402.34**
b.) 11,764,117 PDRs issued on 29 July 2015 to NBM Rappler, L.P.	109,022,399.23
Multiply: VAT Rate (12%)	12%
Deficiency VAT	13,082,687.91
50% Surcharge	6,541,343.95
Interest (up to 2/28/18)	6,143,483.87
Deficiency Value Added Tax	**25,767,518.73**
b. 7,217,257 PDRs issued on 05 October 2015 to Omidyar Network Fund LLC	70,184,204.57
Multiply: VAT Rate (12%)	12%
Deficiency VAT	8,422,104.55
50% Surcharge	4,211,052.27
Interest (up to 2/28/18)	3,525,746.78
Deficiency Value Added Tax	**16,158,903.60**
Total Deficiency Value Added Tax	**42,520,824.67**
TOTAL DEFICIENCY TAX	**133,841,305.75**

Subsequently, OIC-Chief of the NID of the BIR, Atty. Abigail Joy D. Gamboa, issued a Notice of Informal Conference[17] to accused RHC on November 12, 2018 along with initial findings of its alleged deficiency income tax (IT) and value-added tax (VAT) for TY 2015.

Assistant State Prosecutor Zenamar J.L. Machacon-Caparros of the DOJ issued a Resolution dated October 2, 2018, which was recommended for approval by Senior Deputy State Prosecutor, Chairman-Anti-Fraud Division Miguel F. Gudio, Jr. and approved by Senior Deputy State Prosecutor & OIC, Office of the Prosecutor General Richard Anthony D. Fadullon, finding probable cause and recommending the filing of criminal information against the accused.

---

[17] Exhibit "P-22", Docket – Vol. V, p. 3448.

On November 26, 2018, an Information was filed charging the accused Maria A. Ressa for the crime of willful failure to supply correct and accurate information in the quarterly VAT return of RHC for the 3rd quarter of taxable year 2015, under Section 255 of the 1997 NIRC, as amended. This case was docketed as CTA Crim. Case No. O-679.

On November 28, 2018, an Information was filed charging the accused, Maria A. Ressa for the crime of willful and unlawful attempt to evade or defeat tax, by deliberately and calculatedly not declaring in the income tax returns (ITR) filed by accused RHC for the TY 2015 its trading income under Section 254 of the 1997 NIRC, as amended. This case was docketed as CTA Crim. Case No. O-680.

On the same date of November 28, 2018, an Information was filed charging the accused, Maria A. Ressa for the crime of willfully and unlawfully failing to supply correct and accurate information in the VAT return of accused RHC for the 4th quarter of TY 2015 under Section 255 of the 1997 NIRC, as amended. This case was docketed as CTA Crim. Case No. O-681.

Likewise, on November 28, 2018, an Information was filed against accused Maria A. Ressa for the crime of willfully and unlawfully failing to supply correct and accurate information in the ITR of accused RHC for TY 2015 under Section 255 of the 1997 NIRC, as amended. This case was docketed as CTA Crim. Case No. O-682.

On November 22, 2018, the Court received from the accused RHC and Maria A. Ressa a copy of the Motion for Reconsideration (of the Resolution dated 2 October 2018) filed by them before the DOJ.[18]

On November 28, 2018, the plaintiff submitted to the Court a copy of the Motion for Reconsideration (of the Resolution dated 2 October 2018) filed before the DOJ.[19]

On December 11, 2018, accused Maria A. Ressa voluntarily appeared and submitted her person to the

---

[18] Docket – Vol. I, pp. 628 to 650.
[19] Docket – Vol. I, pp. 651 to 696.

jurisdiction of the Court and posted a cash bond in the amount of ₱60,000.00 for her provisional liberty.[20]

In the Resolution dated December 11, 2018, the Court set the Preliminary Conference on January 16, 2019, for marking of plaintiff's and defense' exhibits and on January 23, 2019, for the arraignment of accused and the Pre-Trial Conference.[21]

In the Resolution dated December 12, 2018,[22] the First Division of this Court confirmed the consolidation of CTA Crim. Case Nos. O-680, O-681, and O-682 with CTA Crim. Case No. O-679.

During the conditional arraignment held on December 13, 2018,[23] accused Maria A. Ressa, duly assisted by her counsel, entered a plea of "NOT GUILTY" of the crimes charged under the Information in CTA Criminal Case Nos. O-679, O-680, O-681, and O-682.[24] Accordingly, these consolidated cases were initially set for Preliminary Conference on January 16, 2019, and Unconditional Arraignment and Pre-Trial Conference on January 23, 2019.

Also, during the hearing held on December 13, 2018, the Court allowed the plaintiff to make certain amendments/corrections to several clerical errors appearing on all four (4) Informations.

Thereafter, accused then filed an *Ex Abundanti Ad Cautelam* Urgent Motion (1) To Quash Information; and/or (2) To Remand to the Department of Justice; and/or; (3) To Suspend Proceedings on December 13, 2018.[25] Plaintiff then filed a Consolidated Comment/Opposition (On the Accused' Four (4) *Ex Abundanti Ad Cautelam* Urgent Motion to Quash Information, Remand to the Department of Justice and/or Suspend Proceedings dated December 12, 2018*)* on December 21, 2018.[26]

---

[20] Official Receipt No. 8982044 in the amount of ₱60,000.00, Docket – Vol. 1 (CTA Crim. Case No. O-679), p. 707; *Undertaking* dated December 11, 2018 signed by the accused, Docket – Vol. 1 (CTA Crim. Case No. O-679), pp. 703 to 704.
[21] Docket (CTA Crim. Case No. O-679), pp. 712 to 713.
[22] Docket (Crim. Case No. 0-679) – Vol. I, pp. 739 to 740.
[23] Docket (Crim. Case No. 0-679) – Vol. I, pp. 745 to 749.
[24] *Undertaking* signed by the accused on December 18, 2018, Docket – Vol. I, pp. 703 to 704.
[25] Docket (Crim. Case No. 0-679) – Vol. I, pp. 750 to 766.
[26] Docket (Crim. Case No. 0-679) – Vol. II, pp. 960 to 965. *om*

On January 21, 2019, plaintiff submitted its Compliance and attached the four (4) Amended Informations and a letter signed by then CIR, Caesar R. Dulay dated March 8, 2018.[27]

Accused then filed an *Ex Abundanti Ad Cautelam* Urgent Motion to Defer Preliminary Conference and Pre-Trial on January 15, 2019,[28] which was granted by the Court in its Resolution dated January 22, 2019.[29] Accordingly, the Court postponed the Preliminary Conference previously scheduled on January 16, 2019 and the pre-trial on January 23, 2019.

In its Resolution dated February 7, 2019, the Court denied accused's *Ex Abundanti Ad Cautelam* Urgent Motion (1) To Quash Information; and/or (2) Remand to the Department of Justice; and/or; (3) To Suspend Proceedings.[30] Accordingly, the preliminary conference and the pre-trial were set on March 6, 2019 and March 13, 2019, respectively.

On February 7, 2019, accused filed an *Ex Abundanti Ad Cautelam Urgent* Omnibus Motion: (A) For Leave to File and Serve the Attached Supplement to the Motion to Quash; and (B) To Defer Preliminary Conference, Arraignment and Pre-trial.[31]

Thereafter, accused filed an *Ex Abundanti Ad Cautelam* Compliance with Manifestation[32] on February 8, 2019, which was noted by the Court in its Resolution dated February 21, 2019.[33]

In its Resolution dated February 21, 2019,[34] the Court admitted the accused's attached *Ex Abundanti Ad Cautelam* Supplement to the *Ad Cautelam* Urgent Motion (1) To Quash Information; and/or (2) To Remand to the Department of Justice; and/or (3) To Suspend Proceedings dated 12 December 2018,[35] with plaintiff's Comment filed on March 5, 2019.[36]

---

[27] Docket (Crim. Case No. 0-679) - Vol. II, pp. 1061 to 1062.
[28] Docket (Crim. Case No. 0-679) - Vol. II, pp. 1046 to 1053.
[29] Docket (Crim. Case No. 0-679) - Vol. II, pp. 1080 to 1081.
[30] Docket (Crim. Case No. 0-679) - Vol. II, pp. 1121 to 1133.
[31] Docket (Crim. Case No. 0-679) - Vol. III, pp. 1134 to 1144.
[32] Docket (Crim. Case No. 0-679) - Vol. III, pp. 2038 to 2044.
[33] Docket (Crim. Case No. 0-679) - Vol. IV, pp. 2944 to 2945.
[34] Docket (Crim. Case No. 0-679) - Vol. IV, pp. 2947 to 2948.
[35] Docket (Crim. Case No. 0-679) - Vol. III, pp. 1141 to 1148.
[36] Docket (Crim. Case No. 0-679) - Vol. V, pp. 2979 to 2983.

In its Resolution dated March 21, 2019,[37] the Court set these cases for Preliminary Conference on March 27, 2019 and the Arraignment of the accused Maria A. Ressa and Pre-Trial on April 3, 2019.

Accused's Pre-Trial Brief was filed on March 29, 2019,[38] while the Prosecution's Pre-Trial Brief was submitted on April 1, 2019.[39]

When arraigned on April 3, 2019,[40] the accused Maria A. Ressa, duly assisted by her counsel, entered a plea of "NOT GUILTY" of the crimes charged under the Amended Informations in CTA Criminal Case Nos. O-679, O-680, O-681 and O-682.[41] Thereafter, the Pre-Trial of the case proceeded followed by a Pre-Trial Order.

On April 8, 2019, the plaintiff filed an Urgent Motion with Leave of Court to Amend the Amended Informations dated December 13, 2018 and Motion to Admit attached Second Amended Informations,[42] with accused's Manifestation (Re: Plaintiff's Urgent Motion with Leave of Court to Amend the Amended Informations) filed on April 26, 2019.[43] The Court granted such motion in its Resolution dated May 15, 2019.[44]

Trial ensued.

During the hearing held on May 15, 2019, the Court granted the motion to amend the Pre-Trial Order dated April 3, 2019. Considering that the parties agreed that the admission of the Second Amended Informations (the amendments therein being mere formal in nature) would not require the re-arraignment of accused Maria A. Ressa. Thus, accused Maria A. Ressa's plea of not guilty remains, without need of entering a new plea anent the Second Amended Informations.

Due to the admission of the Second Amended Informations by the Court, the corporate entity RHC was

---

[37] Docket (Crim. Case No. 0-679) - Vol. V, pp. 2996 to 2998.
[38] Docket (Crim. Case No. 0-679) - Vol. V, pp. 3233 to 3255.
[39] Docket (Crim. Case No. 0-679) - Vol. V, pp. 3466 to 3474.
[40] Order (Re: Arraignment) and Pre-Trial Order dated April 3, 2019, Docket – Vol. V, pp. 3481 to 3487.
[41] *Certificate of Arraignment/ With Waiver of the Reading of the Informations* dated April 3, 2019, Docket - Vol. V, p. 3488.
[42] Docket (Crim. Case No. 0-679) - Vol. VI, pp. 3526 to 3534.
[43] Docket (Crim. Case No. 0-679) - Vol. VI, pp. 3561 to 3564.
[44] Docket (Crim. Case No. 0-679) - Vol. VI, pp. 4083 to 4085.

included as an accused in these cases. The Court then directed both parties to submit their respective memoranda.[45]

Both accused and plaintiff submitted their Memoranda on May 20, 2019.[46]

Thereafter, accused filed a Request for Issuance of *Subpoena Duces Tecum Ad Testificandum* on May 29, 2019.[47]

On May 29, 2019, Honorable Presiding Justice Roman G. Del Rosario issued a Memorandum addressed to the other members of the First Division, stating that: "*Sans* arraignment, accused RHC cannot be convicted of the crimes charged in the Second Amended Informations without violating its right to be informed of the nature and cause of the accusations against it, not to mention its right to due process; on the other hand, *sans* an arraignment, any eventual acquittal of RHC would not entitle it to invoke the right against double jeopardy thereby allowing the filing of similar charges in the future. Needless to say, double jeopardy attaches only after arraignment."[48]

On even date, Honorable Associate Justice Esperanza R. Fabon-Victorino also issued a Memorandum, which states that: "xxx, I reiterate my humble opinion that only a natural person may be the subject of arraignment xxx".[49]

Also, the ponente, Honorable Associate Justice Catherine T. Manahan, issued as well a Memorandum, stating that: "Hence, I reiterate my position that no arraignment must be set for RHC in the 4 instant cases assigned to me."[50]

In the Memorandum dated May 30, 2019, the Honorable Presiding Justice Roman G. Del Rosario stresses the rationale behind his recusal from the instant case.[51]

---

[45] Minutes of the hearing held on, and Order dated May 15, 2019, Docket – Vol. VI, pp. 4088 to 4099.
[46] Docket (Crim. Case No. 0-679) - Vol. VI, pp. 4114 to 4137.
[47] Docket (Crim. Case No. 0-679) - Vol. VI, pp. 4152 to 4155.
[48] Docket (Crim. Case No. 0-679) - Vol. VI, pp. 4164 to 4165.
[49] Docket (Crim. Case No. 0-679) - Vol. VI, pp. 4166 to 4168.
[50] Docket (Crim. Case No. 0-679) - Vol. VI, pp. 4170 to 4172.
[51] Docket (Crim. Case No. 0-679) - Vol. VI, pp. 4176 to 4177.

Then, on June 14, 2019, accused filed an Urgent Omnibus Motion 1. To Transmit the BIR-NID Records; and/or 2. Issuance of a Subpoena Duces Tecum,[52] with plaintiff's Comment/Opposition (to the Urgent Omnibus Motion 1. To Transmit the BIR-NID Records; and/or 2. Issuance of a Subpoena Duces Tecum dated June 14, 2019) filed on July 15, 2019.[53] However, the Court denied such motion for lack of merit.[54]

In its Amended Resolution dated July 8, 2019, the Court issued a *Subpoena Duces Tecum Ad Testificandum* to Atty. Helen Go Tiu for the taking of her testimony in open court as a witness for the accused.[55] Then, accused filed its Comment (Re: Amended Resolution dated 8 July 2019),[56] while plaintiff failed to file its comment.[57]

Plaintiff posted a Motion for Partial Reconsideration (to the Amended Resolution dated July 8, 2019)[58] on July 22, 2019.

On August 5, 2019, accused filed a Motion for Leave to File and Admit Attached Reply,[59] with attached Reply To (BIR's Comment/Opposition Re: Transmittal of BIR NID/Records and Issuance of Subpoena Duces Tecum),[60] which was rendered moot by the Court in its Resolution dated September 6, 2019.[61]

During trial, the plaintiff presented their documentary and testimonial evidence. The plaintiff offered the testimonies of the following individuals, namely: (1) Ms. Jocelyn B. Bautista, OIC-Chief of Compliance Section of BIR Regional District Office (RDO) No. 43, Pasig City;[62] (2) Mr. Rufo B. Ranario, Revenue District Officer of BIR RDO No. 43, Pasig

---

[52] Docket (Crim. Case No. 0-679) - Vol. VI, pp. 5132 to 5144.
[53] Docket (Crim. Case No. 0-679) - Vol. VI, pp. 5331 to 5340.
[54] Resolution dated August 5, 2019, Docket (Crim. Case No. 0-679) – Vol. VIII, pp. 5574 to 5578.
[55] Supersedes Resolution dated June 11, 2019, Docket (Crim. Case No. 0-679) – Vol. VIII, pp. 5129 to 5131 and 5294 to 5296.
[56] Docket (Crim. Case No. 0-679)-Vol. VIII, pp. 5372 to 5380.
[57] Record's Verification dated July 25, 2019 issued by Judicial Records Division, Docket (Crim. Case No. 0-679) – Vol. VIII, p. 5408.
[58] Docket (Crim. Case No. 0-679) - Vol. VIII, pp. 5533 to 5542.
[59] Docket (Crim. Case No. 0-679) - Vol. VIII, pp. 5579 to 5584.
[60] Docket (Crim. Case No. 0-679) - Vol. VIII, pp. 5585 to 5595.
[61] Docket (Crim. Case No. 0-679) - Vol. VIII, p. 5659.
[62] Exhibit "P-29", Docket – Vol. VI, pp. 3627 to 3631; Minutes of the hearing held on, and Order dated, May 15, 2019, Docket (Crim. Case No. 0-679) – Vol. VI, pp. 4088 to 4096.

City;[63] (3) RO Salles at the NID of the BIR National Office;[64] (4) RO Quilantang at the NID of the BIR National Office;[65] and (5) Ms. Karen F. Lazaro, Administrative Officer IV in the Office of the General Counsel of the SEC.[66]

On August 20, 2019, the plaintiff filed its Formal Offer of Evidence.[67] The accused filed their Comment and/or Objections to the Plaintiff's Formal Offer of Evidence on September 11, 2019.[68] Then, the plaintiff filed its Reply (to the Comment and/or Objections to the Plaintiff's Formal Offer of Evidence September 11, 2019) on September 19, 2019,[69] which was noted by the Court in its Resolution dated October 1, 2019.[70] In the Resolution dated October 25, 2019,[71] the Court admitted the prosecution's Exhibits "P-1", "P-1-A", "P-2", "P-3", "P-4", "P-5", "P-5-A", "P-5-B", "P-5-C", "P-5-D", "P-5-E", "P-5-F", "P-5-G", "P-6", "P-6-A", "P-6-B", "P-6-C", "P-6-D", "P-7", "P-7-A", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-22", "P-23", "P-24", "P-25 - 26", "P-28", "P-29", "P-29-A", "P-30", "P-30-A", "P-31", "P-31-A", "P-32", "P-32-A", "P-33" and "P-33-A". However, Exhibit "P-27", was denied for failure to identify.

Accused filed their Motion for Leave to File and Admit attached Demurrer on November 8, 2019.[72] The plaintiff filed its Comment/Opposition (to the Demurrer to Evidence dated November 8, 2019) on November 18, 2019.[73] In its Resolution dated December 2, 2019, the Court admitted accused's Demurrer to Evidence, but denied the same.[74]

---

[63] Exhibit "P-30", Docket(Crim. Case No. 0-679) – Vol. VI, pp. 3633 to 3636; Minutes of the hearing held on, and Order dated, May 29, 2019, Docket (Crim. Case No. 0-679) – Vol. VI, pp. 4142 to 4148.

[64] Exhibit "P-31", Docket (Crim. Case No. 0-679) – Vol. 3671 to 3691; Minutes of the hearing held on, and Order dated, July 3, 2019, Docket (Crim. Case No. 0-679) – Vol. VIII, pp. 5269 to 5275.

[65] Exhibit "P-32", Docket (Crim. Case No. 0-679) – Vol. 3827 to 3833; Minutes of the hearing held on, and Order dated, July 10, 2019, Docket (Crim. Case No. 0-679) – Vol. VIII, pp. 5309 to 5313 and 5368 to 5369.

[66] Exhibit "P-33", Docket (Crim. Case No. 0-679)– Vol. VIII, pp. 5391 to 5395; Minutes of the hearing held on, and Order dated, July 31, 2019, Docket (Crim. Case No. 0-679) – Vol. VIII, pp. 5559 to 5563.

[67] Docket (Crim. Case No. 0-679) - Vol. VIII, pp. 5624 to 5640.

[68] Docket (Crim. Case No. 0-679) - Vol. VIII, pp. 5669 to 5698.

[69] Docket (Crim. Case No. 0-679) - Vol. VIII, pp. 5699 to 5704.

[70] Docket (Crim. Case No. 0-679) - Vol. IX, pp. 5720 to 5721.

[71] Docket (Crim. Case No. 0-679) - Vol. IX, pp. 5804 to 5806.

[72] Docket (Crim. Case No. 0-679) - Vol. IX, pp. 5853 to 5888.

[73] Docket (Crim. Case No. 0-679) - Vol. IX, pp. 5906 to 5925.

[74] Docket (Crim. Case No. 0-679) - Vol. IX, pp. 5978 to 5988.

The Court in its Order dated January 22, 2020,[75] directed the counsel of the accused to submit the certified true copies of the supporting documents that will establish the credentials of the expert witness, Atty. Helen Go Tiu. Thereafter, accused filed their Submission with Manifestation (Re: Credentials of Atty. Helen G. Tiu) on February 6, 2020,[76] with plaintiff's Comment/Opposition filed on February 17, 2020.[77] Later on, accused filed their Reply (Re: Comment/Opposition dated 17 February 2020) filed on March 9, 2020.[78] In its Resolution dated June 30, 2020,[79] the Court took note of the accused's Submission with Manifestation (Re: Credentials of Atty. Helen G. Tiu) but denied plaintiff's prayer (contained in its Comment/Opposition) that the testimony of Atty. Tiu in relation to the taxability of PDR's and tax consequences of RHC's PDR transactions be stricken off the records and that her testimony regarding her opinion on questions of law be disallowed.

Thereafter, accused filed a Motion to Correct Transcript of Stenographic Notes on October 27, 2020[80] without plaintiff's comment,[81] which was granted by the Court in its Resolution dated December 14, 2020.[82]

On February 3, 2021, the Court issued an Order striking out the following questions and/or answers of accused Ms. Dalafu's judicial affidavit: (1) 2nd sentence of her answer to Q. No. 8; (2) Q. No. 9 and 1st paragraph of her answer; (3) Q. No. 358; (4) Q. Nos. 330 and 331, together with the respective answers; (5) Q. Nos. 80, 84 and 88; (6) Q. Nos. 76, 89 and 90; and (7) Q. No. 9.[83]

On February 26, 2021, accused filed an Urgent Motion to Admit the Amended Judicial Affidavit of Maria A. Ressa.[84] In its Order dated March 4, 2021, the Court granted accused's motion and at the same time order that the Question and Answer No. 66 be stricken off from the Amended Judicial Affidavit of accused Maria A. Ressa.[85]

---

[75] Docket (Crim. Case No. 0-679) - Vol. IX, pp. 6018 to 6019.
[76] Docket (Crim. Case No. 0-679) - Vol. IX, pp. 6060 to 6079.
[77] Docket (Crim. Case No. 0-679) - Vol. IX, pp. 6089 to 6098.
[78] Docket (Crim. Case No. 0-679) - Vol. IX, pp. 6115 to 6135.
[79] Docket (Crim. Case No. 0-679) - Vol. X, pp. 6175 to 6178.
[80] Docket (Crim. Case No. 0-679) - Vol. X, pp. 6318 to 6333.
[81] *Records Verification* dated December 7, 2020 issued by Judicial Records Division, Docket (Crim. Case No. 0-679) – Vol. X, p. 6385.
[82] Docket (Crim. Case No. 0-679) - Vol. X, pp. 6391 to 6399.
[83] Docket (Crim. Case No. 0-679) - Vol. X, pp. 6455 to 6458.
[84] Docket (Crim. Case No. 0-679) – Vol. X, pp. 6481 to 6486.
[85] Docket (Crim. Case No. 0-679) - Vol. X, pp. 6839 to 6843. *am*

Accused filed an Urgent Manifestation with Motion to Correct and Request for a Commissioner's Hearing on May 17, 2021[86] with plaintiff's Comment (on Urgent Manifestation with Motion to Correct and Request for a Commissioner's Hearing)[87] filed on June 10, 2021, which was granted by the Court in its Resolution dated July 2, 2021.[88]

On their part, the accused presented their documentary and testimonial evidence. The testimonies of 1. Atty. Helen Go Tiu, practicing lawyer;[89] 2. Ms. Marie Fel D. Dalafu, Chief Financial Officer of accused RHC;[90] and 3. accused Maria A. Ressa, President and Chief Executive Officer of RHC,[91] were offered.

On May 17, 2021, the accused filed their Formal Offer of Documentary Evidence.[92] The plaintiff filed its Comment to accused's Formal Offer of Evidence on June 3, 2021.[93] In the Resolution dated March 10, 2022,[94] the Court admitted accused's Exhibits "A-1", "A-1-1", "A-2", "A-2-1", "A-3", "A-3-1", "A-4", "A-4-1", "A-5", "A-5-1", "A-6", "A-6-1", "A-7", "A-8", "A-8-1", "A-8-2", "A-8-3", "A-9", "A-9-1", "A-9-2", "A-9-3", "A-10", "A-11", "A-13", "A-13-1", "A-13-2", "A-13-3", "A-14", "A-14-1", "A-14-2", "A-15", "A-15-1", "A-15-2", "A-16", "A-16-1", "A-16-2", "A-17", "A-17-1", "A-17-2", "A-18", "A-18-1", "A-19", "A-19-1", "A-20", "A-20-1", "A-21", "A-21-1", "A-21-2", "A-21-3", "A-21-4", "A-21-5", "A-22", "A-22-1", "A-22-2", "A-22-3", "A-22-4", "A-22-5", "A-26", "A-26-1", "A-27", "A-28", "A-44", "A-45", "A-46", "A-29", "A-29-1", "A-29-2", "A-29-3", "A-30", "A-30-1", "A-31", "A-31-1", "A-31-2", "A-31-3", "A-32", "A-32-1", "A-33", "A-33-1", "A-34", "A-34-1", "A-35", "A-35-1", "A-36", "A-36-1", "A-37", "A-38", "A-39", "A-39-1", "A-40", "A-40-1", "A-40-2", "A-40-3", "A-40-4", "A-41", "A-42", "A-47", "A-47-1", "A-47-2", "A-48", "A-48-1", "A-48-2", "A-49", "A-49-1", "A-49-

[86] Docket (Crim. Case No. 0-679) - Vol. XI, pp. 6964 to 6972.
[87] Docket (Crim. Case No. 0-679) - Vol. XI, pp. 7038 to7040.
[88] Docket (Crim. Case No. 0-679) - Vol. XI, pp. 7046 to 7047
[89] TSN taken at the hearing held on January 22, 2020, Vol. I, pp. 1 to 75; Minutes of the hearing held on, and Order dated, January 22, 2020 and September 30, 2020, Docket (Crim. Case No. 0-679) – Vol. IX , pp. 6014 to 6017 and Docket (Crim. Case No. 0-679) – Vol. X, pp. 6296 to 6309.
[90] Exhibit "Exhibit A-92", Docket (Crim. Case No. 0-679) – Vol. VII, pp. 4197 to 4296; Order dated February 3, 2021, Docket (Crim. Case No. 0-679) – Vol. X, pp. 6455 to 6458.
[91] Exhibit "Exhibit A-116", Docket (Crim. Case No. 0-679) – Vol. X, pp. 6487 to 6525; Order dated March 4, 2021, Docket (Crim. Case No. 0-679) – Vol. X, pp. 6839 to 6843.
[92] Docket (Crim. Case No. 0-679) - Vol. XI, pp. 6973 to 7017.
[93] Docket (Crim. Case No. 0-679) - Vol. XI, pp. 7024 to 7037.
[94] Docket (Crim. Case No. 0-679) - Vol. XI, pp. 7461 to 7464.

2", "A-49-3", "A-49-4", "A-49-5", "A-50", "A-43", "A-51", "A-52", "A-53", "A-54", "A-55", "A-56", "A-57", "A-58", "A-58-1", "A-58-2", "A-58-3", "A-58-4", "A-59", "A-59-1", "A-59-2", "A-60", "A-60-1", "A-60-2", "A-61", "A-61-1", "A-61-2", "A-62", "A-62-1", "A-63", "A-63-1", "A-64", "A-65", "A-65-1", "A-66", "A-66-1", "A-66-2", "A-67", "A-67-1", "A-68", "A-68-1", "A-68-2", "A-69", "A-70", "A-71", "A-72", "A-73", "A-74", "A-74-1", "A-75", "A-75-1", "A-76", "A-77", "A-78", "A-78-1", "A-90", "A-91", "A-92", "A-92-1", "A-93", "A-94", "A-95", "A-96", "A-97", "A-98", "A-99", "A-100", "A-101", "A-102", "A-103", "A-104", "A-105", "A-106", "A-107", "A-108", "A-109", "A-110", "A-111", "A-112", "A-112-1", "A-112-2", "A-113", "A-114", "A-115", "A-116", and "A-116-A". However, the Court denied the admission of the following exhibits:

1. Exhibits "A-12", "A-23", "A-24", "A-25", for failure to present the original for comparison;

2. Exhibits "A-7-1", "A-12-1", "A-12-2", "A-23-1", "A-24-1", "A-25-1", for failure to properly mark and to present the original for comparison; and

3. Exhibits "A-79", "A-80", "A-81", "A-82", "A-83", "A-84", "A-85", "A-86", "A-87", "A-88", "A-89", for failure to submit the duly marked exhibits.

Thus, on March 25, 2022, accused filed an Urgent Motion for Partial Reconsideration (Re: Resolution dated 10 March 2022) with: (1) Motion for Marking Conference; and (2) Motion to Suspend Period to File Memorandum.[95]

The Court partially granted petitioner's motion and admitted the following exhibits:[96] "A-7-1", "A-12", "A-12-1", "A-12-2", "A-23", "A-23-1", "A-24", "A-24-1", "A-25", "A-25-1", "A-79", "A-80", "A-81", "A-82", "A-83", "A-84", "A-85", "A-86", "A-87", "A-88" and "A-89".

On May 10, 2022, accused filed a Tender of Excluded Evidence, praying that the excluded questions and answers in Ms. Marie Fel Dalafu's Judicial Affidavit dated May 29, 2019 and in Maria A. Ressa's Amended Judicial Affidavit dated February 24, 2021 be part of the records of the case.[97] The

---

[95] Docket (Crim. Case No. 0-679) – Vol. XI, pp. 7486 to 7512.
[96] Resolution dated April 8, 2022, Docket (Crim. Case No. 0-679) – Vol. XII, pp. 7579 to 7590.
[97] Docket (Crim. Case No. 0-679) – Vol. XII, pp. 7645 to 7655.

plaintiff filed its Comment to Tender of Excluded Evidence on June 27, 2022.[98] Then, on July 18, 2022, accused filed a Motion for Partial Striking Out of Portions the Plaintiff's Comment to Tender of Excluded Evidence dated 26 June 2022,[99] while, plaintiff filed its Opposition to Accused's Motion for Partial Striking Out of Portions of the Plaintiff's Comment (To Tender of Excluded Evidence dated 26 June 2022).[100]

In its Resolution dated October 11, 2022, the Court noted accused's Tender of Excluded Evidence but denied accused's Motion for Partial Striking Out of Portions of the Plaintiff's Comment to Tender of Excluded Evidence dated 26 June 2022.[101]

Accused filed their Memorandum on May 10, 2022,[102] while plaintiff's Memorandum was posted on May 13, 2022.[103]

On October 11, 2022, the case was submitted for decision.[104]

On December 9, 2022, a Notice of Promulgation was issued by the Court setting the date of promulgation on January 18, 2022.

EVIDENCE FOR THE PLAINTIFF

Below is a summary of the testimonies of the plaintiff's witnesses during their direct examination, cross-examination and/or responses to clarificatory questions posed by the Court, *viz.*:

Testimony of RO Jocelyn B. Bautista:[105]

Ms. Jocelyn B. Bautista testified, by way of Judicial Affidavit, that she is currently the OIC-Chief of Compliance Section of BIR RDO No. 43, Pasig City. As such, her duties and functions include supervision of registration of individual

---

[98] Docket (Crim. Case No. 0-679) - Vol. XII, pp. 7882 to 7914.
[99] Docket (Crim. Case No. 0-679) - Vol. XII, pp. 7990 to 8003.
[100] Docket (Crim. Case No. 0-679) - Vol. XIII, pp. 8259 to 8270.
[101] Docket (Crim. Case No. 0-679) - Vol. XIII, pp. 8430 to 8444.
[102] Docket (Crim. Case No. 0-679) - Vol. XII, pp. 7656 to 7773.
[103] Docket (Crim. Case No. 0-679) - Vol. XII, pp. 7800 to 7848.
[104] Docket (Crim. Case No. 0-679) - Vol. XIII, pp. 8430 to 8444.
[105] TSN taken at the hearing held on May 15, 2019, Vol. I, pp. 1 to 39; and Exhibit "P-29", Docket (Crim. Case No. 0-679) – Vol. VI, pp. 3627 to 3631.

and non-individual taxpayers, update of taxpayers' registration information, transfer of Tax Identification Number (TIN) to other districts, and assists taxpayers on e-services, among others.[106]

She stated that she made a printout of RHC's Certificate of Registration containing details about RHC's BIR registration, namely: Date of Registration (on April 9, 2015), registered business address, tax types and line of business, which was extracted from the BIR Integrated Tax System (ITS). This was done upon the request of ROs Berba, Salles and Quilantang for RHC's BIR Registration Details. She continued that the said ROs conducted an investigation on RHC under the Run After Evaders (RATE) Program.[107]

She was able to confirm that accused RHC is registered with RDO 43.[108] She said that their section checked the registration details of RHC provided in its BIR Form 1903 in relation to its supporting documents, and then the registration information as reflected in RHC's BIR Form 1903 as encoded through the ITS.[109]

She was also able to confirm that accused RHC's Line of Business/Industry is that of a Financial Holding Company as indicated in its BIR Registration. She affirmed that their office was able to verify the accuracy of the line of industry indicated in accused's BIR Form No. 1903 by reviewing the supporting documents attached to its SEC registration.[110]

Testimony of Mr. Rufo B. Ranario:[111]

Mr. Rufo B. Ranario testified, by way of Judicial Affidavit, that he is a Revenue District Officer, assigned at RDO No. 43, Pasig City since September July 1991 up to the present. As such, his duties and functions include planning and developing programs necessary for the efficient and economical assessment, collection and administration of internal revenue taxes within the revenue district, in accordance with standards and guidelines set by the CIR and the Regional Director; supervising the field investigation and

[106] Exhibits "P-29" and "P-29-a", Docket (Crim. Case No. 0-679) – Vol. VI, p. 3628.
[107] Exhibits "P-29" and "P-29-a", Docket (Crim. Case No. 0-679) – Vol. VI, p. 3629.
[108] Exhibits "P-29" and "P-29-a", Docket (Crim. Case No. 0-679) – Vol. VI, p. 3630.
[109] Exhibits "P-29" and "P-29-a", Docket (Crim. Case No. 0-679) – Vol. VI, p. 3630.
[110] Exhibits "P-29" and "P-29-a", Docket (Crim. Case No. 0-679) – Vol. VI, p. 3630.
[111] TSN taken at the hearing held on May 29, 2019, Vol. I; Exhibit "P-30", Docket (Crim. Case No. 0-679) – Vol. VI, pp. 3633 to 3636.

audit of tax cases within the revenue district; and performing such other related functions as may be assigned to him by his superiors from time to time, such as issuance of certifications, pursuant to law and rules and regulations, among others.[112]

He stated that he certified the copies of accused RHC's Annual Income Tax Return, Monthly Value-Added Tax Declarations and Quarterly Value-Added Tax Returns for taxable year 2015. According to him, he certified these copies upon the request of ROs Berba, Salles and Quilantang of the BIR NID.[113]

He narrated that their office was able to verify that RHC is indeed registered with their district office (RDO No. 43). Their district office then generated copies of accused RHC's income tax and VAT returns for 2015 which he subsequently certified to be true copies of the tax returns filed by accused RHC with their district office.[114]

On cross-examination, he testified that Mr. Ramon B. Navarro, is his assistant RDO and that Mr. Navarro is also allowed to certify in case of his absence.[115]

<u>Testimony of RO Ed Al Renzi B. Salles:</u>[116]

Mr. Ed Al Renzi B. Salles testified, by way of Judicial Affidavit, that he is currently holding the RO position at the NID of the BIR National Office. As RO, he narrated that his duties and functions include, but are not limited to, conducting audit or investigation of books of accounts and other accounting records of taxpayers for internal revenue tax purposes; submitting corresponding reports on their audit or investigation; recommending the prosecution of taxpayers for criminal violations of the provisions of the Tax Code; and performing such duties and functions that may be assigned to him by his superiors from time to time pursuant to law. He also mentioned that he is a Certified Public Accountant.[117]

---

[112] Exhibit "P-30" and "P-30-a", Docket (Crim. Case No. 0-679) – Vol. VI, p. 3634.
[113] Exhibit "P-30" and "P-30-a", Docket (Crim. Case No. 0-679) – Vol. VI, pp. 3634 to 3635.
[114] Exhibit "P-30" and "P-30-a", Docket (Crim. Case No. 0-679) – Vol. VI, p. 3635.
[115] TSN taken at the hearing held on May 29, 2019, Vol. I, pp. 27 to 29.
[116] TSN taken at the hearing held on July 3, 2019, Vol. I, pp. 1 to 93; and Exhibit "P-31", Docket (Crim. Case No. 0-679) – Vol. VI, pp. 3671 to 3691.
[117] Exhibit "P-30" and "P-30-a", Docket (Crim. Case No. 0-679) – Vol. VI, p. 3672.

He stated that on January 11, 2018, the SEC *En Banc* promulgated a Decision entitled "In Re: Rappler, Inc. and Rappler Holdings Corporation" (SEC Decision) with SP Case No. 08-17-001, finding Rappler, Inc. and RHC liable for violating the Constitution and statutory foreign equity restrictions in mass media and imposed the penalty of the revocation of the Certificates of Incorporation of Rappler, Inc. and RHC. Thereafter, a NID Memorandum Assignment (NID Memo Assignment) was issued on January 24, 2018 directing them to conduct a preliminary investigation on RHC and Rappler, Inc. [118] Subsequently, an NID Memorandum Assignment No. CRD/AJDG 2018-01-024-0083 dated January 24, 2018 was issued to their team to conduct a preliminary investigation against accused RHC and Rappler Inc. to check their tax compliance.[119]

He narrated that after the issuance of the NID Memo Assignment, he and his teammates secured various documents from the BIR and the SEC that are relevant to their investigation on RHC's and Rappler, Inc.'s tax compliance and their possible tax liabilities.[120]

Afterwards, he testified that their team proceeded to study, evaluate and analyze the documents pursuant to the directives embodied in the NID Memo Assignment.[121]

Further, he testified that their group was able to establish that both accused RHC and Rappler, Inc. are domestic corporations incorporated under the laws of the Philippines that share a common business address at 3/F, North Wing Estancia Offices, Capitol Commons, Ortigas Center, Pasig City 1605.

He further stated that through the same SEC documents and registration papers and the 2015 AFS filed with the BIR, they were able to establish the connection between Rappler, Inc. and accused RHC. Aside from sharing a common business address, accused RHC, during the time of their investigation, owned 98.84% equity in Rappler, Inc., making the latter its subsidiary company. Accused RHC and Rappler, Inc. also had interlocking directors and identical officers, both headed by

---

[118] Exhibit "P-30" and "P-30-a", Docket (Crim. Case No. 0-679) – Vol. VI, p. 3673.
[119] Exhibit "P-30" and "P-30-a", Docket (Crim. Case No. 0-679) – Vol. VI, p. 3674.
[120] "P-30" and "P-30-a", Docket (Crim. Case No. 0-679) – Vol. VI, p. 3674.
[121] "P-30" and "P-30-a", Docket (Crim. Case No. 0-679) – Vol. VI, p. 3676.

accused Maria A. Ressa who was the President for both companies during the relevant period.[122]

He testified that in the three (3) SEC Forms 10-1 it filed with the SEC, accused RHC acknowledged that the PDRs it issued are "securities" as defined under the Securities and Regulation Code (SRC) when it claimed exemption under Sec. 10.1 (k) thereof, which expressly covers the sale of securities.[123]

He stated that for TY 2015, accused RHC electronically filed its income tax and quarterly VAT returns but with zero declaration therein of taxes on its sales receipts. Moreover, he alleged that there was irregularity in the transactions because accused RHC substantially and repeatedly, within a short span of time, continually purchased Rappler, Inc. shares, and resold them to customers, NBM Rappler L.P. (NBM) and Omidyar Network Fund LLC (ON), through the PDRs written by RHC itself against the same Rappler shares, as can be summarized as follows:[124]

Date	Stock Purchase	PDR Sale
December 2014	1,300,000	
May 25, 2015	110,917,181	
May 29, 2015		264,601
July 29, 2015		11,764,117
August 28, 2015	7,217,257	
October 2, 2015		7,217,257

He opined that accused RHC was stripped of its beneficial ownership, namely voting and economic rights in favor of ON and economic rights in favor of NBM.[125]

He claimed that the total consideration of Php181,658,758.67 received by accused RHC from selling the PDRs less the aggregate par value of the Rappler, Inc. shares utilized as underlying shares for the PDRs or cost of sale in the amount of Php19,245,975 leads to a total gain or income of Php162,412,783.67. He further claimed that they classified the profit as ordinary business income.[126]

[122] "P-30" and "P-30-a", Docket (Crim. Case No. 0-679) – Vol. VI, p. 3677.
[123] "P-30" and "P-30-a", Docket (Crim. Case No. 0-679) – Vol. VI, p. 3681.
[124] "P-30" and "P-30-a", Docket (Crim. Case No. 0-679) – Vol. VI, p. 3682.
[125] "P-30" and "P-30-a", Docket (Crim. Case No. 0-679) – Vol. VI, p. 3683.
[126] "P-30" and "P-30-a", Docket (Crim. Case No. 0-679) – Vol. VI, p. 3684.

On cross-examination, he testified that the LOA was not signed by the Deputy Commissioner of Legal but was signed by the CIR.[127]

Testimony of RO Editha V. Quilantang:[128]

Ms. Editha V. Quilantang testified, by way of Judicial Affidavit, that she is currently a Revenue Officer assigned at the NID of the BIR National Office. As such, she conducts audit or investigation of books of accounts and other accounting records of taxpayers for internal revenue tax purposes; submits corresponding reports on the results of the audit or investigation; and recommends the prosecution for criminal violations of the provisions of the Tax Code, among others.[129] She stated that they uncovered the transactions undertaken by accused RHC consisting of large volumes of repeated, successive and continual purchase of Rappler, Inc.'s shares and reselling them through the PDRs issued.[130]

She said that they observed that accused RHC took on the position of a dealer in securities that performed the tasks of buying Rappler, Inc.'s shares, then of writing or originating equity derivatives from the same shares in the form of PDRs, and finally, of offering them for sale to ON and NBM, both of which could buy shares directly from Rappler, Inc. She further claimed that acquisitions by accused RHC were observed as done with intention to immediately resell or dispose, versus buying or holding them for investment given the short intervals between the date of purchase of Rappler, Inc.'s shares and the issue and selling of the PDRs that soon followed.[131]

She held the opinion that the income or profit earned by accused RHC from its purchase of Rappler, Inc.'s shares and the sale of PDRs in excess of the costs to NBM and ON in line with its securities dealing activities, is subject to corporate income tax and are considered vatable sales subject to VAT under Sections 27 and 108 of the 1997 NIRC, as amended, respectively.[132]

---

[127] TSN taken at the hearing held on July 3, 2019, Vol. I, p. 37.
[128] TSN taken at the hearing held on July 10, 2019, Vol, I, pp. 1 to 35; and Exhibit "P-32", Docket (Crim. Case No. 0-679) -Vol. VI, pp. 3827 to 3837.
[129] "P-32" and "P-32-a", Docket (Crim. Case No. 0-679) – Vol. VI, p. 3828.
[130] "P-32" and "P-32-a", Docket (Crim. Case No. 0-679) – Vol. VI, p. 3829.
[131] "P-32" and "P-32-a", Docket (Crim. Case No. 0-679) – Vol. VI, p. 3831.
[132] "P-32" and "P-32-a", Docket (Crim. Case No. 0-679) – Vol. VI, p. 3831.

She asserted that the total consideration received by accused RHC from the issuance and sale of PDRs is Php181,658,758.67, broken down as follows:

- Accused RHC issued 264,601 and 11,764,117 PDRs to NBM Rappler L.P. on May 29, 2015 and July 29, 2015, respectively, for a consideration of Php111,474,554.10 plus Php70,184,204.57 as consideration paid by and received from Omidyar Network Fund LLC for the issuance of another 7,217,257 PDRs.

- Each PDR has an underlying asset/share of one common share of Rappler, Inc. This means that the total underlying equity/shares used is 19,245,975 shares. Accused RHC purchased the shares from Rappler, Inc. for Php1 per share, giving a total purchase price of Php19,245,975.00.

She said that by subtracting the total acquisition cost of Rappler, Inc.'s shares in the amount of Php19,245,975.00 from the total consideration of Php181,658,758.67 received by accused RHC through the sale of PDRs, the amount of total gain or income of RHC is Php162,412,783.67.[133]

Moreover, she contended they have reasons to believe that there exists a *prima facie* evidence of tax fraud as can be seen from the under-declaration committed by accused RHC in the tax returns filed for taxable year 2015, which would warrant the issuance of the LOA by BIR to authorize a formal tax fraud investigation of accused RHC.[134]

<u>Testimony of Ms. Karen F. Lazaro:</u>[135]

Ms. Karen F. Lazaro testified, by way of Judicial Affidavit, that she is currently an Administrative Officer IV in the Office of the General Counsel (OGC) of the SEC. As Administrative Officer IV, her duties and functions include, among others, providing administrative support to the operations of the office; receiving office correspondences and documents and endorsing the same to appropriate officers; maintaining and certifying the files, records and correspondences of the office;

---

[133] "P-32" and "P-32-a", Docket (Crim. Case No. 0-679) – Vol. VI, pp. 3831 to 3832.
[134] "P-32" and "P-32-a", Docket (Crim. Case No. 0-679) – Vol. VI, pp. 3833 to 3834.
[135] TSN taken at the hearing held on July 31, 2019, Vol. I, pp. 1 to 17; and Exhibit "P-33", Docket (Crim. Case No. 0-679) - Vol. VIII, pp. 5391 to 5395.

and, preparing letters, reports, documents, emails, messages and other communications of the office. [136]

She attested that she certified as true copies the following documents:

(1) Decision promulgated by the SEC *En Banc* on January 11, 2018 in the case entitled "In Re: Rappler, Inc. and Rappler Holdings Corporation" (SEC Rappler Case) with SP Case No. 08- 17-001; and

(2) The Verified Explanation filed by Rappler, Inc. and Rappler Holdings Corporation (RHC) on August 29, 2017 (Verified Explanation) in the SEC Rappler Case.[137]

Admitted evidence of the plaintiff.

To establish the guilt of the accused beyond reasonable doubt, plaintiff presented the following documentary evidence, which have been admitted by the Court in its Resolution dated October 25, 2019, to wit:

Exhibits	Description
"P-1"	Securities and Exchange Commission (SEC) *En Banc* Division entitled "In Re: Rappler, Inc. and Rappler Holdings Corporation (RHC)", S.P. Case No. 08-17-001 dated January 11, 2018[138]
"P-1-A"	Verified Explanation dated August 26, 2017 filed by accused before the SEC in the case entitled "In Re: Rappler, Inc. and Rappler Holdings Corporation" docketed as SP Case No. 08-17-001[139]
"P-2"	NID Memo Assignment No. CRD/AJDG 2018-01-024-0083 dated January 24, 2018[140]
"P-3"	BIR Integrated Tax System (ITS) Print-out of the Registration Details of Rappler Holdings Corporation (RHC)[141]
"P-4"	Annual Income Tax Return (BIR Form No. 1702-RT) of RHC for taxable year 2015[142]

[136] Exhibit "P-33" and "P-33-a", Docket (Crim. Case No. 0-679) – Vol. VIII, p. 5392.
[137] Exhibit "P-33" and "P-33-a", Docket (Crim. Case No. 0-679) – Vol. VIII, p. 5392.
[138] Docket (Crim. Case No. 0-679) – Vol. V, pp 3256 to 3284.
[139] Docket (Crim. Case No. 0-679) – Vol. VIII, pp. 5414 to 5456.
[140] Docket (Crim. Case No. 0-679) – Vol. V, p. 3285
[141] Docket (Crim. Case No. 0-679) – Vol. V, p. 3286.
[142] Docket (Crim. Case No. 0-679) – Vol. V, pp. 3287 to 3294.

"P-5"	Monthly Value-Added Tax (VAT) Declaration (BIR Form No. 2550-M) of RHC for January 2015[143]
"P-5-A"	Monthly Value-Added Tax (VAT) Declaration (BIR Form No. 2550-M) of RHC for February 2015[144]
"P-5-B"	Monthly Value-Added Tax (VAT) Declaration (BIR Form No. 2550-M) of RHC for April 2015[145]
"P-5-C"	Monthly Value-Added Tax (VAT) Declaration (BIR Form No. 2550-M) of RHC for May 2015[146]
"P-5-D"	Monthly Value-Added Tax (VAT) Declaration (BIR Form No. 2550-M) of RHC for July 2015[147]
"P-5-E"	Monthly Value-Added Tax (VAT) Declaration (BIR Form No. 2550-M) of RHC for August 2015[148]
"P-5-F"	Monthly Value-Added Tax (VAT) Declaration (BIR Form No. 2550-M) of RHC for October 2015[149]
"P-5-G"	Monthly Value-Added Tax (VAT) Declaration (BIR Form No. 2550-M) of RHC for November 2015[150]
"P-6"	Quarterly VAT Return (BIR Form No. 2550-Q) of RHC for the 1st Quarter of 2015[151]
"P-6-A"	Quarterly VAT Return (BIR Form No. 2550-Q) of RHC for the 2nd Quarter of 2015[152]
"P-6-B"	Quarterly VAT Return (BIR Form No. 2550-Q) of RHC for the 3rd Quarter of 2015[153]
"P-6-C"	Quarterly VAT Return (BIR Form No. 2550-Q) of RHC for the 4th Quarter of 2015[154]
"P-6-D"	Amended Quarterly VAT Return (BIR Form No. 2550-Q) of RHC for the 4th Quarter of 2015[155]
"P-7"	Certificate of Incorporation of RHC
"P-7-A"	Articles of Incorporation of RHC[156]
"P-8"	General Information Sheet of RHC for the period of July 17, 2015[157]
"P-9"	General Information Sheet of RHC for the period of August 1, 2017[158]
"P-10"	Separate Financial Statements of RHC for the year

[143] Docket (Crim. Case No. 0-679) – Vol. V, pp. 3295 to 3296.
[144] Docket (Crim. Case No. 0-679) – Vol. V, pp. 3297-3298.
[145] Docket (Crim. Case No. 0-679) – Vol. V, pp. 3299-3300.
[146] Docket (Crim. Case No. 0-679) – Vol. V, pp. 3301 to 3302.
[147] Docket (Crim. Case No. 0-679) – Vol. V, pp. 3303 to 3304.
[148] Docket (Crim. Case No. 0-679) – Vol. V, pp. 3305 to 3306.
[149] Docket (Crim. Case No. 0-679) – Vol. V, pp. 3307 to 3308.
[150] Docket (Crim. Case No. 0-679) – Vol. V, pp. 3309 to 3310.
[151] Docket (Crim. Case No. 0-679) – Vol. V, pp. 3311 to 3312.
[152] Docket (Crim. Case No. 0-679) – Vol. V, pp. 3313 to 3314.
[153] Docket (Crim. Case No. 0-679) – Vol. V, pp. 3315 to 3316.
[154] Docket (Crim. Case No. 0-679) – Vol. V, pp. 3317 to 3318.
[155] Docket (Crim. Case No. 0-679) – Vol. V, pp. 3319 to 3320.
[156] Docket (Crim. Case No. 0-679) – Vol. V, p. 3324.
[157] Docket (Crim. Case No. 0-679) – Vol. V. pp. 3330 to 3339
[158] Docket (Crim. Case No. 0-679) – Vol. V, pp. 3340 to 3349.

	ended December 31, 2014 with stamp received by the BIR[159]
"P-11"	Separate Financial Statements of RHC for the year ended December 31, 2015 with stamp received by the BIR[160]
"P-12"	Financial Statements of Rappler, Inc. for the year ended December 31, 2015 with stamp received by the BIR[161]
"P-13"	SEC Form No. 10-1 of RHC dated June 8, 2015[162]
"P-14"	SEC Form No. 10-1 of RHC dated August 8, 2015[163]
"P-15"	SEC Form No. 10-1 of RHC dated December 1, 2015[164]
"P-16"	Letter of Authority eLA201600007402 dated March 2, 2018 with Attached List[165]
"P-17"	Letter of Commissioner Caesar R. Dulay addressed to then Department of Justice (DOJ) Secretary Vitaliano N. Aguirre II dated March 8, 2018, authorizing the filing and institution of the criminal complaint against accused pursuant to Section 220 of the National Internal Revenue Code of 1997, as amended (1997 NIRC)[166]
"P-18"	Joint Complaint-Affidavit of Revenue Officers Rosanna F. Berba, Ed Al Renzi B. Salles and Editha V. Quilantang dated March 8, 2018 with attachments[167]
"P-19"	Computation Sheet signed by Revenue Officers Salles, Berba and Quilantang[168]
"P-20"	PDR Instrument dated May 29, 2015 (marked as Annex "9" as attached in Joint Counter-Affidavit of accused RHC and Ms. Ressa)[169]
"P-21"	PDR Instrument in favor of Omidyar Network Fund LLC (marked as Annex "10" as attached in Joint Counter-Affidavit of accused RHC and Ms. Ressa)[170]
"P-22"	Notice of Informal Conference dated November 12, 2018[171]

159 Docket (Crim. Case No. 0-679) – Vol. V, pp. 3350 to 3367.
160 Docket (Crim. Case No. 0-679) – Vol. V., pp.3368 to 3387.
161 Docket (Crim. Case No. 0-679) - Vol. V. pp. 3388 to 3415.
162 Docket (Crim. Case No. 0-679) – Vol. V. pp. 3416 to 3423.
163 Docket (Crim. Case No. 0-679) - Vol V, pp. 3424 to 3431.
164 Docket (Crim. Case No. 0-679) - Vol, V, pp. 3432 to 3439.
165 Docket (Crim. Case No. 0-679) - Vol. V, p.3440.
166 Docket (Crim. Case No. 0-679) - Vol. V, p. 3444 to 3446.
167 Docket (Crim. Case No. 0-679) - Vol. I, pp. 428 to 443.
168 Docket (Crim. Case No. 0-679) - Vol. V, p. 3447.
169 Docket (Crim. Case No. 0-679) – Vol. I, pp. 387 to 401.
170 Docket (Crim. Case No. 0-679) – Vol. I, pp. 402 to 419.
171 Docket (Crim. Case No. 0-679) – Vol. V, p. 3448.

"P-23"	Preliminary Assessment Notice (PAN) dated December 13, 2018[172]
"P-24"	Joint Reply-Affidavit dated May 21, 2018[173]
"P-25-P-26"	Final Assessment Notice (FAN) with Details of Discrepancies dated March 15, 2019 (with stamp received by Rappler dated April 15, 2019)[174]
"P-28"	General Information Sheet of Rappler, Inc. for the period August 21, 2016[175]
"P-29"	Judicial Affidavit of Jocelyn B. Bautista[176]
"P-29-A"	Signature of Jocelyn B. Bautista[177]
"P-30"	Judicial Affidavit of Rufo B. Ranario[178]
"P-30-A"	Signature of Rufo B. Ranario[179]
"P-31"	Judicial Affidavit of Ed Al Renzi B. Salles[180]
"P-31-A"	Signature of Ed Al Renzi B. Salles[181]
"P-32"	Judicial Affidavit of Editha V. Quilantang[182]
"P-32-A"	Signature of Editha V. Quilantang[183]
"P-33"	Judicial Affidavit of Karen F. Lazaro[184]
"P-33-A"	Signature of Karen F. Lazaro[185]

EVIDENCE FOR THE ACCUSED

To counter the foregoing evidence of the plaintiff, the accused presented the following witnesses, namely: (1) Atty. Helen Go Tiu, (2) Marie Fel D. Dalafu; (3) accused Maria A. Ressa; and (4) Mr. Charlito B. Padul (3).[186] Their testimonies during their direct examination, cross-examination and responses to clarificatory questions are summarized as follows:

---

[172] Docket (Crim. Case No. 0-679) – Vol. V, pp. 3451 to 3452.
[173] Docket (Crim. Case No. 0-679) – Vol. I, pp. 281 to 298.
[174] Docket (Crim. Case No. 0-679) – Vol. VI, pp. 3847 to 3855.
[175] Docket (Crim. Case No. 0-679) – Vol. V, pp. 3076 to 3087.
[176] Docket (Crim. Case No. 0-679) – Vol. VI, pp.3627 to 3631.
[177] Docket (Crim. Case No. 0-679) – Vol. VI, p. 3631.
[178] Docket (Crim. Case No. 0-679) – Vol. VI, pp. 3633 to 3636.
[179] Docket (Crim. Case No. 0-679) – Vol. VI, p. 3636.
[180] Docket (Crim. Case No. 0-679) – Vol. VI, pp. 3671 to 3691.
[181] Docket (Crim. Case No. 0-679) – Vol. VI, p. 3691.
[182] Docket (Crim. Case No. 0-679) – Vol. VI, pp. 3827 to 3837.
[183] Docket (Crim. Case No. 0-679) – Vol. VI, p. 3837.
[184] Docket (Crim. Case No. 0-679) – Vol. VIII, pp. 5391 to 5395.
[185] Docket (Crim. Case No. 0-679) – Vol. VIII, p. 5394.
[186] TSN taken at the hearing held on February 3, 2021, Vol. II, pp. 1 to 111; and Exhibit "A-92", Docket(Crim. Case No. 0-679) – Vol. VII, pp. 4197 to 4296. am

Testimony of Atty. Helen Go Tiu: [187]

Atty. Tiu testified, by way of direct testimony in open Court, that she is a CPA lawyer and that she was the external counsel of accused RHC from 2013 to 2015 specifically for PDR transactions.[188] She recalled that at the time she was hired as consultant, there was still no holding company but only Rappler, Inc. She then recommended that they should adopt the business/capital structures of ABS-CBN and GMA which were the leading television networks at the time by first setting up a holding company which paved the way for the establishment of RHC in 2014.

In answer to the query of accused's counsel as to the meaning of a PDR, Atty. Tiu described it as follows, and we quote:

> "Atty. Tiu:
>
> A. Philippine Depositary Receipt as the name is, it's a receipt. It's a receipt issued by the registered shareholder saying that "I have on deposit with me, shares of stock of a different company, in this case Rappler, Inc., the operating company. So, a PDR is essentially a receipt issued by the depositary or the one who has, who is the registered shareholder of a parent company and the PDR usually will say" okay investors, if you invest in the PDR I will give you the option to purchase shares in my underlying company, in this case, Rappler, Inc., and your ability to exercise the option is normally dependent on certain conditions such as in this case of Philippine Law or the Philippine Constitution already allows you to own shares of stock in the mass media company. But in the meantime, since you are a PDR holder, if you've invested to *(sic)* us, we will share with you whatever dividends that we received from the operating company, if the operating company declares dividends to us, the parent company."[189]

The rationale for setting up a holding company patterned after the ABS-CBN and GMA capital structures was explained by Atty. Tiu as follows, and we quote:

> "A. Because somebody needs to be the registered stockholder of the operating company. So, Rappler Holdings cannot be the registered shareholder of its own

---

[187] TSN taken at the hearing held on March 13, 2019, pp. 1 to 39; and Exhibit "A-35", Docket – Vol. 2 (CTA Crim. Case No. O-501), pp. 900 to 906
[188] TSN taken at the hearing held on January 22, 2020, p. 29.
[189] TSN taken at the hearing held on January 22, 2020.

> company. So it has to be a parent or holding company that owns the shares of Rappler, Inc. Therefore there was a need to establish Rappler Holdings Corporation, because after mirroring the shareholders what happens next is Rappler Holdings Corporation subscribed to all the unissued shares of Rappler, Inc., and actually with the money that came from the PDR investors it applied for the increase in capital stock in Rappler Holdings Corp., and Rappler, Inc., and the money that was secured from PDR investor were used to increase the capital stock through Rappler Holdings Corporation."[190]

Essentially, as testified to by Atty. Tiu, the issuance of the PDRs was to raise funds to enable Rappler, Inc. to expand their news or media services globally, particularly in Indonesia and Singapore.

Testimony of Marie Fel D. Dalafu:[191]

Witness Marie Fel D. Dalafu testified by way of Judicial Affidavit, that she is the Chief Financial Officer (CFO) of accused RHC, and her duties and responsibilities involve: (i) overseeing and monitoring RHC's tax compliance matters; (ii) accessing and managing RHC's account in the BIR's electronic filing payment system ("eFPS"); (iii) overseeing the receipts and disbursements of funds of RHC and added that as an accountant, she is also involved in the preparation and safekeeping of financial reports, books of accounts, financial statements of RHC; (iv) safekeeping and maintaining the records of RHC; and (v) monitoring, recording and safekeeping of all pertinent documents and records that have been filed with the DOJ, BIR and with the courts in relation to the cases that have been filed against RHC.[192]

She summarized the defenses of accused RHC as follows: First, accused RHC is not and has never been engaged in business as a dealer in securities; Second, accused RHC did not act as a dealer in securities in relation to the PDRs it issued to NBM and ON for taxable year 2015; Third, accused RHC did not gain any trading income in relation to the said PDR Transactions; Fourth, the theory of the BIR that RHC gained profits from the mark-up between the par value of the Rappler, Inc. share and the total amount it received from the

---

[190] Ibid.
[191] TSN taken at the hearing held on February 3, 2021, Vol. II, pp. 1 to 111; and Exhibit "A-92", Docket – Vol. VII, pp. 4197 to 4296.
[192] Exhibit "A-92" and "A-92-1, Docket (Crim. Case No. 0-679) - Vol. VII, pp. 4197 to 4198.

PDR transactions is only based on speculation; Fifth, accused RHC had no intention to evade any taxes. In fact, it acted in good faith and sought advice from experts regarding the taxability of PDRs; Sixth, there was no proper and legal assessment of the supposed tax liability of accused RHC as the BIR violated accused RHC's due process rights as a taxpayer; and Seventh, the information provided in accused RHC's 2015 value-added tax returns and income tax returns were accurate. In fact, accused RHC has duly paid all taxes that were due to the government in the said TY of 2015.[193]

On cross-examination, she reiterated that these PDRs are issued as a way to raise funds.[194] She stated that she is not aware if accused RHC requested the BIR for a ruling regarding the taxability of its PDR transactions.[195]

Upon clarification of the Court, she stated that according to their expert lawyer, the documentary stamp tax (DST) on PDR is based on the total amount that accused RHC received from the PDR holders, so the basis of the DST is the total amount of the subscription price.[196]

Testimony of Maria A. Ressa:[197]

Accused Maria A. Ressa testified by way Judicial Affidavit, that she is one of the incorporators and also the President and Chief Executive Officer (CEO) of accused RHC. As a stockholder of accused RHC, she currently owns 23.77% of the total shareholdings of the company.[198]

Accused claims that they sought the advice from the following as regards the PDR transactions:

1. Sycip Salazar Hernandez & Gatmaitan Law Offices, intimately familiar with PDRs;
2. The auditing firm of KPMG (RG & Manabat & Co); and
3. Atty. Helen G. Tiu.[199]

---

[193] Exhibit "A-92" and "A-92-1, Docket - Vol. VII, pp. 4198 to 4199.
[194] TSN taken at the hearing held on February 3, 2021, p. 92.
[195] TSN taken at the hearing held on February 3, 2021, p. 94.
[196] TSN taken at the hearing held on February 3, 2021, p. 104.
[197] TSN taken at the hearing held on March 4, 2021, Vol. II, pp. 1 to 137; and Exhibit "A-116", Docket (Crim. Case No. 0-679) – Vol. X, pp. 6487 to 6525.
[198] Exhibit "A-116" and "A-116-A", Docket (Crim. Case No. 0-679) - Vol. X, pp. 6487 to 6525.
[199] Exhibit "A-116" and "A-116-A", Docket (Crim. Case No. 0-679) - Vol. X, p. 6497. *am*

She stated that in accordance with the terms of the investment, NBM remitted the total investment in the form of cash to accused RHC's bank account. Upon receipt of the cash, accused RHC and NBM executed a PDR Instrument confirming the issuance of 12,028,718 PDRs in favor of NBM.

She further stated that accused RHC and RI also entered into a subscription agreement separately, and all of the cash received from NBM, less the cost used to pay for documentary stamp taxes, where thereafter invested by accused RHC in RI. Accused RHC then issued the PDRs to NBM in two (2) tranches: Accused RHC issued the first PDR Certificate with No. 001 on May 29, 2015 relating to 264,601 underlying shares in RI. The said underlying shares were put in escrow with the Escrow Agent. Accused RHC issued the second PDR Certificate with No. 002 on July 29, 2015 in favor of NBM relating to11,764,117 underlying shares in RI.[200]

Furthermore, accused recalled that in accordance with the terms of the investment, ON remitted the total investment in the form of cash to RHC's bank account. Upon receipt of the cash, accused RHC and ON executed a PDR Instrument confirming the issuance of 7,217,257 PDRs in favor of ON. Separately, accused RHC and RI also entered into a subscription agreement. Most of the cash received from ON, less the cost used to pay for documentary stamp taxes and other administrative fees, were thereafter invested by accused RHC in RI. Thereafter, accused RHC issued the PDRs to ON. On December 1, 2015, accused RHC issued the third PDR Certificate with No. 003 relating to 7,217,257 underlying shares in RI. The said underlying shares were put in escrow with the Escrow Agent.[201]

She maintains that she is not guilty of the criminal offenses she is charged with and she understands that she was impleaded in these criminal tax cases solely because she is the President of RHC. However, according to accused she had been advised by her legal counsel (ACCRA Law) that the mere fact that she is the President of RHC does not make her automatically liable and is not enough to implicate her for any of the criminal offenses charged in the Informations. She stated that she was told that the Tax Code clearly requires proof of participation because the criminal provisions for

---

[200] Exhibit "A-116" and "A-116-A", Docket (Crim. Case No. 0-679) - Vol. X, pp. 6499 to 6500.

[201] Exhibit "A-116" and "A-116-A", Docket (Crim. Case No. 0-679) - Vol. X, p. 6505

which she was being charged with contain the words "responsible for the violation".[202]

On the allegation that RHC is a "dealer in securities," accused was made to understand by her legal counsel that one may be considered a dealer in securities only if the following conditions are present: (i) the person is a merchant of stocks or securities with an established place of business; (ii) the person is regularly engaged in the purchase and resale of the same securities to customers; and (iii) the person is engaging in such purchase and sale to derive profit.

She holds the view that accused RHC never represented itself nor acted as a dealer in securities because it is not engaged in the business of selling any type of securities. The PDRs issued by accused RHC were pursuant to an investment agreement with the sole objective of raising capital. The PDRs did not involve a sale of securities. Moreover, accused RHC was never habitually engaged in the purchase and resale of securities. There were only two (2) PDR Transactions entered into by accused RHC. One with NBM, which was implemented in two tranches and the other one was with ON. She contends that since RHC is not a dealer in securities, there is clearly no basis to charge her as an officer of accused RHC for any criminal violations under the Tax Code.[203]

Accused Maria A. Ressa stated that she is not a tax evader and in fact has been cited as one of the top paying taxpayers in the Philippines. She further asserted that she did not receive any profit from the PDR Transactions in her personal capacity since the funds were invested by the PDR Holders to accused RHC. She puts emphasis on the fact that she is only a 23.77% shareholder of accused RHC. As the President of RHC, she attested that all their activities are lawful and there was never an instance where accused RHC intended to willfully evade the payment of any taxes as charged.[204]

Further, she raised the lack of proper service of the LOA from the BIR which is necessary to authorize a tax investigation and alleged that the LOA was improperly served

---

[202] Exhibit "A-116" and "A-116-A", Docket (Crim. Case No. 0-679) - Vol. X, p. 6508.
[203] Exhibit "A-116" and "A-116-A", Docket (Crim. Case No. 0-679) - Vol. X, p. 6508.
[204] Exhibit "A-116" and "A-116-A", Docket (Crim. Case No. 0-679) - Vol. X, p. 6509.

to a person who was not authorized under the law to receive said official notice.[205]

Admitted evidence of the accused.

The accused presented the following documentary evidence, which have been admitted by the Court in the Resolution dated June 16, 2021, to wit:

"A-1"	RHC's Certificate of Incorporation dated 12 December 2014 with attached Articles of Incorporation[206]
"A-1-1"	RHC's Primary Purpose, Second Section of the Articles of Incorporation found in page 1, 2nd paragraph[207]
"A-2"	Certification issued by the Market and Securities Regulation Department of the SEC dated 18 January 2019 to RHC, signed by its Director, Mr. Vicente Graciano P. Felizmenio, Jr. [208]
"A-2-1"	First paragraph of the Certification[209]
"A-3"	RHC's Certificate of Registration (BIR Form No. 2303), issued by the Bureau of Internal Revenue ("BIR") on 9 January 2015[210]
"A-3-1"	Under the phrase "Line of Business or Industry", which reads: "LINE OF BUSINESS/INDUSTRY 6694 FINANCIAL HOLDING COMPANY ACTIVITIES"[211]
"A-4"	Mayor's Permit Number IN6 15-0033 issued by the Business Permit and License Office ("BPLO") of Pasig City dated 29 April 2015 [212]
"A-4-1"	Under the phrase "Kind of Business", which reads: "IN6 HOLDINGS (MAIN OFFICE)"[213]
"A-5"	Mayor's Permit Number IN6 18-0231 issued by the BPLO of Pasig City dated 25 January 2018[214]

205 Exhibit "A-116" and "A-116-A", Docket (Crim. Case No. 0-679) - Vol. X, p. 6510.
206 Docket (Crim. Case No. 0-679) - Vol. V, p. 3321.
207 Docket (Crim. Case No. 0-679) - Vol. V, p. 3324.
208 Docket (Crim. Case No. 0-679) - Vol. V, p. 3030.
209 Docket (Crim. Case No. 0-679) - Vol. V, p. 3030.
210 Docket (Crim. Case No. 0-679) - Vol. V, p. 3031.
211 Docket (Crim. Case No. 0-679) - Vol. V, p. 3031.
212 Docket (Crim. Case No. 0-679) - Vol. V, p. 3032.
213 Docket (Crim. Case No. 0-679) - Vol. V, p. 3032.

"A-5-1"	Under the phrase "Kind of Business", which reads: "IN6 HOLDINGS (MAIN OFFICE)"[215]
"A-6"	Certificate of Approval of Increase of Capital Stock of RI dated 14 July 2015 issued by the SEC, with Certificate of Increase of Capital Stock of RI[216]
"A-6-1"	1st Paragraph of the Certificate of Approval of Increase of Capital Stock, on Page 1[217]
"A-7"	Certificate of Filing of RI's Amended Articles of Incorporation dated 14 July 2015 with its Amended Articles of Incorporation [218]
"A-7-1"	Section Seventh of the Amended Articles of Incorporation, on page 3[219]
"A-8"	Subscription Agreement between RHC and RI dated 25 May 2015[220]
"A-8-1"	Signature of Manuel Ayala, the authorized Representative of RI[221]
"A-8-2"	Signature of Ms. Ressa, President of RHC[222]
"A-8-3"	Whereas Clause of the Subscription Agreement[223]
"A-9"	Subscription Agreement between RHC and RI dated 2 October 2015[224]
"A-9-1"	Signature of Manuel Ayala, the authorized representative of RI[225]
"A-9-2"	Signature of Ms. Ressa, President of RHC[226]
"A-9-3"	Whereas Clause of the Subscription Agreement [227]
"A-10"	Notarized Certification dated 15 January 2019, executed by Mr. Michael G. Acaban, for and on behalf of the Escrow Agent, GSE Law Firm, certifying that RI Stock Certificate Nos. 44 and 46 are in the Escrow Agent's possession [228]

[214] Docket (Crim. Case No. 0-679) - Vol. V, p. 3875.
[215] Docket (Crim. Case No. 0-679) - Vol. V, p. 3875.
[216] Docket (Crim. Case No. 0-679) - Vol. V, p. 3034.
[217] Docket (Crim. Case No. 0-679) - Vol. V, p. 3034.
[218] Docket (Crim. Case No. 0-679) - Vol. V, p. 3048.
[219] Docket (Crim. Case No. 0-679) - Vol. V, p. 3053.
[220] Docket (Crim. Case No. 0-679) - Vol. V, p. 3056.
[221] Docket (Crim. Case No. 0-679) - Vol. V, p. 3057.
[222] Docket (Crim. Case No. 0-679) - Vol. V, p. 3057.
[223] Docket (Crim. Case No. 0-679) - Vol. V, p. 3056.
[224] Docket (Crim. Case No. 0-679) -Vol. X, pp. 6450 to 6454.
[225] Docket (Crim. Case No. 0-679) - Vol. X, p 6451.
[226] Docket (Crim. Case No. 0-679) - Vol. X, p 6451.
[227] Docket (Crim. Case No. 0-679) - Vol. X, p. 6450.
[228] Docket (Crim. Case No. 0-679) - Vol. V, p. 3060.

"A-11"	Certification dated 15 January 2019, executed by Mr. Michael G. Acaban, for and on behalf of the Escrow Agent, GSE Law Firm, certifying that RI Stock Certificate No. 47 is in the Escrow Agent's possession[229]
"A-12"	Letter dated 23 February 2016 addressed to Mr. Noel A. Baladiang ("Mr. Baladiang"), Engagement Partner for RI, and sent by RI's Corporate Secretary, Atty. Jose Maria G. Hofilena, on the list of RI shareholders of record as of 31 December 2015 [230]
"A-12-1"	Signature of Atty. Jose Maria G. Hofilena on page 3 of the Certification[231]
"A-12-2"	Item No. 4 in page 3 stating that RHC owns 119,434,438 shares or 98.8423% of RI shares as of 31 December 2015[232]
"A-13"	General Information Sheet ("GIS") of RI for the period covered 31 July 2015, filed with SEC on 14 August 2015[233]
"A-13-1"	Signature of Atty. Jose Maria G. Hofilena, Corporate Secretary of RI, on page 8 of the GIS[234]
"A-13-2"	Page 1, under the Intercompany Affiliations of the GIS, which reads: "Parent Corporation Rappler Holdings Corporation"[235]
"A-13-3"	Page 5, under the Stockholders' Information portion of the GIS, which indicates that RHC owns more than 98% in RI [236]
"A-14"	GIS of RI for the period covered 12 August 2016, filed with SEC on 30 August 2016[237]
"A-14-1"	Page 1, under the Intercompany Affiliations of the 2016 GIS, which reads: "Parent Corporation Rappler Holdings Corporation"[238]

[229] Docket (Crim. Case No. 0-679) - Vol. V, p. 3061.
[230] Docket (Crim. Case No. 0-679) - Vol. V, p. 3062.
[231] Docket (Crim. Case No. 0-679) - Vol. V, p. 3064.
[232] Docket (Crim. Case No. 0-679) - Vol. V, p. 3064.
[233] Docket (Crim. Case No. 0-679) - Vol. V, p. 3065.
[234] Docket (Crim. Case No. 0-679) - Vol. V, p. 3075.
[235] Docket (Crim. Case No. 0-679) - Vol. V, p. 3067.
[236] Docket (Crim. Case No. 0-679) - Vol. V, p. 3072.
[237] Docket (Crim. Case No. 0-679) - Vol. V, p. 3076.
[238] Docket (Crim. Case No. 0-679) - Vol. V, p. 3078.

"A-14-2"	Page 5, under the Stockholders' Information portion of the GIS, which indicates that RHC owns more than 98% in RI[239]
"A-15"	GIS of RI for the period covered 1 August 2017, filed with SEC on 30 August 2017[240]
"A-15-1"	Page 1, under the Intercompany Affiliations of the 2017 GIS, which reads: "Parent Corporation Rappler Holdings Corporation"[241]
"A-15-2"	Page 4, under the Stockholders' Information portion of the GIS, which indicates that RHC owns more than 98% in RI[242]
"A-16"	GIS of RI for the period covered 27 July 2018, filed with SEC on 31 July 2018[243]
"A-16-1"	Page 1, under the Intercompany Affiliations of the 2018 GIS, which reads: "Parent Corporation Rappler Holdings Corporation"[244]
"A-16-2"	Page 5, under the Stockholders' Information portion of the GIS, which indicates that RHC owns more than 98% in RI[245]
"A-17"	GIS of RHC for the period covered 17 July 2015, filed with SEC on 14 August 2015[246]
"A-17-1"	Signature of Atty. Jose Maria G. Hofilena, Corporate Secretary of RHC, on page 8 of the GIS [247]
"A-17-2"	Page 1, under the Intercompany Affiliations of the 2015 GIS, which reads: "Subsidiary/ Affiliate Rappler, Inc."[248]
"A-18"	GIS of RHC for the period covered 12 August 2016, filed with SEC on 30 August 2016[249]

---

[239] Docket (Crim. Case No. 0-679) - Vol. V, p. 3084.
[240] Docket (Crim. Case No. 0-679) - Vol. V, p. 3089.
[241] Docket (Crim. Case No. 0-679) - Vol. V, p. 3090.
[242] Docket (Crim. Case No. 0-679) - Vol. V, p. 3094.
[243] Docket (Crim. Case No. 0-679) - Vol. V, p. 3099.
[244] Docket (Crim. Case No. 0-679) - Vol. V, p. 3100.
[245] Docket (Crim. Case No. 0-679) - Vol. V, p. 3104.
[246] Docket (Crim. Case No. 0-679) - Vol. V, p. 3109.
[247] Docket (Crim. Case No. 0-679) - Vol. V, p. 3119.
[248] Docket (Crim. Case No. 0-679) - Vol. V, p. 3111.
[249] Docket (Crim. Case No. 0-679) - Vol. V, p. 3121.

"A-18-1"	Page 1, under the Intercompany Affiliations of the 2016 GIS, which reads: "Subsidiary/ Affiliate Rappler, Inc."[250]
"A-19"	GIS of RHC for the period covered 1 August 2017, filed with SEC on 30 August 2017[251]
"A-19-1"	Page 1, under the Intercompany Affiliations of the 2017 GIS, which reads: "Subsidiary/ Affiliate Rappler, Inc."[252]
"A-20"	GIS of RHC for the period covered 27 July 2018, filed with SEC on 31 July 2018[253]
"A-20-1"	Page 1, under the Intercompany Affiliations of the 2018 GIS, which reads: "Subsidiary/ Affiliate Rappler, Inc."[254]
"A-21"	PDR Instrument issued by RHC dated 29 May 2015[255]
"A-21-1"	Signature of Ms. Ressa, President of RHC[256]
"A-21-2"	Whereas Clause (B) of the PDR Receipt Instrument, in page 1, which states that RHC has authorized the issuance of 12,028,718 PDRs.[257]
"A-21-3"	Section 4.2 on Ownership of Shares and Voting Rights, on page 4, where 4.2 states: "The stock certificates representing the Underlying Shares shall be placed by the Issuer in escrow with the Escrow Agent."[258]

[250] Docket (Crim. Case No. 0-679) - Vol. V, p. 3122.
[251] Docket (Crim. Case No. 0-679) - Vol. V, p. 3340.
[252] Docket (Crim. Case No. 0-679) - Vol. V, p. 3341.
[253] Docket (Crim. Case No. 0-679) - Vol. V, p. 3132.
[254] Docket (Crim. Case No. 0-679) - Vol. V, p. 3133.
[255] Docket (Crim. Case No. 0-679) - Vol. V, p. 3142.
[256] Docket (Crim. Case No. 0-679) - Vol. V, p. 3154.
[257] Docket (Crim. Case No. 0-679) - Vol. V, p. 3142.
[258] Docket (Crim. Case No. 0-679) - Vol. V, p. 3145.

"A-21-4"	Section 4.3 on Ownership of Shares and Voting Rights, in page 4 which states that: "Neither the Escrow Agent nor any Holder shall have voting rights with respect to the Underlying Shares. Until an exercise of a PDR Exercise Right, the Issuer as owner of the Underlying Shares, will retain and exercise such voting rights relating to the Underlying Shares."[259]
"A-21-5"	Section 9 on Cash Dividends and other Cash Distributions, in page 6[260]
"A-22"	PDR Instrument issued by RHC in favor of ON[261]
"A-22-1"	Signature of Ms. Ressa, President of RHC[262]
"A-22-2"	Whereas Clause (C) of the PDR Instrument, in page 1, which states that RHC has authorized the issuance of 7,217,257 PDRs.[263]
"A-22-3"	Section 4.2 on Ownership of Shares and Voting Rights, in pages 5-7, which states: "The stock certificates representing the underlying shares shall be placed by the Issuer in escrow with the Escrow Agent."[264]
"A-22-4"	Section 4.3 on Ownership of Shares and Voting Rights, in pages 5-7, which states that: "Neither the Escrow Agent nor any Holder shall have voting rights with respect to the Underlying Shares. Until an exercise of a PDR Exercise Right, the Issuer as owner of the Underlying Shares will retain and exercise such voting rights relating to the Underlying Shares."[265]
"A-22-5"	Section 9 on Cash Dividends and other Cash Distributions, in page 9[266]
"A-23"	PDR Certificate No. 001 dated 29 May 2015 issued to NBM[267]
"A-23-1"	Signature of Ms. Ressa, President of RHC[268]
"A-24"	PDR Certificate No. 002 dated 29 July 2015 issued to NBM[269]

[259] Docket (Crim. Case No. 0-679) - Vol. V, p. 3145.
[260] Docket (Crim. Case No. 0-679) - Vol. V, p. 3147.
[261] Docket (Crim. Case No. 0-679) - Vol. I, p. 402.
[262] Docket (Crim. Case No. 0-679) - Vol. I, p. 417.
[263] Docket (Crim. Case No. 0-679) - Vol. I, p. 402.
[264] Docket (Crim. Case No. 0-679) - Vol. I, p. 406.
[265] Docket (Crim. Case No. 0-679) - Vol. I, p. 406.
[266] Docket (Crim. Case No. 0-679) - Vol. I, p. 409.
[267] Docket (Crim. Case No. 0-679) - Vol. VI, p. 3876.
[268] Docket (Crim. Case No. 0-679) - Vol. VI, p. 3876.
[269] Docket (Crim. Case No. 0-679) - Vol. VI, p. 3877.

"A-24-1"	Signature of Ms. Ressa, President of RHC[270]
"A-25"	PDR Certificate No. 003 dated 1 December 2015 issued to ON[271]
"A-25-1"	Signature of Ms. Ressa, President of RHC[272]
"A-26"	RHC's Documentary Stamp Tax ("DST") Declaration/Return (BIR Form No. 2000) filed and paid on 04 June 2015[273]
"A-26-1"	Signature of Ms. Dalafu[274]
"A-27"	RHC's DST Declaration/Return (BIR Form No. 2000) filed and paid on 29 July 2015[275]
"A-28"	RHC's DST Declaration/Return (BIR Form No. 2000) filed and paid on 14 October 2015[276]
"A-44"	Proof of Payment of the DST- *UnionBank BTR-BIR Deposit Slip dated 04 June 2015*[277]
"A-45"	Proof of Payment of the DST-*eFPS Payment Form with attached RCBC Acknowledgment Receipt dated 29 July 2015*[278]
"A-46"	Proof of Payment of the DST- *eFPS Payment Form with attached RCBC Acknowledgment Receipt dated 14 October 2015*[279]
"A-29"	RHC's Separate Financial Statements - 31 December 2015 and 2014, filed with SEC on 13 May 2016[280]
"A-29-1"	Page 8 of the Audited Financial Statement indicating the Assets of RHC[281]
"A-29-2"	Note 7, Accounts Payable and other Accrued Expenses, on page 7[282]
"A-29-3"	Note 4, Philippine Deposit Receipts, on page 6[283]
"A-30"	RI (A Subsidiary of RHC) Financial Statements - 31 December 2015 and 2014, filed with SEC on 4 May 2016[284]
"A-30-1"	Note 12, Equity, on page 12[285]

[270] Docket (Crim. Case No. 0-679) - Vol. VI, p. 3877.
[271] Docket (Crim. Case No. 0-679) - Vol. VI, p. 3878.
[272] Docket (Crim. Case No. 0-679) - Vol. VI, p. 3878.
[273] Docket (Crim. Case No. 0-679) - Vol. V, p. 3155.
[274] Docket (Crim. Case No. 0-679) - Vol. V, p. 3155.
[275] Docket (Crim. Case No. 0-679) - Vol. V, p. 3157.
[276] Docket (Crim. Case No. 0-679) - Vol. V, p. 3163.
[277] Docket (Crim. Case No. 0-679) - Vol. V, p. 3156.
[278] Docket (Crim. Case No. 0-679) - Vol. V, p. 3160.
[279] Docket (Crim. Case No. 0-679) - Vol. V, p. 3166.
[280] Docket (Crim. Case No. 0-679) - Vol. V, p. 3368.
[281] Docket (Crim. Case No. 0-679) - Vol. V, p. 3386.
[282] Docket (Crim. Case No. 0-679) - Vol. V, p. 3385.
[283] Docket (Crim. Case No. 0-679) - Vol. V, p. 3384.
[284] Docket (Crim. Case No. 0-679) - Vol. V, p. 3388.
[285] Docket (Crim. Case No. 0-679) - Vol. V, p. 3410.

"A-31"	RHC and a Subsidiary Consolidated Financial Statements- 31 December 2015 and 2014, filed with SEC on 13 May 2016[286]
"A-31-1"	Signature of Ms. Marie Fel Dalafu, Chief Financial Officer, on the Statement of Management's Responsibility[287]
"A-31-2"	Note 4, Business Combination, on page 9, which reads: "As a result of the issuance, the Parent Company owns 98.84% of the total outstanding shares of Rappler."[288]
"A-31-3"	Note 5, Philippine Deposit Receipts, on page 10[289]
"A-32"	Public Announcement made by RHC in relation to the PDR Issuances, entitled *"Top journalists' independent media fund invests in Rappler"*, published on 31 May 2015[290]
"A-32-1"	Page 3 of the document[291]
"A-33"	Public Announcement made by RHC in relation to the PDR Issuances, entitled *"Omidyar Network invests in Rappler"*, published on 5 November 2015[292]
"A-33-1"	Page 3 of the document[293]
"A-34"	Notice of/Application for Confirmation Exempt Transaction (SEC Form 10-1) dated 8 June 2015[294]
"A-34-1"	Item 2, "Information about the securities for which this Notice/Application has been filed", on page 1[295]
"A-35"	Notice of/Application for Confirmation Exempt Transaction (SEC Form 10-1) dated 8 August 2015[296]
"A-35-1"	Item 2, "Information about the securities for which this Notice/Application has been filed", on page 1[297]
"A-36"	Notice of/Application for Confirmation Exempt Transaction (SEC Form 10-1) dated 01 December 2015[298]

[286] Docket (Crim. Case No. 0-679) - Vol. V, p. 3168.
[287] Docket (Crim. Case No. 0-679) - Vol. V, p. 3172.
[288] Docket (Crim. Case No. 0-679) - Vol. V p. 3185.
[289] Docket (Crim. Case No. 0-679) - Vol. V p. 3186.
[290] Docket (Crim. Case No. 0-679) - Vol. V, p. 3193.
[291] Docket (Crim. Case No. 0-679) - Vol. V, p. 3195.
[292] Docket (Crim. Case No. 0-679) - Vol. V, p. 3202.
[293] Docket (Crim. Case No. 0-679) -Vol. V, p. 3204.
[294] Docket (Crim. Case No. 0-679) -Vol. V, p. 3416.
[295] Docket (Crim. Case No. 0-679) -Vol. V, p. 3418.
[296] Docket (Crim. Case No. 0-679) - Vol. V, p. 3424.
[297] Docket (Crim. Case No. 0-679) - Vol. V, p. 3426.
[298] Docket (Crim. Case No. 0-679) - Vol. V, p. 3432. *om*

"A-36-1"	Item 2, "Information about the securities for which this Notice/Application has been filed", on page 1[299]
"A-37"	RHC's Annual Income Tax Return (BIR Form No. 1702-RT) for 2015[300]
"A-38"	RHC's 3rd Quarter Value Added Tax ("VAT") Return (BIR Form No. 2550-Q) for 2015[301]
"A-39"	RHC's 4th Quarter VAT Return (BIR Form No. 2550-Q) for 2015[302]
"A-39-1"	RHC's 4th Quarter Amended VAT Return (BIR Form No. 2550-Q) for 2015[303]
"A-40"	Request for Payment dated 15 January 2016, indicating Atty. Helen G. Tiu as payee[304]
"A-40-1"	Signature of Jen De Vera[305]
"A-40-2"	Signature of Ms. Ressa[306]
"A-40-3"	Signature of Ms. Dalafu[307]
"A-40-4"	Details Column, which reads: "1st Tranche Payment for Legal Fees for NBM"[308]
"A-41"	Official Receipt No. 010450 dated 10 June 2016, issued by R.G. Manabat & Co.[309]
"A-42"	Official Receipt No. MKT000015255 dated 9 September 2016, issued by SyCip Law[310]
"A-47"	Official Receipt No. 0542 dated 15 January 2016, issued by H.G. Tiu Law Offices[311]
"A-47-1"	Signature of Atty. Helen G. Tiu[312]
"A-47-2"	Which reads: "Received from: Rappler Holdings Corporation"[313]
"A-48"	Official Receipt No. 0541 dated 15 January 2016, issued by H.G. Tiu Law Offices[314]
"A-48-1"	Signature of Atty. Helen G. Tiu[315]

[299] Docket (Crim. Case No. 0-679) - Vol. V, p. 3434.
[300] Docket (Crim. Case No. 0-679) - Vol. V, p. 3287.
[301] Docket (Crim. Case No. 0-679) - Vol. V, p. 3315.
[302] Docket (Crim. Case No. 0-679) -Vol. V, p. 3317.
[303] Docket (Crim. Case No. 0-679) -Vol. V, p. 3319.
[304] Docket (Crim. Case No. 0-679) -Vol. VI, p. 3879.
[305] Docket (Crim. Case No. 0-679) -Vol. VI, p. 3879.
[306] Docket (Crim. Case No. 0-679) -Vol. VI, p. 3879.
[307] Docket (Crim. Case No. 0-679) -Vol. VI, p. 3879.
[308] Docket (Crim. Case No. 0-679) -Vol. VI, p. 3879.
[309] Docket (Crim. Case No. 0-679) -Vol. VI, p. 3880.
[310] Docket (Crim. Case No. 0-679) -Vol. VI, p. 3212.
[311] Docket (Crim. Case No. 0-679) -Vol. VI, p. 3881.
[312] Docket (Crim. Case No. 0-679) -Vol. VI, p. 3881.
[313] Docket (Crim. Case No. 0-679) -Vol. VI, p. 3881.
[314] Docket (Crim. Case No. 0-679) -Vol. VI, p. 3882.
[315] Docket (Crim. Case No. 0-679) -Vol. VI, p. 3882.

"A-48-2"	"Received from: Rappler Holdings Corporation"[316]
"A-49"	Check Request for Payment dated 16 June 2016, indicating R.G. Manabat & Co. as payee[317]
"A-49-1"	Signature of Jen De Vera[318]
"A-49-2"	Signature of Ms. Ressa[319]
"A-49-3"	Signature of Glenda M. Gloria[320]
"A-49-4"	Signature of Ms. Dalafu[321]
"A-49-5"	Details Column, which reads: "Audit Fee- RHC FS as of & for the year ended Dec 31, 2015"[322]
"A-50"	Official Receipt No. 010784 dated 24 June 2016, issued by R.G. Manabat & Co.[323]
"A-43"	Inquirer Online Article entitled *"Duterte, Rappler clash over fake news, press freedom"* dated 18 January 2018[324]
"A-51"	ABS-CBN News Online Article entitled *"Rappler reporter now banned from entire Malacañang Complex"* dated 21 February 2018[325]
"A-52"	Inquirer Online Article entitled *"PSG chief won't apologize for 'unbecoming' remark to Rappler reporter"* dated 21 February 2018[326]
"A-53"	Inquirer Online Article entitled *"Roque: Duterte felt 'betrayed' by Rappler reporter"* dated 21 February 2018[327]
"A-54"	CNN Philippines Online Article entitled "Pia Ranada's defense of Rappler 'fake news' offended Duterte-Roque" dated 22 February 2018[328]
"A-55"	Rappler Article entitled "Duterte says he banned Rappler due to 'twisted' reporting" dated 2 March 2018[329]
"A-56"	Interaksyon.com Article entitled "Threat to Press Freedom' SEC revokes Rappler's registration" dated 15 January 2018[330]

[316] Docket (Crim. Case No. 0-679) -Vol. VI, p. 3882.
[317] Docket (Crim. Case No. 0-679) -Vol. VI, p. 3883.
[318] Docket (Crim. Case No. 0-679) -Vol. VI, p. 3883.
[319] Docket (Crim. Case No. 0-679) -Vol. VI, p. 3883.
[320] Docket (Crim. Case No. 0-679) -Vol. VI, p. 3883.
[321] Docket (Crim. Case No. 0-679) -Vol. VI, p. 3883.
[322] Docket (Crim. Case No. 0-679) -Vol. VI, p. 3883.
[323] Docket (Crim. Case No. 0-679) -Vol. VI, p. 3884.
[324] Docket (Crim. Case No. 0-679) -Vol. V, p. 3213.
[325] Docket (Crim. Case No. 0-679) - Vol. V, p. 3215.
[326] Docket (Crim. Case No. 0-679 - Vol. V, p. 3216.
[327] Docket (Crim. Case No. 0-679) - Vol. V, p. 3218.
[328] Docket (Crim. Case No. 0-679) -Vol. V, p. 3220.
[329] Docket (Crim. Case No. 0-679) - Vol. V, p. 3223.

"A-57"	Inquirer Online Article entitled "Int'l press groups: Charges against Ressa 'politically motivated'" dated 14 February 2019[331]
"A-58"	PDR Investment Agreement executed among ON, RHC, and RI dated 29 September 2015[332]
"A-58-1"	Signature of Ms. Ressa, President of RHC[333]
"A-58-2"	Signature of Manuel Ayala, authorized representative of RI[334]
"A-58-3"	Clause 2.1 on page 2 of the PDR Investment Agreement[335]
A-58-4"	Clause 2.2 (b) on page 3 of the PDR Investment Agreement, which reads: "(b) Fifteen percent (15%) of the ON Investment, or US$225,000 shall be retained by RHC to: (i) pay the documentary stamp taxes related to the issuance to ON of the Subscription PDRs; and (ii) finance reasonable general administrative expenses incurred by RHC and taxes for which it may be liable in the ordinary course of business."[336]
"A-59"	First PDR Subscription Agreement executed by and between RHC and NBM dated 29 May 2015[337]
"A-59-1"	Signature of Ms. Ressa, President of RHC[338]
"A-59-2"	Section 2 on page 2 of the Subscription Agreement[339]
"A-60"	Second PDR Subscription Agreement executed by and between RHC and NBM dated 29 May 2015[340]
"A-60-1"	Signature of Ms. Ressa, President of RHC[341]
"A-60-2"	Section 2 on page 2 of the Subscription Agreement[342]
"A-61"	PDR Subscription Agreement executed by and between RHC and ON dated 2 October 2015[343]

330 Docket (Crim. Case No. 0-679) - Vol. V, p. 3226.
331 Docket (Crim. Case No. 0-679) - Vol. V, p. 3230.
332 Docket (Crim. Case No. 0-679) - Vol. X, pp. 3885 to 3917.
333 Docket (Crim. Case No. 0-679) - Vol. X, p. 6435
334 Docket (Crim. Case No. 0-679) -Vol. X, p. 3910
335 Docket (Crim. Case No. 0-679) -Vol. X, p. 3889 to 3890
336 Docket (Crim. Case No. 0-679) -Vol. X, p. 3890.
337 Docket (Crim. Case No. 0-679) -Vol. VI, p. 3918.
338 Docket (Crim. Case No. 0-679) -Vol. VI, p. 3923.
339 Docket (Crim. Case No. 0-679) -Vol. VI, p. 3919.
340 Docket (Crim. Case No. 0-679) -Vol. VI, p. 3924.
341 Docket (Crim. Case No. 0-679) -Vol. VI, p. 3929.
342 Docket (Crim. Case No. 0-679) -Vol. VI, p. 3925.
343 Docket (Crim. Case No. 0-679) -Vol. VI, p. 3930.

"A-61-1"	Signature of Ms. Ressa, President of RHC[344]
"A-61-2"	Section 2 on page 2 of the Subscription Agreement[345]
"A-62"	RI Acknowledgment Receipt No. 040 dated 25 May 2015[346]
"A-62-1"	Signature of Jenny De Vera, Financial Analyst of RI[347]
"A-63"	RI Acknowledgment Receipt No. 041 dated 26 May 2015[348]
"A-63-1"	Signature of Jenny De Vera, Financial Analyst of RI[349]
"A-64"	RI Acknowledgment Receipt No. 043 dated 2 October 2015[350]
"A-65"	Bank Certification issued by RCBC dated 18 June 2015[351]
"A-65-1"	Signature of Ms. Norife CV. Villeza, Business Manager of RCBC-Meralco Business Center[352]
"A-66"	Report of Factual Findings by R.G. Manabat & Co. dated 10 June 2015[353]
"A-66-1"	Signature of Mr. Noel Baladiang, Partner of R.G. Manabat & Co.[354]
"A-66-2"	First bullet point on page 2 showing that RI received Php110,917,181.00 from RHC which reads: "For procedures 1, 2, 3 and 4, the schedule of cash received from RHC amounting to PH110,917,181 as deposit for future stock subscription to the increase in authorized capital stock of the Company, was agreed with the balance of deposit for future stock subscription in the general ledger and cash receipt book."[355]

[344] Docket (Crim. Case No. 0-679) - Vol. VI, p. 3934.
[345] Docket (Crim. Case No. 0-679) - Vol. VI, p. 3931.
[346] Docket (Crim. Case No. 0-679) - Vol. VI, p. 3935.
[347] Docket (Crim. Case No. 0-679) - Vol. VI, p. 3935.
[348] Docket (Crim. Case No. 0-679) - Vol. VI, p. 3936.
[349] Docket (Crim. Case No. 0-679) - Vol. VI, p. 3936.
[350] Docket (Crim. Case No. 0-679) - Vol. VI, p. 3937.
[351] Docket (Crim. Case No. 0-679) - Vol. VI, p. 3938.
[352] Docket (Crim. Case No. 0-679) - Vol. VI, p. 3938.
[353] Docket (Crim. Case No. 0-679) - Vol. VI, p. 3939.
[354] Docket (Crim. Case No. 0-679) - Vol. VI, p. 3939.
[355] Docket (Crim. Case No. 0-679) -Vol. VI, p. 3941.

"A-67"	Letter addressed to the National Investigation Division of BIR dated 3 May 2018 Re: Second Request for Presentation of Records Pursuant to LOA No. eLA201600007403 Covering Taxable Year 2014-2015[356]
"A-67-1"	Signature of Ms. Ressa[357]
"A-68"	Decision of the Court of Appeals promulgated on 26 July 2018 in the case entitled "Rappler, Inc. and Rappler Holdings Corporation v. Securities and Exchange Commission Special Panel Created Pursuant to Special Panel Created Pursuant to SEC Resolution No. 436, Series of 2017 [358]
"A-68-1"	Page 46 of the Court of Appeals Decision which reads: "It is undisputed that the said PDRs do not make Omidyar a shareholder of Rappler".[359]
"A-68-2"	Page 68 of the Court of Appeals Decision, which reads: "The SEC does not dispute that the issuance of PDRs is not illegal *per se*. As noted by petitioners, other corporations like ABS-CBN, GMA and Globe have issued PDRs in the past and the same were allowed by the SEC. Further the SEC also reviewed NBM PDR and found nothing illegal or irregular in its terms".[360]
"A-69"	Resolution of the Court of Appeals promulgated on 21 February 2019 in the case entitled "Rappler, Inc. and Rappler Holdings Corporation v. Securities and Exchange Commission Special Panel Created Pursuant to SEC Resolution No. 436, Series of 2017" docketed as C.A. G.R. SP No.154292.[361]
"A-70"	Information filed against Maria A. Ressa, et al. for violation of Section 255 of the NIRC of 1997, as amended in Crim. Case No. R-PSG-18-02983-CR filed with the Regional Trial Court ("RTC") of Pasig City, Branch 157 dated 2 October 2018[362]

[356] Docket (Crim. Case No. 0-679) - Vol. VI, p. 3943.
[357] Docket (Crim. Case No. 0-679) - Vol. VI, p. 3944.
[358] Docket (Crim. Case No. 0-679) - Vol. VI, p. 3947.
[359] Docket (Crim. Case No. 0-679) - Vol. VI, p. 3992.
[360] Docket (Crim. Case No. 0-679) - Vol. VI, p. 4014.
[361] Docket (Crim. Case No. 0-679) - Vol. VI, p. 4020.
[362] Docket (Crim. Case No. 0-679) - Vol. VI, p. 4045.

"A-71"	Information filed against Maria Angelita Ressa, et al. for violation of Section 4(c)(4) of RA No. 10175 or the Cybercrime Prevention Act of 2012 (Cyberlibel) in Case No. R-MNL-19-01141-CR filed with the RTC of Manila, Branch 46 dated 10 January 2019.[363]
"A-72"	Information filed against Maria A. Ressa, et al. for violation of Section 2-A of Commonwealth Act No. 108 (AntiDummy Law) in Case No. R-PSG-19-00737-CR filed with the RTC of Pasig City, Branch 265 dated 20 March 2019.[364]
"A-73"	Information filed against Maria A. Ressa, et al. for violation of Section 26.1 in relation to Section 73 of RA 8799 or the Securities Regulation Code in Case No. R-PSG-19-00738-CR filed in RTC Pasig Branch 265 dated 20 March 2019[365]
"A-74"	BIR Ruling No. 136-99 dated 30 August 1999[366]
"A-74-1"	Page 2 of the BIR Ruling, which reads in part: "Furthermore, a PDR is indeed a warrant and/or option to purchase shares of stock..."[367]
"A-75"	BIR - International Tax Affairs Division ("ITAD") Ruling No. 172-03 dated 17 November 2003[368]
"A-75-1"	Page 3 of the ITAD Ruling which reads in part: "Therefore, and since the GDR Holders represented herein, CIRM and CRMC, do not own shares of stock of either Meralco or FPHC but a mere option to purchase such shares..."[369]
"A-76"	BIR-ITAD letter dated 17 April 2019 responding to the request for a certified true copy of ITAD Ruling No. 172-03[370]
"A-77"	SEC Opinion dated 3 November 1983[371]
"A-78"	BusinessWorld Online Article entitled *"Celebrities, businessmen among top taxpayers"* dated 13 December 2010[372]

[363] Docket (Crim. Case No. 0-679) - Vol. VI, p. 4048.
[364] Docket (Crim. Case No. 0-679) - Vol. VI, p. 4045.
[365] Docket (Crim. Case No. 0-679) - Vol. VI, p. 4048.
[366] Docket (Crim. Case No. 0-679) – Vol. VI, p. 4051.
[367] Docket (Crim. Case No. 0-679) – Vol. VI, p. 4055.
[368] Docket (Crim. Case No. 0-679) – Vol. X, p. 4062.
[369] Docket (Crim. Case No. 0-679) – Vol. X, p. 4064.
[370] Docket (Crim. Case No. 0-679) – Vol. VI, p. 4062.
[371] Docket (Crim. Case No. 0-679) – Vol. VI, p. 4064.
[372] Docket (Crim. Case No. 0-679) – Vol. VI, p. 4066.

"A-78-1"	"Page 2, where it states: "Media personalities also among the top taxpayers in 2019 were: #173 - Maria A. Ressa, P5.91 million"[373]
"A-79"	Curriculum Vitae of Atty. Helen G. Tiu[374]
"A-80"	Diploma in Bachelor of Science in Business Administration and Accountancy at the University of the Philippines of Atty. Helen G. Tiu issued on 22 November 1981[375]
"A-81"	Professional Regulatory Commission (PRC) Professional License card as a Certified Public Accountant of Atty. Helen G. Tiu with registry date of 19 October 1982[376]
"A-82"	Diploma in Bachelor of Laws at the University of the Philippines of Atty. Helen G. Tiu issued on 5 April 1987[377]
"A-83"	Integrated Bar of the Philippines Identification Card of Atty. Helen G. Tiu with Roll No. 35023[378]
"A-84"	Certificate of Admission to the Philippine Bar of Atty. Helen G. Tiu issued by the Supreme Court issued on 29 June 1988[379]
"A-85"	Diploma in Master of Laws at Harvard University of Atty. Helen G. Tiu[380]
"A-86"	Certificate of Employment dated 28 January 2020 of Atty. Helen G. Tiu from Sycip Gorres Velayo & Co.[381]
"A-87"	Certificate of Employment dated 24 January 2020 of Atty. Helen G. Tiu from Sycip Salazar Hernandez & Gatmaitan with Cert. Ref. No. 20-009[382]
"A-88"	Certificate of Registration (BIR Form 2303) issued by the Bureau of Internal Revenue to Atty. Helen Go Tiu with reference number OCN3RC0000307024 [383]
"A-89"	DTI Registration of the H. G. Tiu Law Offices[384]

---

[373] Docket (Crim. Case No. 0-679) – Vol. X, p. 4070.
[374] Docket (Crim. Case No. 0-679) – Vol. VI, pp. 6065 to 6066.
[375] Docket (Crim. Case No. 0-679) – Vol. VI, p. 6067.
[376] Docket (Crim. Case No. 0-679) – Vol. IX, p. 6068.
[377] Docket (Crim. Case No. 0-679) – Vol. IX, p.6069.
[378] Docket (Crim. Case No. 0-679) – Vol. IX, p. 6070.
[379] Docket (Crim. Case No. 0-679) – Vol. IX, p. 6071.
[380] Docket (Crim. Case No. 0-679) – Vol. IX, p. 6072.
[381] Docket (Crim. Case No. 0-679) – Vol. IX, p. 6073.
[382] Docket (Crim. Case No. 0-679) – Vol. IX, p. 6074.
[383] Docket (Crim. Case No. 0-679) – Vol. IX, p. 6075.
[384] Docket (Crim. Case No. 0-679) – Vol. IX, p. 6076.

"A-90"	Amended Certificate of Registration (BIR Form 2303) issued by the Bureau of Internal Revenue to Atty. Helen Go Tiu on 30 July 2020[385]
"A-91"	Decision dated 8 April 2020 Metropolitan Trial Court Branch 62, Makati City in Criminal Case No. M-MKT-19-00854-CR [386]
"A-92"	Judicial Affidavit of Ms. Dalafu dated 29 May 2019[387]
"A-92-1"	Signature of Ms. Dalafu[388]
"A-93"	Investigation Data Form Sheet for NPS Docket No. 20B0626 dated 13 February 2020.[389]
"A-94"	Information filed against Maria Angelita Ressa, et al. for "Cyber Libel" in Criminal Case No. R-MNL-21-00130 filed with the RTC of Manila, Branch 24 dated 7 December 2020[390]
"A-95"	CTA Resolution dated 18 January 2019[391]
"A-96"	CTA Resolution dated 22 January 2019[392]
"A-97"	CTA Resolution dated 14 March 2019[393]
"A-98"	CTA Resolution dated 3 April 2019[394]
"A-99"	CTA Resolution dated 14 May 2019[395]
"A-100"	CTA Resolution dated 18 June 2019[396]
"A-101"	CTA Resolution dated 1 July 2019[397]
"A-102"	CTA Resolution dated 28 August 2019[398]
"A-103"	CTA Resolution dated 10 October 2019[399]
"A-104"	CTA Resolution dated 4 November 2019[400]
"A-105"	CTA Resolution dated 12 November 2019[401]
"A-106"	CTA Resolution dated 3 December 2019[402]

[385] Docket (Crim. Case No. 0-679) – Vol. IX, pp. 6077 to 6079.
[386] Docket (Crim. Case No. 0-679) – Vol. X, pp. 6400 to 6405.
[387] Docket (Crim. Case No. 0-679) – Vol. VII, p. 4197.
[388] Docket (Crim. Case No. 0-679) – Vol. VII, p. 4295.
[389] Docket (Crim. Case No. 0-679) – Vol. X, p. 6857.
[390] Docket (Crim. Case No. 0-679) – Vol. X, pp 6858 to 6861.
[391] Docket (Crim. Case No. 0-679) – Vol. II, p. 1058.
[392] Docket (Crim. Case No. 0-679) – Vol. II, p. 1083.
[393] Docket (Crim. Case No. 0-679) – Vol. V, p. 2989.
[394] Docket (Crim. Case No. 0-679) – Vol. V, p. 3493.
[395] Docket (Crim. Case No. 0-679) – Vol. VI, pp. 4075 to 4078.
[396] Docket (Crim. Case No. 0-679) – Vol. IX, pp. 5189 to 5191.
[397] Docket (Crim. Case No. 0-679) – Vol. IX, pp. 5238 to 5242.
[398] Docket (Crim. Case No. 0-679) – Vol. IX, pp. 5646 to 5650.
[399] Docket (Crim. Case No. 0-679) – Vol. IX, pp. 5670 to 5763.
[400] Docket (Crim. Case No. 0-679) – Vol. IX, pp. 5826 to 5830.
[401] Docket (Crim. Case No. 0-679) – Vol. IX, pp. 5893 to 5896.
[402] Docket (Crim. Case No. 0-679) – Vol. IX, pp. 5959 to 5962.

"A-107"	CTA Resolution dated 10 January 2020[403]
"A-108"	CTA Resolution dated 7 February 2020[404]
"A-109"	CTA Resolution dated 29 June 2020[405]
"A-110"	CTA Resolution dated 6 August 2020[406]
"A-111"	CTA Resolution dated 11 November 2020[407]
"A-112"	Letter of Authority dated 2 March 2018 with reference number eLA201600007402[408]
"A-112-1"	The words "Arnold Cuenca" and "Admin Staff"[409]
"A-112-2"	Date of service indicating "5 Mar. 2018"[410]
"A-113"	Rappler Online Article entitled "Duterte himself banned Rappler report from Malacañang coverage" dated 20 February 2018[411]
"A-114"	Rappler Online Article entitled *"Duterte 'compiling' information vs. Maria Ressa"* dated 8 July 2020[412]
"A-115"	CNN Philippines Online Article entitled "Duterte threatens to expose journalist Ressa as a 'fraud'" dated 8 July 2020[413]
"A-116"	Amended Judicial Affidavit of Ms. Ressa dated 24 February 2021[414]
"A-116-A"	Signature of Ms. Ressa in page 38[415]

THE ISSUES

As stipulated by the parties, the following issues are to be resolved by the Court, to wit:

1. Whether accused Maria A. Ressa and accused RHC are guilty beyond reasonable doubt of the crimes as alleged in the Second Amended

---

[403] Docket (Crim. Case No. 0-679) – Vol. IX, pp. 6007 to 6010.
[404] Docket (Crim. Case No. 0-679) – Vol. IX, pp. 6082 to 6086.
[405] Docket (Crim. Case No. 0-679) – Vol. X, pp. 6170 to 6172.
[406] Docket (Crim. Case No. 0-679) – Vol. X, pp. 6287 to 6291
[407] Docket (Crim. Case No. 0-679) – Vol. X, pp. 6356 to 6359.
[408] Docket (Crim. Case No. 0-679) – Vol. V, p. 3440.
[409] Docket (Crim. Case No. 0-679) – Vol. V, p. 3440.
[410] Docket (Crim. Case No. 0-679) – Vol. V, p. 3440.
[411] Docket (Crim. Case No. 0-679) – Vol. X, pp. 6819 to 6824.
[412] Docket (Crim. Case No. 0-679) – Vol. X, pp. 6825 to 6832.
[413] Docket (Crim. Case No. 0-679) – Vol. X, pp. 6833 to 6936.
[414] Docket (Crim. Case No. 0-679) – Vol. X, pp. 6487 to 6525.
[415] Docket (Crim. Case No. 0-679) – Vol. X, p. 6524.

Informations in CTA Crim. Case Nos. O-679, O-680, O-681 and O-682.

2. Whether accused Maria A. Ressa and accused RHC can be held civilly liable for the supposed tax deficiencies as alleged in the Second Amended Informations in CTA Crim. Case Nos. O-679, O-680, O-681 and O-682."[416]

Plaintiff's arguments:

The plaintiff primarily contends that accused RHC and Maria A. Ressa are guilty beyond reasonable doubt of violating Sections 254 and 255, in relation to Section 253(d) and 256 of the 1997 NIRC, as amended. The plaintiff alleges that accused's willful failure to report RHC's trading income in its Annual Income Tax Return (AITR) and its sales receipts in their quarterly VAT returns (VATRs) for the third (3rd) and fourth (4th) quarters of TY 2015, constitute essential elements of the crimes described in Sections 254 and 255 of the 1997 NIRC, as amended.

Plaintiff theorizes that accused RHC is a "dealer in securities" when it made several purchases of Rappler, Inc.'s shares and re-sold the same through the issuance of PDRs in favor of foreign buyers. Citing Section 22 (U) of the 1997 NIRC, as amended, petitioner concludes that RHC satisfied the following description of a "dealer in securities", to wit:

1. There must be a merchant, whether individual, partnership or corporation, with an established place of business;
2. It must be regularly engaged in the purchase of securities and resale thereof to customers; and
3. With a view to the gains and profits that may be derived therefrom.

The plaintiff believes that the following securities transactions characterize RHC as a dealer in securities, detailed as follows:

a. Accused RHC purchased 1,300,000 common shares from RI in December 2014; 110,917,181 common

---

[416] Minutes of the hearing held on, and Order dated May 15, 2019, Docket (Crim. Case No. 0-679) – Vol. VI, pp. 4088 to 4099.

shares in May 2015; and another 7,217,257 common shares in August of 2015;

b. Accused RHC subsequently issued and sold 264,601 and 11,764,117 PDRs on May 29, 2015 and July 29, 2015, to NBM and 7,217,257 PDRs on October 2, 2015 to ON; and
c. The transaction resulted in the PDR holders having economic rights derived from the equity of RI similar to what a shareholder might receive from RI.

The plaintiff views the foregoing transactions as income generating activities on the part of RHC which it claims to have derived gains and profits from the sales of the PDRs. The plaintiff posits that there can be no other conclusion that income was earned when it received a total consideration of Php181,658,758.67 as compared to the value of the underlying shares in the amount of Php19,245,975.00.

The computed difference of Php162,412,783.67 is considered by the plaintiff as a taxable gain subject to income tax. The defense of the accused that the proceeds for the PDRs were only meant to raise funds does not erase the fact that a taxable event had already taken place, i.e., at the moment accused RHC received consideration from the sale of PDRs.

The plaintiff goes on to pursue its theory that accused RHC is a dealer in securities as seen from the large volumes of repeated, successive and continual purchase of RI's shares and the subsequent re-selling thereof for profit.

The criminal aspect of the case stems from the plaintiff's allegation that there was willfulness in the non-reporting of gains from the PDR transactions characterized by a conscious disregard of their tax obligations in the face of substantial profits earned.

Accused's counter-arguments:

Accused disputes the allegation that it is a dealer in securities and denies having acted or represented itself as such to the public. It claims that it is registered with the SEC as a holding company and this is reflected in its primary purpose, to wit:

> "To acquire by purchase, exchange, assignment, gift or otherwise, and to hold, own and use for investment or otherwise, and to sell, assign, transfer, exchange, lease, let, develop, mortgage, pledge, traffic, deal in and with and otherwise operate

> and enjoy and dispose of real and personal properties of every kind and description and wherever situated, as and to the extent permitted by law including but not limited to shares of capital stock, bonds, debentures, promissory notes or other securities or obligations created, negotiated or issued by any corporation, association, or other entity, foreign or domestic, and real estate, whether improved or unimproved, and any interest or right therein, as well as buildings, tenements, warehouses, factories, edifices, and structures and other improvements, and while the owner, holder or possessor thereof, to exercise any and all rights, powers and privileges of ownership or any other interest therein, including the right to vote on any proprietary or other interest on any shares of the capital stock, and upon any bonds debentures, or other securities having voting power, so owned or held and the right to receive, collect and dispose of, any and all rentals, dividends, interests and income derived therefrom, except the management of fund portfolios and similar assets of such managed entities; Provided it shall not act as a stockbroker or dealer of securities."

Accused claims that its records with different regulatory bodies and the local government unit show that it operates as a holding company and does not hold itself out to the public as a dealer in securities. Even its PDR transactions which were the subject of the tax investigations conducted by the BIR, are characterized by the accused as investment/capital raising transactions and did not involve any sale or reselling of securities, contrary to the contention of the prosecution. Accused considers the allegation by the prosecution that they earned "trading income" from the PDR transactions as "malicious, baseless and erroneous."

In their attempt to distinguish between a holding company and a dealer in securities, accused insist that the subject PDR transactions did not involve any sale or re-selling of securities but were investment/capital raising transactions consistent with its operations as a holding company. This distinction also serves to bolster the argument of accused that RHC was not selling the shares of Rappler, Inc. to NBM and ON by issuing a PDR and stresses the premise that a PDR and the underlying Rappler, Inc.'s shares are totally different securities. To elaborate and address the technicalities of the PDR transactions, accused explains that a PDR is a derivative security evidenced by a depositary receipt issued by an entity which holds shares in another corporation and gives the holder thereof, an option to purchase upon exercise of certain conditions, the underlying shares of the operating subsidiary. Accused illustrates that even after the PDR transactions involving NBM and ON, RHC remained to be the owner of the underlying shares of Rappler, Inc. as evidenced by Stock

Certificate Nos. 44, 46 and 47. To simplify, petitioner maintains that a PDR is a mere receipt and not evidence of ownership in the operating company and that the PDR holders (NBM and ON) did not become stockholders of Rappler, Inc.

Violation of their right to due process was also invoked by the accused because official notices such as the Notice of Informal Conference and the Preliminary Assessment Notice (PAN) were alleged to have been improperly served to Arnold Gueco, an administrative staff who is not part of management. Accused further alleges that the revenue examiners did not conduct an actual examination of RHC's books nor even schedule a visit of its office for the audit.

The accused RHC and Maria Ressa contend, in their *Memorandum*, that the criminal cases should be outrightly dismissed because the due process and constitutional rights of the accused were violated.

Lastly, the accused also argue that there is no evidence to hold Maria Ressa criminally liable for Section 255 and Section 254 of the 1997 NIRC, as amended. Accused avers that being president of RHC does not make Maria Ressa *ipso facto* criminally liable.

THE RULING OF THE COURT

For an orderly disposition of these consolidated criminal cases, the Court shall first address the issues raised by accused relative to the arraignment of RHC and the alleged violations of their right to due process before resolving the substantial aspect of the criminal charges filed against them.

Accused RHC need not be arraigned.

Accused argue that the Court did not acquire jurisdiction over the corporate entity of RHC as it was not properly arraigned hence, its corporate officer, Maria A. Ressa, cannot be held liable as her culpability arises only upon the valid conviction of RHC.

Arraignment is the formal mode and manner of implementing the constitutional right of an accused to be informed of the nature and cause of the accusation against him.[417] The purpose of arraignment is to apprise the accused of the possible loss of freedom, even of his [or her] life, depending on the nature of the crime imputed to him [or her], or at the very least to inform him [or her] of why the prosecuting arm of the State is mobilized against him [or her].[418]

If the crime is committed by a corporation or other juridical entity, the directors, officers, employees or other officers responsible for the offense shall be charged and penalized for the crime.[419] This is so since a corporation is a juridical entity created by law. It can act only through its board of directors or officers, in conformity with its articles of incorporation and by-laws. Consequently, corporate officers or employees through whose act, default or omission the corporation commits a crime are themselves individually guilty of the crime.[420] This is consistent with Sections 253(d) and 256 of the 1997 NIRC, as amended, wherein the penalty to be imposed is on the responsible individual, not on the corporation itself. If at all, the corporation is only penalized by payment of a fine. Said provisions read as follows:

> "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**." (emphases supplied)
>
> "SEC. 256. *Penalty 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 (₱100,000)**." (emphases supplied)

---

[417] 1987 Constitution, Article III, Section 14(2).
[418] *People of the Philippines vs. Pangilinan,* 547 Phil. 260, 274 (2007).
[419] *Joint Ship Manning Group, Inc. vs. Social Security System,* G.R. No. 247471, July 7, 2020.
[420] *Home Development Mutual Fund Pag-ibig Fund. vs. Sagun,* 837 Phil. 608 (2018).

Be that as it may, a corporation, as a legal entity, cannot be arrested or imprisoned[421] for it possesses no corporeal body. In the same manner, a corporation cannot be "arraigned" in the classical sense. As an artificial being existing by legal fiat, it does not have the faculty of cognition that triggers the constitutional right to be informed of the nature and cause of the charges against it; hence, the need to prosecute the responsible officers for the corporate criminal act.

In the recent Resolution of the Supreme Court in the case of *Kingsam Express International and Samuel Santos vs. People of the Philippines,*[422] this principle was reiterated and declared with finality in this manner:

> **"With this in mind, We rule that KEI need not be arraigned separately since Santos, its president and responsible officer, was already arraigned.** The arraignment of Santos is sufficient to put the corporation on notice that it is being prosecuted for violation of the law." (emphasis supplied)

Based on the foregoing, We rule that accused RHC need not be arraigned separately since accused Maria Ressa, its president and responsible officer, was already arraigned. The arraignment of accused Maria Ressa is sufficient to put accused RHC on notice that it is being prosecuted for a violation of the law which if proven, accused RHC may be exposed to the consequences provided under relevant laws.

A deficiency tax assessment is not necessary before a criminal case may be filed. Thus, there was no violation of due process rights of the accused, even when no assessment has been issued, before the filing of the said criminal case.

The accused contend that the ROs did not conduct a formal investigation and failed to comply with the requirements under Revenue Memorandum Order Nos. 27-

---

[421] *Ching vs. Secretary of Justice*, 517 Phil. 151, 177 (2006).
[422] G.R. No. 254086 dated September 7, 2022.

2010 and 24-08, thereby violating accused's due process rights.

The accused's reasoning, however, is specious.

There is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution under the 1997 NIRC, as amended. This was reinforced by the Supreme Court in the case of *Ungab vs. Cusi, Jr., et al.,*[423] and We quote:

> "xxx. **While there can be no civil action to enforce collection before the assessment procedures provided in the Code have been followed, there is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution under the Code.**
>
> > **The contention is made, and is here rejected, that an assessment of the deficiency tax due is necessary before the taxpayer can be prosecuted criminally for the charges preferred.** The crime is complete when the violator has, as in this case, knowingly and willfully filed fraudulent returns with intent to evade and defeat a part or all of the tax.[424]
> >
> > **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."[425] (emphasis supplied)

The foregoing ruling was reiterated in *Adamson, et al. vs. Court of Appeals, et al., etseq.,*[426] wherein the Supreme Court said:

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

[423] G.R. No. L-41919-24, May 30, 1980.
[424] *Guzik vs. U.S.*, 54 F2d 618.
[425] *Merten's Law of Federal Income Taxation*, Vol. 10, Sec. 55A.05, p. 21.
[426] G.R. Nos. 120935 and 124557, May 21, 2009.

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."

Furthermore, under Sections 254 and 255 of the 1997 NIRC, as amended, the government can file a criminal case for tax evasion against any taxpayer who willfully attempts in any manner to evade or defeat any tax imposed in the Tax Code or the payment thereof. The crime of tax evasion is committed by the mere fact that the taxpayer knowingly and willfully filed a fraudulent return with intent to evade and defeat a part or all of the tax. It is therefore not required that a tax deficiency assessment must first be issued for a criminal prosecution for tax evasion to prosper.[427]

Moreover, Sections 222(a) and 205 of the 1997 NIRC of 1997, as amended read as follows, *viz.*:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
>
> (a) In the case of a false and fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof."
>
> "SEC. 205. *Remedies for the Collection of Delinquent Taxes.* — The civil remedies for the collection of internal

---

[427] *Lim Gaw, Jr. vs. Commissioner of Internal Revenue*, G.R. No. 222837, July 23, 2018. *am*

revenue taxes, fees or charges, and any increment thereto resulting from delinquency shall be:

(a) By distraint of goods, chattels or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts, and interest in and rights to personal property, and by levy upon real property and interest in or rights to real property; and

(b) By civil or criminal action.

Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes: xxx."

Based on the foregoing provisions, it is clear that in the case of a false and fraudulent return with intent to evade tax or of failure to file a return, a proceeding in court, either by civil or criminal action, for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud, or omission.

In *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, et al.,*[428] the Supreme Court held as follows:

"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 may be commenced *without 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 NIRC, which penalizes

---

[428] G.R. No. 128315, June 29, 1999. *om*

> 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)

Moreover, in *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation,*[429] the Supreme Court ruled in this wise:

> "The Tax Code provides two types of remedies to enforce the collection of unpaid taxes, to wit: (a) summary administrative remedies, such as the distraint and/or levy of taxpayer's property; and/or (b) judicial remedies, such as the filing of a criminal or civil action against the erring taxpayer.
>
> xxx xxx xxx
>
> Unlike summary administrative remedies, the government's power to enforce the collection through judicial action is not conditioned upon a previous valid assessment. Sections 318[430] and 319(a)[431] of the 1977 NIRC expressly allowed the institution of court proceedings for collection of taxes without assessment within five years from the filing of the tax return and 10 years from the discovery of falsity, fraud, or omission, respectively.
>
> A judicial action for the collection of a tax is begun: (a) by the filing of a complaint with the court of competent jurisdiction, or (b) where the assessment is appealed to the Court of Tax Appeals, by filing an answer to the taxpayer's petition for review wherein payment of the tax is prayed for."

It is clear from the foregoing jurisprudential pronouncements that the government's power to enforce the collection through judicial action, whether civil or <u>criminal</u>, is not conditioned upon a previous valid assessment.

Correspondingly, the present criminal cases need not be preceded by a valid assessment. Thus, prior to the filing of the said cases, the accused's right to due process was not violated, notwithstanding the absence of valid tax assessments or even

---

[429] G.R. Nos. 197945 and 204119-20, July 9, 2018.
[430] Now Section 203 of the NIRC of 1997, as amended.
[431] Now Section 222(a) of the NIRC of 1997, as amended.

when the said tax assessments were issued and the same were not received by the taxpayer.

We now proceed to the substantial aspects of these cases.

To recall, the prosecution charged the accused RHC and Maria A. Ressa for violation of Section 254 and 255 of the NIRC of 1997, to wit: (a) for willfully and unlawfully failing to supply correct and accurate information in the quarterly VAT Return for the 3rd quarter and 4th quarter of taxable year 2015 (CTA Crim. Case Nos. O-679 and O-681); (b) for willfully and unlawfully attempting to evade or defeat tax, by deliberately and calculatedly not declaring its alleged trading income in the income tax returns for the tax year 2015; for fraudulently concealing its true income earnings for the same year; and for defeating payment for income tax thereon (CTA Crim. Case No. O-680); and (c) for willfully and unlawfully failing to supply correct and accurate information in the income tax return of accused RHC for tax year 2015 (CTA Crim. Case No. O-682). We quote Sections 254 and 255 of the 1997 NIRC, as amended, 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 of not less than Thirty thousand pesos (P30,000) but not more than One hundred thousand pesos (P100,000) 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)
>
> "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 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." cm

The following elements must be established under Section 255 of the 1997 NIRC, as amended, to wit:

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.

On the other hand, the following elements must be established for one to be convicted of the offense charged under Section 254 of the 1997 NIRC, as amended, to wit:

1. A tax is imposed under the NIRC, and a person, natural or juridical, is liable for the 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 facts as narrated show that the alleged criminal liability of the accused stems from twin events of subscription by RHC to RI's shares and the issuance by RHC of the PDRs to NBM and ON which plaintiff deemed as a taxable event. Hence, it is imperative to first resolve this issue before we can determine whether the aforementioned elements for violations of Section 254 and 255 of the 1997 NIRC, as amended, have been established by the prosecution beyond reasonable doubt.

Plaintiff employed a two-pronged approach in discussing accused's alleged criminal liability. First, plaintiff argues that accused RHC is a dealer in securities as seen from the repeated, successive and continual purchase of RI's shares and the re-selling thereof to foreign buyers in the form of PDRs and second, the consequential earning of the so-called "trading income" by RHC from the re-selling of these shares disguised as PDRs to NBM and ON. These transactions of RHC were considered by the plaintiff as activities of a "dealer in securities."

Section 22 (L) of the 1997 NIRC, as amended, defines "a share of stock" as covering "an option to purchase shares of stock". BIR Ruling No. 136-99 dated August 30, 1999 treated the PDRs as "warrants and/or options to purchase shares of stock." In addition, the SEC Decision dated January 11, 2018,[432] treated a PDR as an "equity derivative since its value is dependent on the underlying equity."

As a dealer in securities, plaintiff holds accused liable for VAT, under Section 108 (A) of the 1997 NIRC, as amended, by Republic Act (RA) No. 9337, to wit:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* —
>
> (A) *Rate and Base of Tax.* — **There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%)[433] of gross receipts derived from the sale or exchange of services, including the use or lease of properties**: xxx.
>
> **The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by ...dealers in securities**..." (emphasis supplied)

Plaintiff proffers the theory that a taxable event occurred when RHC received gains and profits from the issue and sale of PDRs to said foreign entities, NBM and ON. Further, plaintiff maintains that accused RHC earned Php162,412,783.67 from the issuance of the PDRs but failed to declare it in its income tax and VAT returns for 2015 which allegedly showed zero declaration of income and sales.

Accused deny both allegations by their vehement objection that RHC is a dealer in securities and that it earned income from the issuance of the PDRs. Both accused insist that the transactions involving the issuance of PDRs is still within the nature of RHC as a holding company. They refer to

---

[432] SP Case No. 08-17-001, January 11, 2018.
[433] The VAT rate was increased to 12% effective February 1, 2006. Refer to Revenue Memorandum Circular No. 7-2006 dated January 31, 2006.

the obvious by stating that RHC is registered with the SEC as a holding company and not a dealer in securities and as evidenced by the primary purpose outlined in its Articles of Incorporation (AOI), shows a clear limitation that it "shall not act as a stockbroker or as dealer in securities." Accused disputes plaintiff's theory that it sold RI shares to NBM and ON and stresses that the PDR transactions were investment-raising activities to raise funds to enable its subsidiary RI to expand its operations. As such, accused alleges that it did not earn any "trading income" as the issuance of the PDR did not involve any sale of securities.

The Court finds for the accused.

Accused RHC is not a dealer in securities.

Section 22 (U) of the 1997 NIRC, as amended, defines a dealer in securities as follows:

> "Section 22. Definitions.- When used in this Title:
>
> (U) The term *"dealer in securities"* means a merchant of stocks and securities, whether an individual, partnership or corporation, with an established place of business, **regularly engaged in the purchase of securities** and the resale thereof to customer: that is, one who, as a merchant, buys securities and re-sells them to customers with a view to the gains and profits that may be derived therefrom." (emphasis supplied)

The Securities and Regulation Code (SRC) or Republic Act (RA) 8799 defines a "dealer" as follows:

> "Section 3. *Definition of Terms.* –
>
> 3.4. – "Dealer" means any person who buys and sells securities for his/her own account in the **ordinary course of business**." (emphasis supplied)

Revenue Regulations (RR) No. 6-2008,[434] states that "Dealer in Securities" refers to a merchant of stocks or securities, whether an individual, partnership or corporation, with an established place of business, **regularly engaged in the purchase of securities and the resale thereof to customers**; that is one, who as merchant buys securities and

[434] Consolidated Regulations Prescribing the Rules on Taxation of Sale, Barter, Exchange or Other Disposition of Shares of Stock Held as Capital Assets.

re-sells them to customers with a view to the gains and profits that may be derived therefrom.

The Supreme Court in the case of *Commissioner of Internal Revenue vs. Magsaysay Lines, Inc.,*[435] in clarifying the concept of acts or transactions done "in the ordinary course of business" subscribed to the Court of Tax Appeals' ruling on the matter, thus:

> "That the sale of the vessels was not in the ordinary course of trade or business of NDC was appreciated by both the CTA and the Court of Appeals, the latter doing so even in its first decision which it eventually reconsidered. We cite with approval the CTA's explanation on this point:
>
> In Imperial v. Collector of Internal Revenue, G.R. No. L-7924, September 30, 1955 (97 Phil. 992), **the term "carrying on business" does not mean the performance of a single disconnected act, but means conducting, prosecuting and continuing business by performing progressively all the acts normally incident thereof; while "doing business" conveys the idea of business being done, not from time to time, but all the time**. [J. Aranas, UPDATED NATIONAL INTERNAL REVENUE CODE (WITH ANNOTATIONS), p. 608-9 (1988)]. "Course of business" is what is usually done in the management of trade or business. [Idmi v. Weeks & Russel, 99 So. 761, 764, 135 Miss. 65, cited in Words & Phrases, Vol. 10, (1984)].
>
> **What is clear therefore, based on the afore-cited jurisprudence, is that "course of business" or "doing business" connotes regularity of activity.** In the instant case, the sale was an isolated transaction. The sale which was involuntary and made pursuant to the declared policy of Government for privatization could no longer be repeated or carried on with regularity. It should be emphasized that the normal VAT-registered activity of NDC is leasing personal property.

The evidence on record shows that accused RHC was not habitually or regularly engaged in the purchase and re-sale of securities. The issuance of the PDRs by RHC was done pursuant to a legitimate business purpose, i.e, to raise capital for its subsidiary RI, which is consistent with one of the purposes of RHC as a holding company, i.e., "to own and use for investment xxxx real and personal properties of every kind and description xxx including but not limited to shares of stock, bonds, debentures, promissory notes, or other

---

[435] G.R. No. 146984, July 28, 2006. cm

securities or obligations, created, negotiated or issued by any corporation, association or other entity, foreign or domestic, xxx xxx."[436] This Court finds that the two (2) transactions of accused RHC in issuing PDRs to NBM (two-tranches) and ON cannot be considered as regularly or frequently engaged in the purchase of securities and resale thereof to customers.

The SEC, in several of its opinions, has consistently adopted the following definition of a holding company, to wit:

> "A holding company has been defined by the Commission in several opinions. It has been aptly defined as a "corporation organized to hold stock of another or other corporations. Its essential feature is that it holds stock. The term "holding company" is equivalent to a parent corporation, having such interest in another corporation, or power of control, that it may elect its directors and influence its management. A parent or holding company is one that controls another as a subsidiary or affiliate by the power to elect its management."[437]

It is not repugnant to the nature of a holding company to engage in financial activities to raise capital for its subsidiaries. In fact, RHC is registered with the BIR as an entity engaged in the Line of Business - "Financial Holding Company Activities"[438] Also in the Acknowledgment Receipt of the SEC for the GIS of RHC dated August 30, 2016,[439] the latter was classified as being engaged in "Financial Holding Activities."

True to its nature as an entity engaged in financial holding company activities, RHC entered into a PDR Investment Agreement with ON on September 29, 2015 and consequently a PDR Subscription Agreement on October 2, 2015. As regards NBM, there were two (2) PDR Subscription Agreements, namely: First PDR Subscription Agreement dated May 29, 2015 and Second PDR Subscription Agreement dated July 29, 2015. The details are as follows:

Date of Sale	No. of PDRs	Selling Price/ Consideration	PDR Holder
May 29, 2015	264,601	₱2,452,154.87	NBM Rappler, L.P.[440]
July 29, 2015	11,764,117	₱109,022,399.23	NBM Rappler, L.P.[441]

[436] Exhibit "A-1-1", Court Docket, Vol. V. pp. 3324.
[437] SEC-OGC Opinion No. 15-15 Re: Holding Companies Deemed Domestic Market Enterprise to FINL dated November 3, 2015.
[438] Exhibit "A-3-1", Court Docket, Volume V, page 3031.
[439] Exhibit "A-18", Vol. V, pp. 3142.
[440] Exhibit "A-59", Docket (Crim. Case No. O-679) – Vol. VI, pp. 3918 to 3923.

October 2, 2015	7,217,257	₱70,184,204.57	Omidyar Network Fund LLC[442]

Paragraph 2, sub-paragraphs 2.1 and 2.2. of the Investment Agreement[443] among RHC, RI and ON provide as follows:

"2. ON Investment

2.1 The ON Investment; ON Subscription PDRs
(a) **Subject to the terms and conditions of the Transaction Documents, ON agrees to invest One Million Five Hundred Thousand US Dollars (US$1,500,000) in RHC (the "ON Investment"), RHC agrees, among others, to issue to ON, and ON agrees to subscribe to 7,217,257 PDRs (the" Subscription PDRs) at the subscription price of US$0.2078 per Subscription PDR.** The Subscription PDRs shall be backed up by an equal number of Underlying Shares (the "ON Underlying Shares") such that there shall be one (1) Underlying Share for each Subscription PDR."

xxx xxx xxx

2.2 The ON Investment
(a) Eighty five percent (85%) of the ON Investment, or (US$1,275,000 (the "New Shares Subscription Amount") shall be used by RHC to subscribe to and fully pay for 7,217,257 Additional common Shares (these additional shares, the ("New Shares"). For this purpose. RHC and Rappler shall enter into an irrevocable subscription agreement (the "RHC-Rappler Subscription Agreement") substantially in the Form of Annex 2 hereto.

For purposes of recordation in the books of Rappler, the New Shares Subscription Amount shall be recorded on the Philippine Dealing System's website http//www.pds.com.ph on the date the ON Investment was actually remitted by ON into the account of RHC."

Paragraph 5.5 of the Philippine Depositary Receipt Instrument[444] is also quoted as follows:

"5. PDR Rights

5.5. Where ON PDRs are issued for cash, Eighty Five Percent (85.0%) of the ON PDR Subscription price received by the Issuer shall be treated by the issuer as a deposit (the

[441] Exhibit "A-59", Docket (Crim. Case No. O-679) – Vol. VI, pp. 3918 to 3923.
[442] Exhibit "A-59", Docket (Crim. Case No. O-679) – Vol. VI, pp. 3930 to 3934.
[443] Exhibit " A-58", Court Docket, Volume X, p. 6406.
[444] Exhibit "A-22", Docket, Volume I, p. 402.

> **"Deposit"**) to be applied by the issuer against the ON PDR Exercise Right towards payment for the relevant Underlying Shares, without prejudice to the Issuer's use of the OBN PDR Subscription Price pending exercise of the ON PDR Exercise Right. The Issuer agrees that on exercise, only the ON PDR Exercise Price shall be payable. The consideration for the Underlying Shares to be delivered on exercise of the ON PDRs shall be the ON PDR Exercise Price and the application of the Deposit."

The concept of a financial holding company was first recognized in the United States by the enactment of the Financial Services Modernization Act of 1999 which allowed financial service providers to be organized as financial holding companies, offering banking, insurance, securities and other financial services.[445]

There are four (4) uses of holding companies in the United States, namely: 1) To centralize management or control of two or more independent companies, 2) to achieve unified financing for two or more independent companies, **3) to raise large capital for subsidiaries that have limited access to financing or are restricted to do so by regulatory agencies or for various other reasons** and, 4) to maintain control with a minimum amount of capital investment or to use a holding company as a means of pyramiding control.[446]

In the case at hand, RHC as the holding company is raising capital for RI, the operating company, which is restricted by constitutional and statutory foreign equity limitations.

The SEC has also acknowledged that holding companies, aside from merely holding the stock of another corporation or corporations, may engage in investment/financial activities for their subsidiary or subsidiaries as evidenced by its approval of the primary purpose embodied in the Articles of Incorporation of several holding companies but with a corresponding limitation that said companies will not "act as a stockbroker (stock brokerage) or dealer of securities."[447] This limitation is also found in the primary purpose of the AOI of RHC.[448]

---

[445] Erlinda S. Echanis, "Holding Companies: A Structure for Managing Diversification", Philippine Management Review, 2009, Volume 16, pp. 1-12.
[446] Ibid.
[447] AOI of RHC, Docket, Vol. V, p. 3324.
[448] Ibid.

The agreements entered into by RHC with NBM and ON did not serve to convert the former as a dealer in securities, hence, this Court finds the allegation of plaintiff without legal or factual bases.

RHC did not earn any trading income from the issuance of PDRs to foreign entities NBM and ON.

The crux of the controversy lies in the taxability of the issuance by RHC of the PDRs which plaintiff views as a sale of securities of RI to NBM and ON garnering substantial income in the process. This theory was based on the findings of the BIR that a taxable event occurred when accused RHC received gains and profits from the issue and sale of the PDRs to foreign entities, NBM and ON. The findings of the BIR which ripened into tax assessments concluded that RHC earned a total income of Php162,412,783.67 representing the difference between the total consideration received by RHC (Php181,658,758.67) from the agreements with NBM and ON and the total subscription price of the underlying RI shares in the amount of Php19,245,975.00. Plaintiff alleges that said income was not reflected in RHC's tax returns for 2015 and neither was it reflected in its VAT returns as a dealer in securities.

Accused disputes plaintiff's allegation of RHC's unreported trading income in 2015 and makes a distinction between a PDR and the underlying shares of RI maintaining that these are totally different securities. Accused insists that there was no sale of RI shares to NBM and ON by means of issuing a PDR, rather the latter is a mere receipt evidencing the option given to the holder thereof to purchase the underlying shares of the operating company (subsidiary) upon the exercise of certain conditions. In fact, there is an option price paid for this transaction.[449] This assertion of accused serves to negate the contention of plaintiff that there was "buying and selling of RI shares" and emphasizes their position that RHC did not purchase RI shares because the underlying shares in the PDRs issued are alleged to have been original issuances of the unissued capital stock of RI.

What then is a PDR – is it an evidence of ownership of shares of stock or it a mere receipt?

---

[449] Philippine Depositary Receipt Instrument, Paragraph I.

Although not specifically defined in the 1997 NIRC, as amended, and the SRC, a PDR is classified as a security which grants the holder thereof the right to the delivery of sale of the underlying share. PDRs are not statements nor are they certificates of ownership of a corporation.[450]

The SEC has clarified that the PDR issued by RHC to ON is an "equity derivative since its value is dependent on the underlying equity."[451]

As an equity derivative, it can be said that its existence is anchored on the value of the underlying asset which is commonly the shares of stock of a corporation.

In Revenue Memorandum Order (RMO) No.46-2020,[452] the BIR defines a PDR as follows:

> "A PDR is a document that gives the holder thereof a right, but not an obligation, to purchase the underlying shares at a specified price, or the right to the delivery of the sales proceeds of the underlying shares. When the first right is exercised, the PDR holder becomes a shareholder. The PDR holder cannot exercise, however, the first right if the underlying shares cannot be legally owned by a non-Philippine national. In such case, the PDR holder cannot compel the delivery of the underlying shares but is obliged to accept instead the proceeds of the sale of these shares."

In the Philippine Stock Exchange (PSE) Circular for Brokers No. 2375-99 dated September 22, 1999, it was pointed out that for as long as the PDR remains unexercised by its holder, the PDR holder **has no right of ownership over the underlying shares and all such ownership rights pertain to and belong to the issuer.** However, if the PDR holder exercises the option to have the underlying shares be delivered to him, he then becomes a shareholder but only up to the extent that he is qualified to own the underlying shares.

Clearly, a PDR may fall under the classification of "securities" in much the same way as a share of stock but under a different category. A security may come in various forms as described under the SRC, to wit;

"Section 3. *Definition of Terms.*-

---

[450] Retrieved from https: PSEACADEMY.COM.PH/LM/glossary/Glossary.html#P
[451] In Re: Rappler, Inc. and Rappler Holdings Corporation, Sp. Case No. 08-17-001 dated January 11, 2018.
[452] Issued on December 23, 2020.

3.1. "Securities" are shares, participation of interests in a corporation or in a commercial enterprise or profit making venture and evidenced by a certificate, contract, instruments, whether written or electronic in character. It includes:

(a) Shares of stocks, bonds, debentures, notes, evidences of indebtedness, asset-backed securities;

(b) Investment contracts, certificates of interest or participation in a profit-sharing agreement, certificates of deposit for a future subscription;

(c) Fractional undivided interests in oil, gas or other mineral rights;

(d) Derivatives like option and warrants;

(e) Certificates of assignments, certificates of participation, trust certificates or similar instruments;

(f) Proprietary or nonproprietary membership certificates in corporations, and

(g) Other instruments as may in the future be determined by the Commission." (emphasis supplied)

We repeat what was quoted earlier as regards the testimony of accused's witness, Atty. Helen Go Tiu when asked to explain a PDR, thus:

ATTY. TAN

Q: Can you please explain what a Philippine Depositary Receipt means?

ATTY. TIU:

A: A Philippine Depositary Receipt as the name is, it's a receipt. It's a receipt issued by the registered shareholder saying that 'I have on deposit with me, shares of stock of a different company, in this case Rappler Inc., the operating company.' So, a PDR is essentially a receipt issued by the depositary or the one who has the, who is registered shareholder of a parent company and the PDR usually will say, 'okay investors, if you invest in the PDR I will give you the option to purchase shares in my underlying company, in this case Rappler, Inc.' and your ability to exercise the option is normally dependent on certain conditions such as in this case when Philippine Law or the Philippine Constitution already allows you to own shares of stock in the mass media company. But in the meantime, since you are a PDR holder, if you've invested to us, we will receive from our operating company, if the operating company declares dividends to us, the parent company."

xxx xxx xxx

ATTY. TAN:

Q: What is the relationship of a Philippine Depositary Receipt to the underlying shares?

ATTY. TIU:

A: **The Philippine Depositary Receipts essentially tells the investors, you have the option to purchase shares in the underlying shares**, in this case, Rappler, Inc., once Philippine law allows the same.

JUSTICE MANAHAN:

So, it's an option?

ATTY. TIU:

A: It's an option to purchase shares subject to conditions, in this case, (interrupted)."

Upon further inquiry from Honorable Justice Catherine T. Manahan as regards the nature of a PDR as an "option" Atty. Tiu, elaborated, thus:

JUSTICE MANAHAN:

While you're looking at the records, Ms. Witness, just to clarify your last statement.

So how do you characterize PDR?

ATTY. TIU:

A: A PDR, first of all we look at the Securities Regulation for it which was enacted sometime in July 2000, a Securities Regulation Code Section 3 and 5, securities as including warrants and options to purchase shares. In the National Internal Revenue Code the definition section, Section 22, paragraph L, it also defines shares of stocks as including warrants and options. So, since the PDR is essentially gives the investor an option to purchase shares of stock, in Rappler, Inc., it essentially security for shares, (interrupted).

JUSTICE MANAHAN:

Under the nature of classification option?

ATTY. TIU:

A. Option, your Honors. Yes, the Securities Regulation Code probably characterized it better by saying it's a derivative security because it derives, the PDR derives its value from other than shares, in this case the shares of Rappler, Inc."

In RR No. 6-2008, an option is defined as follows:

"(d) "Option" **refers to an option to acquire stock** or an option to acquire such an option and each one of a series of options to acquire stock. "Options" are contracts that give the buyer the right, but not the obligation, to buy or sell an underlying security at a predetermined price, called the exercise or strike price, on or before a predetermined date, called the expiry date, which can only be extended by the Commission upon stockholders' approval." (emphasis supplied).

The process whereby the PDRs were issued to NBM and ON reveals that it did not involve a sale of shares of stock but were investment transactions.

In the Amended Judicial Affidavit of accused Maria A. Ressa,[453] she testified that upon advice of their lawyers, a holding company was established which would then issue PDRs to investors to raise funds for its subsidiary (RI). She further described the process after RHC was established, thus:

Q. What happened after RHC was incorporated?

A. After it was incorporated, RHC subscribed to Rappler, Inc.'s (RI) shares. Also, it was then that serious discussions and negotiations for a possible investment by North Base Media, Ltd. or NBM Rappler, LPL (NBM) were made and this eventually led to the PDR transactions of RHC with NBM.

Q. Why did RHC subscribe to RI?
A. As mentioned, the intention was that RI would become a subsidiary of RHC, They are separate corporations but would become affiliated with each other, wherein RHC would become the parent/holding company.

xxx xxx xxx

Q. What happened after NBM and RHC reached an agreement on the PDR transaction?

A. In accordance with the terms of the investment, NBM remitted the total investment in the form of cash to RHC's bank account. Upon receipt of the cash, RHC and NBM executed a PDR instrument confirming the issuance pf 12,028,718 PDRs in

---

[453] Exhibit "A-116".

> favor of NBM. RHC and RI also entered into a subscription agreement separately, and all of the cash received from NBM, less the cost used to pay for documentary stamp taxes where thereafter invested by RHC in RI.
>
> RHC then issued the PDRs to NBM in two (2) tranches. RHC issued the first PDR Certificate with No. 001 on 29 May 2015 relating to 264,601 underlying shares in RI. The said underlying shares were put in escrow with the Escrow agent. RHC issued the second PDR Certificate with No. 002 on 29 July 2015 in favor of NBM relating to 11,764,117 underlying shares in RI.
>
> Q. Apart from your testimony what other evidence do you have that these matters took place pursuant to RHC's agreement with NBM?
>
> A. These matters were clearly reflected in the documents we executed, which include the PDR Instruments and the PDR Subscription Agreements.

There is nothing in the wordings of the PDR Instruments and the PDR Subscription Agreements, that would show that the foreign entities NBM and ON will become owners of the shares of stock of RI upon the issuance of the PDRs. Paragraph 4 of the PDR Instrument,[454] stipulates that the ownership of the shares of stock of RI remains with the issuer RHC, and we quote:

> "4. Ownership of Shares and Voting Rights
>
> 4.1. **Pending exercise of the PDRs (as described below), the Underlying Shares deliverable on exercise of the PDRs shall be owned by and registered in the name of the Issuer.**
>
> 4.2. The stock certificates representing the Underlying Shares shall be placed by the Issuer in escrow with the Escrow Agent.
>
> 4.3. Neither the Escrow Agent nor any Holder shall have voting rights with respect to the Underlying Shares. **Until an exercise of a PDR Exercise Right, the Issuer, as owner of the Underlying Shares, will retain and exercise such voting rights relating to the Underlying Shares."** (emphasis supplied)

The PDR holder in the instant case only retains an option to purchase the underlying shares of RI subject to certain conditions, e.g., that there is no law restricting foreign ownership in the business of the operating entity. This is the rationale of placing the underlying shares with an escrow agent in the meantime, as described in the PDR Instrument,

---

[454] Exhibit "P-20", Docket, Volume I, pp. 387-401.

because the holders thereof may not exercise the option of owning the shares and just remain as investors.

The Court finds no legal basis in the imputed gain of RHC in the amount of Php162,412,783.67 allegedly treated as trading income by plaintiff, as the acquisition cost of a different security (i.e., RI's shares of stock) is being used to attribute an alleged gain in the sale/issuance of another security, (i.e, PDR).

Having determined, the non-taxability of the issuance of PDRs to NBM and ON, the Court concludes that the afore-mentioned elements of the crime charged under Sections 254 and 255 are not present. Foremost among the elements of the crimes charged is that the accused is liable to pay tax under the 1997 NIRC, as amended. As discussed, no gain or income was realized by accused in the subject transactions.

In the case of *Commissioner of Internal Revenue vs. The Court of Appeals, et.al.,*[455] there are three requisites for the imposition of income tax under the 1997 NIRC, as amended, to wit:

1) There must be gain or profit;
2) That the gain or profit is realized, received, actually or constructively; and
3) It is not exempted by law or treaty from income tax.

All the above requisites are not present for the income tax liability to attach to accused RHC's PDR transactions with NBM and ON. Neither is it liable for VAT as it is not a dealer in securities.

This Court notes, however, that the AFS of RHC for the year ended December 31, 2015 only reflected its stockholdings of Php1,300,000 pursuant to Note 6 thereof and failed to disclose its additional subscription of 7,217,257 RI shares.

In contrast, the AFS of RI for the year ended December 31, 2015[456] mentioned this additional issuance of common shares in Note 12 (Equity), quoted below:

"**12. Equity**

---

[455] G.R. No. 108576, January 20, 1999.
[456] Exhibits "P-11" and "A-29", Docket (Crim. Case No. O-679) – Vol. V, at p. 3410.

> In 2014, the Company issued 131,629 common shares for a total subscription amount of P74,000,925 of which P36,250,925 was received as deposit for future stock subscription in 2013.
>
> On May 25, 2015, the BOD of the Company approved the increase in authorized capital stock from 3,000,000 shares to 446,600,000 shares, both with a par value of P1 per share. On the same date, the BOD also approved the issuance of 110,917,181 common shares to Rappler Holdings for a total subscription price of P110,917,181. The application for the Amendment of Articles of Incorporation for the increase in authorized capital stock was filed with the SEC on July 9, 2015 and was approved on July 14, 2015.
>
> On August 28, 2015, the BOD approved the issuance of additional 7,217,257 common shares for a total subscription price of P7,217,257. **As a result of the issuance, Rappler Holdings owns 98.84% of the total outstanding shares of Rappler, Inc.**"

Nonetheless, this Court finds that this inaccurate information in RHC's 2015 AFS does not relate to the imputed trading income as alleged by plaintiff.

In sum, since accused is not required to pay the income tax and VAT on the PDR transactions for the taxable year 2015, the elements of Sections 254 and 255 of the 1997 NIRC, as amended, are rendered nugatory and without legal support. The plaintiff, therefore failed to prove the guilt of accused beyond reasonable doubt.

As a general rule, acquittal of the accused in the criminal case does not *ipso facto* result in the extinguishment of the civil liability, except if there is a finding in the criminal action that the act or omission from which the civil liability may arise did not exist. In the case of *Dayap vs. Sendiong, et.al.*[457] The Supreme Court ruled, thus:

> "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 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. **However, the civil action based on**

---

[457] G.R. No. 177960, January 29, 2009.

> **delict may be deemed extinguished if there is a finding on the final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist or where the accused did not commit the acts or omission imputed to him."** (emphasis supplied)

We quote the Court *En Banc's* decision in *People vs. Cross Country Oil and Petroleum Corporation,*[458] when it disposed of a similar issue, thus:

> **"Clearly, the acquittal of the accused is based on the findings of the Court in Division that respondents did not commit the crime charged. Thus, the civil liability *ex delicto* cannot be awarded since there is no act or omission punishable by law which can serve as the source of obligation.** On this account, respondents cannot be made liable and therefore, are absolved from paying the civil liability *ex delicto."* (emphasis supplied)

WHEREFORE, in light of the foregoing considerations, the Court rules as follows:

1. In CTA Crim. Case Nos. O-679, O-680, O-681 and O-682, accused Rappler Holdings Corporation and Maria A. Ressa are **ACQUITTED**, for failure of the prosecution to prove their guilt beyond reasonable doubt;

2. No civil liability may be adjudged against the accused as the alleged unpaid tax obligations have not been factually and legally established and proven; and

3. The respective cash bail bonds of the accused for the said cases are likewise **CANCELLED** and ordered **RELEASED** to them upon presentation of proper documents, in accordance with the usual accounting rules and regulations.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

[458] CTA *EB* Criminal Case No. 071, December 4, 2020.

WE CONCUR:

(Inhibited)
ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice/Special Member

(With Separate Concurring Opinion)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case Nos. O-679 to O-682**
	Members:
- versus -	**DEL ROSARIO,** *PJ, Chairperson,* **MANAHAN, BACORRO-VILLENA**[1], *and* **REYES-FAJARDO,** *JJ.*
RAPPLER HOLDINGS CORPORATION/ MARIA A. RESSA, *Accused.*	**Promulgated:** JAN 18 2023, 8:38a.m.

x---x

SEPARATE CONCURRING OPINION

REYES-FAJARDO, ***J.:***

I concur in the conclusion of my esteemed colleague, Associate Justice Catherine T. Manahan that accused Rappler Holdings Corporation (RHC) and Maria A. Ressa must be exonerated of the respective crimes charged under the four (4) Information in CTA Crim. Case Nos. O-679, O-680, O-681 and O-682, for failure of the prosecution to prove their guilt beyond reasonable doubt.

However, I wish to express my point on the characterization of the amounts received by RHC from NBM Rappler, L.P. (NBM) and Omidyar Network Fund, L.L.C. (ON) by reason of the issuance of the Philippine Depositary Receipts (PDRs) by RHC to NBM and ON.

---

[1] Special Member.

To recall, RHC and Maria A. Ressa were prosecuted for RHC's alleged failure to declare its trading income as a dealer in securities in the total amount of ₱162,412,783.67, representing the difference between the total consideration received by RHC in the amount of ₱181,658,758.67 from the PDR Investment Agreement with NBM and ON, and the aggregate book value of the underlying Rappler Inc. (RI) shares in the amount of ₱19,245,975.00. The prosecution claims that: *one,* accused willfully and unlawfully attempted to evade or defeat tax, by deliberately and calculatedly not declaring its alleged trading income as a dealer in securities in its (ITR) for taxable year (TY) 2015; fraudulently concealed its true income earnings for the same year; and for defeating payment for income tax thereon, punishable under Section 254 of the National Internal Revenue Code (NIRC) of 1997, (CTA Crim. Case No. O-680); and *two,* accused willfully and unlawfully failed to supply said trading income as a dealer in securities in its ITR for TY 2015, punishable under Section 255 of the same Code (CTA Crim Case No. O-682).

Bureau of Internal Revenue v. Court of Appeals and Spouses Manly[2] ordains that before one may be prosecuted for violation of Sections 254 and 255 of the NIRC, as amended, the prosecution must establish that there was tax due on the taxpayer. The amounts received by RHC from NBM and ON by reason of the issuance of the PDRs is capital and *not* income on the part of RHC; hence, may not be burdened by the imposition of income tax.

Allow me to explain.

Chamber of Real Estate and Builders' Associations, Inc. v. The Hon. Executive Secretary Alberto Romulo, et al.[3] delineated income from capital in the following manner:

> Income means all the wealth which flows into the taxpayer other than a mere return on capital. Capital is a fund or property existing at one distinct point in time while income denotes a flow of wealth during a definite period of time. Income is gain derived and severed from capital. For income to be taxable, the following requisites must exist:
>
> (1) there must be gain;
> (2) the gain must be realized or received and
> (3) the gain must not be excluded by law or treaty from taxation.

2 G.R. No. 197590, November 24, 2014.
3 G.R. No. 160756, March 9, 2010.

> Certainly, an income tax is arbitrary and confiscatory if it taxes capital because capital is not income. In other words, it is income, not capital, which is subject to income tax.

In a more figurative language, *Madrigal v. Rafferty*[4] contrasted income from capital as: "The fact is that property is a tree, income is the fruit; labor is a tree, income the fruit; capital is a tree, income the fruit."

RHC was incorporated as a holding company,[5] and was registered with the Bureau of Internal Revenue as an entity engaged in financial holding company activities.[6] RHC operates as the parent corporation of its subsidiary RI. Consistent with RHC's operation as a holding company, RHC separately entered in a PDR Investment Agreement and PDR Subscription Agreement with NBM and with ON. Maria A. Ressa testified that the PDR transactions were pursued because RI wanted to expand globally.[7] In line with such purpose, RHC as the holding company executed the PDR Investment Agreements and PDR Subscription Agreements to raise capital through investment of the PDR holders.[8]

---

4 G.R. No. L-12287, August 7, 1918.

5 Exhibit "P-7" and "A-1," Docket (CTA Crim. Case No. O-679 consolidated with O-680, O-681 and O-682), Vol. V, pp. 3321-3339.

6 Exhibit "A-3-1," Docket (CTA Crim. Case No. O-679 consolidated with O-680, O-681 and O-682), Vol. V, p. 3031.

7 Exhibit "A-116," Docket (CTA Crim. Case No. O-679 consolidated with O-680, O-681 and O-682), Vol. X, pp. 6487-6525.

8 Paragraph 2 and sub-paragraphs 2.1 and 2.2 of the PDR Investment Agreement among ON, RHC and RI reads:

2. ON Investment

2.1 The ON Investment; ON Subscription PDRs

(a) Subject to the terms and conditions of the Transaction Documents, ON agrees to invest One Million Five Hundred Thousand US DOLLARS (us$1,500,000) in RHC (the "ON Investment"). In consideration of the ON Investment, RHC agrees, among others, to issue to ON, and ON agrees to subscribe to 7,217,257 PDRs (the "Subscription PDRs") at the subscription price of US$0.2078 per subscription PDR. The Subscription PDRs shall be backed up by an equal number of Underlying Shares (the "ON Underlying Shares") such that there shall be one (1) Underlying Share for each Subscription PDR.
(b) The ON Underlying Shares shall, in the aggregate, represent, on a fully diluted basis, 5.5556% of Rappler's total capital stock, which total capital stock consist or shall consist of the following: ...

2.2 The ON Investment

(a) Eighty Five percent (85%) of the ON Investment, or (US$1,275,000 (the "New Shares Subscription Amount") shall be used by RHC to subscribe to and fully pay for 7,217,257 Additional common Shares (these additional shares, the ("New Shares"). For this purpose, RHC and Rappler shall enter into an irrevocable subscription agreement (the "RHC-Rappler Subscription Agreement") substantially in the Form of Annex 2 hereto. ...

Upon receipt of the investment from the PDR holders, RHC and RI entered into Subscription Agreements wherein RI agreed to issue in favor of RHC the Subscription Shares from the approval by the Securities and Exchange Commission of the increase in RI's authorized capital stock.[9]

In consideration of its investment, RHC executed the PDR Instrument,[10] which granted NBM and ON certain cash distributions, representing the underlying shares in RI which is registered in the name of RHC.

Moveover, RHC's accountant and Chief Financial Officer, Marie Fel D. Dalufo testified[11] that the funds received by RHC from the PDR transactions is not trading income, elaborating as follows:

> 158. Q: In your answer in Question No. 7, you mentioned that the funds received by RHC from the PDR Transactions is not "trading income". Why do you say this?
>
> A: I say this because the funds that were received by RHC is not revenue. The funds received was an investment. The funds were used to cover: (i) the subscription price for RI shares, not only for the premium but also the additional paid-in capital; (ii) costs to be incurred in relation to the transaction such as taxes; and (iii) the balance as advances/special loan from the PDR Holders. More importantly, the funds received from the PDR Transaction is reserved for a particular purpose and may even be returned given certain conditions.

Summing it up, the underlying shares in the PDRs represent the original issuances of the unissued authorized capital stock of RI,[12]

---

9 Exhibit "A-8" and "A-9" Docket (CTA Crim. Case No. O-679 consolidated with O-680, O-681 and O-682), Vol. V, pp. 3056-359.

The whereas clause of the Subscription Agreement between RHC and RI states:

WHEREAS:

(A) RHC wishes to increase its investment in Rappler by subscribing to an additional 110,917,181 common shares with a par value of One Peso (Php 1.00) per share in the capital of Rappler (the "Subscription Shares") and Rappler is willing to accept RHC' subscription.

(B) RHC has agreed to issue, and Rappler has agreed to subscribe to, the Subscription Shares, subject to the terms and conditions of this Agreement. (Boldfacing supplied).

10 Exhibit "A-21 and "A-21-1," Docket (CTA Crim. Case No. O-679 consolidated with O-680, O-681 and O-682), Vol. V, pp. 3142-3154.

11 Exhibit "A-92," Docket (CTA Crim. Case No. O-679 consolidated with O-680, O-681 and O-682), Vol. VII, pp. 4197-4296.

subscribed by RHC. This fact is evidenced by RHC's ownership of 98.84% of the total outstanding shares of RI after the issuance of additional common shares as stated in Note 12 (Equity) of RI's Audited Financial Statement for the year ended December 31, 2015.[13] Further, the money received more than the par value of RI shares was recognized as advances from NBM and ON. In turn, NBM and ON invested in RHC, in the form of said PDRs. Indeed, the money received by RHC from NBM and ON is not payment for services or sale of goods or properties, but an infusion of capital arising from the PDR Investment Agreement and PDR Subscription Agreements. Being so, the amounts received by RHC is capital, and *not* income, and cannot be burdened by the imposition of income tax.

Simply put, had there been no constitutional and statutory foreign equity restrictions in mass media, MNB and ON will simply execute subscription agreements directly with RI for the acquisition of RI's unissued capital stock. The subscription to the RI's capital stock is not subject to income tax just the same.

In this case, RHC and Maria A. Ressa were able to establish that RHC did not receive trading income from the PDR Investment Agreement and PDR Subscription Agreement which should have been reported in RHC's Income Tax Return for the year 2015.

A PDR is an equity derivative since its value is dependent on the underlying equity. It is classified as a security.[14] The PDRs issued to NBM and ON are investment transactions; hence, not subject to income tax.

Also, even if the PDR is classified as a security, the sale thereof is not trading income since RHC is not a "dealer in securities." Ergo, had RHC been adjudged a dealer in securities, its sale of PDR would have translated to trading income. The argument of the RHC and Maria A. Ressa on the distinction between a PDR which remains unexercised by its holder and has no right of ownership over the underlying shares and a PDR holder which exercises the option to have the underlying shares be delivered to it making it a shareholder is only relevant and significant in the issue of ownership or control of a mass media entity pertaining to the SEC case.[15] Again, even assuming that there was a transfer of ownership by RHC to the PDR holder upon the PDR holder's exercise of its option to purchase

---

12 Transcript of Stenographic Notes (TSN) of Hearing held on September 30, 2020, pp. 85-86.
13 Exhibit "P-11" and "A-29," Docket (CTA Crim. Case No. O-679 consolidated with O-680, O-681 and O-682), Vol. V, p 3410.
14 Section 3 of Republic Act No.8799, entitled the "Securities Regulation Code."
15 In Re: Rappler, Inc. and Rappler Holdings Corporation, SEC SP Case No. 08-17-001 dated January 11, 2018.

the underlying shares, the indictment would still fail because RHC is not a dealer in securities and did not earn trading income as such.

All told, I concur with the verdict.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice