REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

JAIME G. NAPOLES,
Accused.

CTA CRIM. CASE NOS. - O-479, O-480, O-481, O-482 & O-484

Members:
UY, *Chairperson, and*
RINGPIS-LIBAN,
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
FEB 17 2020
11:32 a.m.

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RESOLUTION

For resolution is the "Motion to Dismiss"[1] filed by accused Jaime G. Napoles, praying that the instant cases be terminated and dismissed pursuant to the Tax Amnesty Act.

The plaintiff filed its "Comment/Manifestation *(to the Motion to Dismiss dated July 17, 2019)*.[2]

Accused was charged with the crime of violations of Sections 254 and 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, allegedly committed in the following 1st Amended Informations:

Criminal Case No. O-479:

"That on or about April 2007, in the City of Manila and within the jurisdiction of this Honorable Court, the above-named accused, an individual and a Filipino citizen residing in the Philippines, and at that time required by law, rules and regulations to file his annual income tax return did, then and there, wilfully, unlawfully, and feloniously attempt to evade or defeat tax, as said

[1] Docket, Vol. 4, pp. 1894-1899, with Annexes.
[2] Ibid. pp. 1971-1973, with Annexes.

accused substantially under-declared his income for taxable year 2006 which resulted to a basic deficiency income tax of One Million Seven Hundred Thirteen Thousand Three Hundred Seventeen Pesos and Fifty Three Centavos (P1,713,317.53) for taxable year 2006, exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines."

CONTRARY TO LAW.

Criminal Case No. O-480:

"That on or about April 2010, in the City of Manila and within the jurisdiction of this Honorable Court, the above-named accused, an individual and a Filipino citizen residing in the Philippines, and at that time required by law, rules and regulations to file his annual income tax return did, then and there, wilfully, unlawfully and feloniously attempt to evade or defeat tax, as said accused substantially under-declared his income to taxable year2009 which resulted to a basic deficiency income tax of Two Million Eight Hundred Ninety Two Thousand Three Hundred Twelve Pesos and Forty Nine Centavos (P2,892,312.49) for taxable year 2009, exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines."

CONTRARY TO LAW.

Criminal Case No. O-481:

"That on or about April 2013, in the City of Manila and within the jurisdiction of this Honorable Court, the above-named accused, an individual and a Filipino citizen residing in the Philippines, and at that time required by law, rules and regulations to file his annual income tax return did, then and there, wilfully, unlawfully and feloniously attempt to evade or defeat tax, as said accused substantially under-declared his income for taxable year 2012 which resulted to a basic deficiency income tax of One Million One Hundred Two Thousand One Hundred Eighty One Pesos and Eighty Two Centavos (P1,102,181.82) for taxable year 2012, exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines."

CONTRARY TO LAW.

Criminal Case No. O-482:

"That on or about April 2007, in the City of Manila and within the jurisdiction of this Honorable Court, the above-named accused, an individual and a Filipino citizen residing in the Philippines, and at that time required by law, rules and regulations to file his annual income tax required by law, did then and there, wilfully, unlawfully and feloniously fail to supply correct and accurate information in his annual income tax return, by then and there substantially under-declaring his income for taxable year 2006 which resulted in a basic deficiency income tax of One Million Seven Hundred Thirteen Thousand Three Hundred Seventeen Pesos and Fifty Three Centavos (P1,713,317.53) for taxable year 2006, exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines."

CONTRARY TO LAW.

Criminal Case No. O-484:

"That on or about April 2013, in the City of Manila and within the jurisdiction of this Honorable Court, the above-named accused, an individual and a Filipino citizen residing in the Philippines, and at that time required by law, rules and regulations to file his annual income tax return did, then and there, wilfully, unlawfully and feloniously fail to supply correct and accurate information in his annual income tax return, by then and there substantially under-declaring his income for taxable year 2012 which resulted in a basic deficiency income tax of One Million One Hundred Two Thousand One Hundred Eighty One Pesos and Eighty Two Centavos (P1,102,181.82) for taxable year 2012, exclusive of surcharge and interest, to the damage and prejudice of the Government of the Republic of the Philippines."

CONTRARY TO LAW.

These criminal cases were ordered consolidated in the Resolution[3] dated June 2, 2016 for Criminal Case No. O-481, Resolution[4] dated September 14, 2015 for Criminal Case No. O-480, Resolution[5] dated September 29, 2015 for Criminal Case Nos. O-482 and O-484.

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[3] Docket, CTA CRIM. CASE No. O-481, P. 253.
[4] Docket, CTA CRIM CASE No. O-480, p. 359.
[5] Docket, CTA CRIM. CASE No. O-482, p. 281.

During the arraignment[6] on June 8, 2016, accused assisted by his counsel has refused to enter any plea. Hence, the Court entered a plea of not guilty for accused in the consolidated cases, in accordance with Section 1(c) Rule 116 of the Revised Rules on Criminal Procedure.

On July 28, 2016, the Court received the Waiver of Appearance filed by accused.[7]

In the Resolution[8] of the Court dated September 19, 2016, the Court granted the Waiver of Appearance.

The Pre-trial Conference of these cases was held on November 23, 2016. The Court issued a Pre-Trial Order on March 2, 2017.[9]

During trial, the prosecution presented Revenue Officer Josephine D. Madera, Revenue Officer Nilda T. Se, Revenue Officer, Mr. Jose Ivan Justiniano, Ms. Kathleen V. Driz, Ms. Marie Antoinette M. Ingcoco, MS. Carmelita C. Glorioso, Revenue Officer Marites P. Arias, as witnesses to establish the cases against accused.

On October 26, 2017, the plaintiff filed a "Proposed Stipulation of Facts for Admission (as Manifested in the October 18, 2017 Hearing)."[10]

On November 10, 2017, accused filed his "Comment (To Proposed Stipulation of Facts for Admission dated October 26, 2017)."[11]

On January 5, 2018, the plaintiff filed its Formal Offer of Evidence.[12]

On January 25, 2018, the Court issued a Resolution[13] on the "Proposed Stipulation of Facts for Admission (as Manifested in the October 18, 2017 Hearing)" stating that no admission was made by accused. Hence, the cases will be set for hearing for the presentation of documents covered by the proposed stipulation of facts for admission.

On January 30, 2018, accused, through his counsel, filed a "Comment/Opposition (To the Formal Offer of Evidence)."[14]

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[6] Minutes of the Hearing, Docket, O-479, p. 457.
[7] Docket, O-479, pp. 552-553.
[8] Ibid., pp. 577-578.
[9] Docket, pp. 653-667.
[10] Ibid. pp. 1112-1118, with Annexes.
[11] Ibid., pp. 1504-1507.
[12] Ibid., pp. 1531-1561, with Annexes.
[13] Ibid., pp. 1757-1762.
[14] Ibid., pp. 1763-1782.

On February 14, 2018, plaintiff filed an "Urgent Manifestation with Motion for Partial Reconsideration (on the Resolution of the Honorable Court dated January 25, 2018 and the scheduled hearing on March 7, 2018)."[15]

On May 9, 2018, the Court issued a Resolution[16] setting the case for hearing to clarify the manifestations of the parties with regard to the Proposed Stipulations of Facts for Admission.

During the hearing on June 6, 2018, the parties have stipulated as follows: "If placed on the witness stand, the proposed witnesses, specifically the representatives from various government agencies which issued the subject certifications/documents, shall testify on and confirm paragraphs 1 to 15, 21, 22, 25 to 29 of the PROPOSED STIPULATION OF FACTS FOR ADMISSION filed by the prosecution on October 26, 2017, and that the documents cited or enumerated therein are correct and accurate based on the official records of the issuing government agencies."[17] The Court also ordered that the plaintiff's Formal Offer of Evidence filed on January 5, 2018 be submitted for resolution.

On August 6, 2018, the Court issued a Resolution[18] on the plaintiff's Formal Offer of Evidence. In the said Resolution, the Court admitted Exhibits "P-1", "P-2", "P-2-A", "P-3", "P-3-A", "P-4", "P-4-A", "P-5", "P-5-A", "P-5-B", "P-6", "P-6-A", "P-7-A" to "P-7-G", "P-8", "P-8-A", "P-9", "P-9-A", "P-9-B", "P-12", "P-12-A", "P-13", "P-13-A", "P-14-A", "P-14-B", "P-15", "P-15-A", "P-16", "P-16-A", "P-17", "P-17-A", "P-18", "P-18-a" "P-18-B", "P-18-C", "P-22", "P-25" and "P-32", "P-27", "P-27-B", "P-28", "P-30", "P-31", "P-33", "P-36", "P-37", "P-38", "P-39", "P-40", "P-41", "P-41-A", "P-41-B", "P-43", "P-43-A", "P-44" to "P-44-E", "P-43-B" and "P-43-C, "P-45", "P-42 and "P-42-A", subject to the Court's final evaluation and/or appreciation of their purposes, materiality, relevancy and probative value to the issues involved in the instant cases.

The documentary evidence admitted pursuant to the said Court's Resolution are the following:

EXHIBIT	DESCRIPTION
"P-1"	BIR ITS Printout for Jaime G. Napoles
"P-2"	Deed of Absolute Sale dated November 5, 2004 with attachments
"P-2-A"	Condominium Certificate of Title No. PT-41730
"P-3"	Deed of Absolute Sale dated May 9, 2006 with attachments
"P-3-A"	Condominium Certificate of Title No. PT-45292

[15] Ibid., pp. 1786-1788.
[16] Ibid., pp. 1805-1810.
[17] Ibid., pp. 1816-1817.
[18] Ibid., pp. 1829-1830.

"P-4"	Deed of Absolute Sale between Oakridge Properties Inc. and Sps. Jaime G. Napoles and Janet Lim-Napoles dated November 12, 2009
"P-4-A"	Condominium Certificate of Title No. 011-2010000869
"P-5"	Deed of Absolute Sale between Conrado B. Estrella Jr. and Janet L. Napoles, Jaime G. Napoles, Jo Christine L. Napoles, James Christopher L. Napoles, Jeanne Catherine L. Napoles, John Christian L. Napoles, Reynald L. Lim, Ana Marie D. Lim and Jose Emmanuel A. Lim ("Buyers") dated January 12, 2012
"P-5-A"	Transfer Certificate of Title No. 026-2013001382
"P-5-B"	Transfer Certificate of Title No. 026-2013001383
"P-6"	Deed of Absolutre Sale dated May 2, 2012 between Dolores T. Martinez and Jaime G. Napoles
"P-6-A"	Transfer Certificate of Title No. 152-2012000752
"P7-A" to "P-7-G"	Letter of Atty. Ione Fay S. Canto, Head of Compliance of PHILAMLIFE, dated dated September 18, 2013 with Attached Policy Details and History of Payments issued by Maria Christia P. Acedera
"P-8", "P-8-A"	Letter of Calvin L. Kohchet-Chua, Head of Legal and Compliance, of AXA Philippines dated September 11, 2013
"P-9"	Official Receipt with MVRR No. 54586192
"P-9-A"	Certificate of Registration with CA No. 8950623-3 dated May 21, 2004
"P-9-B	Karhause International Commercial Invoice and Packing List with Invoice No. K.I. 09-0505 dated August 28, 2003
"P-12", "P-12-A"	General Information Sheet of Jimmy's Bar, Grill and Restaurant Corporation for the year 2009
"P-13", "P-13-A	Certificate of Incorporation with Articles of Incorporation of Asia Pacific Gun Club, Inc.
"P-14-A	General Information Sheet of JLN Corporation for the year 2009
P-14-B	General Information Sheet of JLN Corporation for the year 2010
"P-15", "P-15-A"	General Information Sheet of Asia Star Power Resources Corporation for the year 2012
"P-16", "P-16-A"	Certificate of Incorporation and Articles of Incorporation of RLG Solutions Corporation
"P-17", "-17-A	Certificate of Incorporation and Articles of Incorporation of Solution Strategies Asia, Inc. ("SSAI")
"P-18", "P-18-A", "P-18-B", "P-18-C"	Deed of Sale dated April 7, 2009 between Noel M. Carino and Jaime Garcia Napoles Special Power of Attorney dated March 27, 2009 Official Receipt No. A-451774 and A-451773
"P-22"	Joint Complaint Affidavit of Marites Arias, Nilda Se and Josephine Madera
"P-25" and "P-32"	Amended Preliminary Assessment Notice dated September 9, 2015, issued by Commissioner of Internal Revenue Kim S.

	Jacinto-Henares against accused, Jaime G. Napoles
"P-27". "P-27-A", "P-27-B"	Computation of Deficiency Income Tax, Annual Summary of Acquisition by Jaime G. Napoles and Summary of ITR Per Return Processing System
"P-28"	Letter of Authority with LOA No. LOA-211-2013-00000139 dated August 23, 2013
"P-30"	NID Memo Assignment No. KJH/SCD 2013-08-05-0647 dated August 5, 2013
"P-31"	Certificate of Incorporation with the Articles of Incorporation of Asia Prime Energy Development and Supply Corporation (APEDSC)
"P-33"	Certification dated November 21, 2016 issued by Carmelita C. Glorioso, Chief of Collection Section of BIR RDO No. 33
"P-36"	(Judicial Affidavit of Ms. Josephine Madera
"P-37"	Judicial Affidavit of Ms. Nilda Se
"P-38"	Judicial Affidavit of Jose Ivan Justiniano
"P-39"	Special Power of Attorney issued by Philippine AXA Life Insurance Corporation to Kathleen Driz dated August 24, 2017
"P-40"	Compliance with Offer and Judicial Affidavit of Kathleen V. Driz
"P-41", "P-41-A"	Judicial Affidavit of Marie Ingcoco
"P-41-B"	Secretary's Certificate dated October 2, 2017
"P-43", "P-43-A"	Formal Letter of Demand darted December 1, 2016 with an Attached Details of Discrepancies, Computation Sheets and Schedules.
"P-44" to "P-44-E"	Six (6) Final Assessment Notices issued against accused Jaime G. Napoles for the Years 2006, 2009 and 2012
"P-43-B" and "P-43-C"	LBC Express Inc. Receipt No. 1264-8316-9736 and Receipt No. 1264-8316-9746
"P-45"	Judicial Affidavit of Marites Arias
"P-42", "P-42-A"	Judicial Affidavits of Carmelita C. Glorioso

On August 13, 2018, accused, through his counsel filed a "Motion for Leave *Ex Abudanti Ad Cautelam* (To File Demurrer to Evidence)."[19] In the said motion, accused asks leave to file an exhaustive Demurrer to Evidence, within ten (10) days from receipt of the Order granting the leave to file Demurrer to Evidence, based on the following grounds:

a) The prosecution failed to prove the guilt of the accused beyond reasonable doubt for violating Section 254 of the NIRC, when:

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[19] Ibid., pp. 1841-1847.

i) The prosecution improperly applied the expenditure method against the accused;
ii) The prosecution hinged their evidence against the accused on surmises and conjectures;
iii) The prosecution failed to prove that the accused is the owner or co-owner of City and Land Condominium unit and condominium parking lot;
iv) The prosecution failed to establish the manner or method employed by the accused to evade or defeat tax, if any be due.

b) The prosecution failed to prove the guilt of the accused beyond reasonable doubt for violating Section 255 of the NIRC, when the prosecution admitted that the accused is retired at the time of making of the said purchases and is thus, not required by law to pay any tax, make any return, keep a record or supply correct and accurate information.

On September 24, 2018, the plaintiff filed its "Comment/Opposition (to the "Motion for Leave *Ex Abudanti Ad Cautelam* (To File Demurrer to Evidence) dated August 18, 2018)."[20]

On November 9, 2018, Atty. Ian Dela Cruz Encarnacion filed his "Withdrawal of Appearance"[21] stating that he is withdrawing his appearance as counsel for accused due to conflict of interest arising from his appointment as City Legal Officer of Cavite City.

In the Resolution[22] dated February 19, 2019, the Court granted the "Withdrawal of Appearance" filed by Atty. Encanacion.

During the hearing on May 22, 2019, Atty. Anamarie P. Gonzalez entered her appearance as counsel for accused.[23] Her appearance was noted by the Court. In the same hearing, the Court submitted for resolution the "Motion for Leave *Ex Abudanti Ad Cautelam* (To File Demurrer to Evidence)."

In the Resolution[24] dated June 17, 2019, the Court resolves to grant the accused's "Motion for Leave *Ex Abudanti Ad Cautelam* (To File Demurrer to Evidence)." Hence, accused was given a period of ten (10) days from notice within which to file the Demurrer to Evidence. The plaintiff was likewise given the same period of ten (10) days within which to file its Comment or Opposition.

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[20] Ibid., pp. 1855-1867.
[21] Ibid., pp. 1871-1874.
[22] Ibid., pp. 1881-1884.
[23] Minutes of the Hearing, Ibid., p. 1887.
[24] Ibid., pp. 1891-1893.

In the "Motion to Dismiss"[25] filed on July 18, 2019, accused avers that on May 31, 2019, he applied for the Tax Amnesty program of the Bureau of Internal Revenue (BIR) in relation to Section 18 of Republic Act No. 11213; that the BIR issued Certificate of Tax Delinquencies/Tax Liabilities dated June 21, 2019; that upon issuance of the Tax and Payment Form, accused immediately paid his tax liabilities, as shown in the following table:

Description	Amount
1) Tax Amnesty Return on Delinquencies (BIR Form No. 2118-DA); 2) Acceptance Payment Form (BIR Form No. 06210DA): and 3) LandBAnk BIR Payment Slip, all dated July 8, 2019	**1,027,990.52**
1) Tax Amnesty Return on Delinquencies (BIR Form No. 2118-DA); 2) Acceptance Payment Form (BIR Form No. 0621-DA; and 3) LandBank BIR Payment Slip, all dated July 8, 2019	**157,142.89**
1) Tax Amnesty Return on Delinquencies (BIR Form No. 2118-DA); 2) Acceptance Payment Form (BIR Form No. 0621-DA); and 3) LandBank BIR Payment Slip, all dated July 8, 2019	**25,510.87**
1) Tax Amnesty Return on Delinquencies (BIR Form No., 2118 (BIR Form No. 0621-DA); and LandBank BIR Payment Slip, all dated July 8, 2019	**263,065.91**
1) Tax Amnesty Return on Delinquencies (BIR Form No. 2118-DA); 2) Acceptance Payment Form (BIR Form No. 0621-DA); and 3) LandBAnk BIR Payment Slip, all dated July 8, 2019	**183,869.09**
1) Tax Amnesty Return on Delinquencies (BIR Form No. 2118-DA); 2) Acceptance Payment Form No. 0621-DA): and 3) LandBank BIR Payment Slip, all dated July 8, 2019	**114,468.01**
1) Tax Amnesty Return on Delinquencies (BIR Form No. 2118-DA; 2) Acceptance Payment Form (BIR Form No. 0621-DA); and 3) LandBank BIR Payment Slip, all dated	**661,309.09**

[25] Ibid., pp. 1894-1899.

July 8, 2019	
1) Tax Amnesty Return on Delinquencies (BIR Form No. 2118-DA; 2) Acceptance Payment Form (BIR Form No. 0621-DA); and 3) LandBank BIR Payment Form Slip, all dated July 8, 2019.	**151,525.91**
1) Tax Amnesty Return on Delinquencies (BIR Form No. 2118-DA; 2) Acceptance Payment Form (BIR Form No. 0621-DA); and 3) LandBank BIR Payment Form Slip, all dated July 8, 2019.	**99,206.86**
1) Tax Amnesty Return on Delinquencies (BIR Form No. 2118-DA; 2) Acceptance Payment Form (BIR Form No. 0621-DA); and 3) LandBank BIR Payment Form Slip, all dated July 8, 2019.	**1,735,387.49**
1) Tax Amnesty Return on Delinquencies (BIR Form No. 2118-DA; 2) Acceptance Payment Form (BIR Form No. 0621-DA); and 3) LandBank BIR Payment Form Slip, all dated July 8, 2019.	**665,845.31**
1) Tax Amnesty Return on Delinquencies (BIR Form No. 2118-DA; 2) Acceptance Payment Form (BIR Form No. 0621-DA); and 3) LandBank BIR Payment Form Slip, all dated July 8, 2019.	**84,025.91**
1) Tax Amnesty Return on Delinquencies (BIR Form No. 2118-DA; 2) Acceptance Payment Form (BIR Form No. 0621-DA); and 3) LandBank BIR Payment Form Slip, all dated July 8, 2019.	**363,869.09**
1) Tax Amnesty Return on Delinquencies (BIR Form No. 2118-DA; 2) Acceptance Payment Form (BIR Form No. 0621-DA); and 3) LandBank BIR Payment Form Skip, all dated July 8, 2019.	**56,128.50**
Total	**5,589,345.45**

that under Section 20 of R.A. No. 11213, the tax delinquency of those who avail of the Tax Amnesty on Delinquencies and have fully complied with all the conditions set forth in the said Act and upon payment of the amnesty tax shall be considered settled and the criminal case under Section 18 (c) and its corresponding civil or administrative case, if applicable, be terminated, and that taxpayer shall be immune from all suits or actions, including the payment of said delinquency or assessment, as well as additions thereto, and from all appurtenant civil, criminal and administrative cases, and penalties under the NIRC, of 1997 as amended; that pursuant to Section 8 of BIR Revenue Regulations No. 4-2009, the criminal case in connection therewith and its corresponding civil or administrative case, shall be terminated, and that the taxpayer shall be immune from all suits or actions, including the payment of said delinquency or assessment, as well as additions thereto, and from all appurtenant civil, criminal and administrative cases, and penalties under the 1997 Tax Code, as amended, as such relate to the internal revenue taxes for taxable years that are subject of the tax amnesty availed of; and that accused already complied with the requirements, hence, he moves for the termination and dismissal of the case against him.

On September 4, 2019, the plaintiff filed a "Comment/Manifestation (to the Motion to Dismiss dated July 17, 2019)" stating that the Motion to Dismiss of accused is hinged upon his alleged availment of tax amnesty pursuant to R.A. No. 11213, to which accused attached copies of his Application for Tax Amnesty, Tax Delinquencies/Tax Liabilities, BIR Form No. 2118-DA (Tax Amnesty Return on Delinquencies), BIR Form No. 0621-DA (Acceptance Payment Form of Tax Amnesty on Delinquencies) and the corresponding BIR payment slip for each of the assessed Income Tax, Percentage Tax and Value-Added Tax deficiencies for years 2004, 2006, 2008, 2009, 2010 2011 and 2012; that to verify the truthfulness of the Manifestation as well as the authenticity of the documents, the Prosecution Division of the BIR issued a Memorandum dated August 20, 2019 for Revenue District Officer Antonio L. Ilagan (RDO Ilagan) of Revenue District No. 33 – Intramuros-Ermita-Malate (RDO 33), requesting for confirmation as to whether the entire 60% of the basic taxes have already been fully paid by accused, pursuant to RR No. 4-2019, in relation to Revenue Memorandum Order No. 23-2019 implementing the Tax Amnesty Act; and that on August 29, 2019. The BIR-Prosecution Division received a Certification dated August 23, 2019 from RDO 33 signed by the Chief of Collection Section Carmelita C. Glorioso and RDO Ilagan, confirming that there appears to be payments made by accused with Tax Identification Number 153-954-811-000 thru cash and check.

Rule 33 of the Rules of Court provides:

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

A demurrer to evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is *competent* or *sufficient* evidence to sustain the indictment or to support a verdict of guilt.[26]

Accused was charged with violation of Section 254 of the NIRC of 1997, as amended, in Criminal Case Nos. O-479, O-480 and O-481, which states:

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

On the other hand, accused was charged with violation of Section 255 of the NIRC of 1997 as amended, in Criminal Case Nos. O-482 and O-484, which states:

> **"Sec. 255. Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.** – Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by laws or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000.00) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.
>
> Any person who attempts to make it appear for any reason that he or another has in fact failed a return or statement, actually files a return or statement and

[26] Soriquez vs. Sandiganbayan, G.R. No. 153526, October 25, 2005, citing Gutib vs. Court of Appeals, G.R. No. 131209, August 13, 1999.

> subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of an internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (P10,000.00) but not more than Twenty thousand pesos (P20,000.00) and suffer imprisonment of not less than one (1) year but not more than three (3) years."

On February 14, 2019, Republic Act No. 11213, otherwise known as "*An Act Enhancing Revenue Administration and Collection by Granting an Amnesty on All Unpaid Internal Revenue Taxes Imposed by the National Government for Taxable Years 2017 and Prior Years with Respect to Estate Tax, Other Internal Revenue Taxes, and Tax on Delinquencies*" was approved and published in the Official Gazette. On April 5, 2018, the BIR issued Revenue Regulations No. 4-2019 (RR No. 4-2019), otherwise known as "*Implementing Rules and Regulations of Republic Act No. 11213, Otherwise Known as the "Tax Amnesty Act", Providing for the Guidelines on the Processing of Tax Amnesty Application on Tax Delinquencies.*" RR No. 4-2019 took effect on April 24, 2019.

The following pertinent provisions of R.A. No. 11213 state as follows:

> "**Section 17**. *Coverage* – There is hereby authorized and granted a tax amnesty herein called the Tax Amnesty on Delinquencies, which shall cover all national internal revenue taxes such as, but not limited to, income tax, withholding tax, capital gains tax, donor's tax, value-added tax, other percentage taxes, excise tax and documentary stamp tax collected by the Bureau of Internal Revenue, including value-added tax and excise tax collected by the Bureau of Customs for taxable year 2017 and prior years.
>
> For purposes of this Act, the Tax Amnesty on Delinquencies may be availed of in the following instances:
>
> (a) Delinquencies and assessments, which have become final and executory, including delinquent tax account, where the application for compromise has been requested on the basis of: (1) doubtful validity of the assessment; or (2) financial incapacity of the taxpayer, but the same was denied by the Regional Evaluation Board or the National Evaluation Board, as the case may be, on or before the Implementing Rules and Regulations take effect.
> (b) <u>Pending criminal cases with the Department of Justice or the courts for tax evasion and other criminal offenses under Chapter II of Title X and Section 275 of the</u>

National Internal Revenue Code of 1997, as amended, with or without assessments duly issued.

(c) Tax cases subject of final and executory judgment by the courts on or before the Implementing Rules and Regulations take effect; and

(d) Withholding tax agents who withheld taxes but failed to remit the same to the Bureau of Internal Revenue." Underscoring supplied)

"**Section 18**. *Entitlement of Tax Amnesty on Delinquencies.* – Any person may enjoy the immunities and privileges of the Tax Amnesty on Delinquencies and pay the following tax amnesty rates:

xxx xxx xxx

(c) Pending criminal cases with criminal information filed with the Department of Justice or the courts for tax evasion and other criminal offenses under Chapter II of Title X and Section 275 of the National Internal Revenue Code of 1991, as amended, with assessments duly issued and otherwise excluded in Titles II and III hereof........ 60% of the basic tax assessed." (Underscoring supplied)

"**Section 19**. *Availment of the Tax Amnesty on Delinquencies; When and Where to File and Pay.* – Any person, natural or juridical, who wishes to avail of the Tax Amnesty on Delinquencies shall within (1) year from the effectivity of the Implementing Rules and regulations of this Act, file with the appropriate office of the Bureau of Internal Revenue, which has jurisdiction over the residence or principal place of business of the taxpayer, a sworn Tax Amnesty on Delinquencies Return accompanied by a Certificate of Delinquency. The payment of the amnesty tax shall be made at the time the Return is filed.

Provided, That the Revenue District Office shall issue and endorse an Acceptance Payment Form, in such form as may be prescribed in the Implementing Rules and Regulations of this Act authorizing the authorized agent bank, or in the absence thereof, the revenue collection agent or municipal treasurer concerned, to accept the amnesty tax payment:

Provided, further, that the availment of the Tax Amnesty on Delinquencies and the issuance of the corresponding Acceptance Payment Form do not imply any admission of criminal, civil or administrative liability on the part of the availing taxpayer.

"**Section 20**. *Immunities and Privileges*. – The tax delinquency of those who avail of the Tax Amnesty on Delinquencies and have fully complied with all the conditions set forth in this Act and upon payment of the amnesty tax shall be considered settled and the criminal case under Section 18(c) and its corresponding civil or administrative case, if applicable, be terminated and the taxpayer shall be immune from all suits or actions, including the payment of said delinquency or assessment, as well as additions thereto, and from all appurtenant civil, criminal, and administrative cases, and penalties under the National Internal Revenue Code of 1997, as amended, as such relate to the taxpayer's assets, liabilities, networth, and internal revenue taxes that are subject of the tax amnesty, and from such other investigations or suits insofar as they relate to the assets, liabilities, networth and internal revenue taxes that are subject of the tax amnesty: *Provided*, That any notices of levy, attachments and/or warrants of garnishments issued against the taxpayer shall be set aside pursuant to a lifting of notice of levy/garnishment duly issued by the Bureau of Internal Revenue or its authorized representative: *Provided, further*, That the Authority to Cancel Assessment shall be issued by the Bureau of Internal Revenue in favor of the taxpayer availing of the Tax Amnesty on Delinquencies within fifteen (15) calendar days from submission to the Bureau of Internal Revenue of the Acceptance Payment Form and the Tax Amnesty on Delinquencies Return. Otherrwise, the duplicate copies, stamped as received, of the Acceptance Payment Form, and the Tax Amnesty on Delinquencies Return shall be deemed as sufficient proof of availment: *Provided*, furthermore, That the Tax Amnesty on Delinquencies Return and the Acceptance Payment Form shall be submitted to the Revenue District Office after complete payment. The completion of these requirements shall be deemed full compliance with the provisions of this Act.

Upon full compliance with all the conditions set forth in this Title and payment of the corresponding tax on delinquency, the tax amnesty granted under this Title shall become final and irrevocable." (Underscoring supplied)

The following provisions of R.R. No. 4-2019 are applicable in the instant cases:

"**SECTION 2. DEFINITION OF TERMS.** For purposes of these Regulations, the words used herein shall be defined as follows:

A. Delinquent Account – shall pertain to a tax due from a taxpayer arising from the audit of the Bureau of Internal Revenue (BIR) which has been issued Assessment Notices that have become final and executory due to the following instances:

1. Failure to pay the tax due on the prescribed due date provided in the Final Assessment Notice (FAN)/Formal Letter of Demand (FLD) and for which no valid Protest, whether a request for reconsideration or reinvestigation, has been filed within thirty (30) days from receipt thereof;"

"**SECTION 3. COVERAGE**. All persons, whether natural or juridical, with internal revenue tax liabilities covering taxable year 2017 and prior years, may avail of Tax Amnesty on Delinquencies within one year from the effectivity of these Regulations, under any of the following instances:

A. xxx xxx xxx

B. <u>With pending criminal cases with the DOJ/Prosecutor's Office or the courts for tax evasion and other criminal offenses under Chapter II of Title X and Section 275 of the Tax Code, as amended, with or without assessments duly issued</u>;" (Underscoring supplied)

SECTION 4. TAX AMNESTY RATES. The tax amnesty rates shall be as follows:

xxx xxx xxx

C. Pending criminal cases filed with the DOJ/Prosecutor's Office or other courts for tax evasion and other criminal offenses under Chapter II of Title X and Section 275 of the Tax Code, as amended	60% of the basic tax assessed

"**SECTION 5. MANNER OF AVAILMENT OF TAX AMNESTY ON TAX DELINQUENCIES**. <u>Any person, whether natural or juridical, who wishes to avail of the Tax Amnesty on Delinquencies shall file, within one (1) year from the effectivity of these Regulations, an application therefor, in accordance with the procedures set forth below</u>:

A. **DOCUMENTARY REQUIREMENTS**: The taxpayer shall submit the following:

1. Tax Amnesty Return (TAR) (BIR Form No. 2118-DA, Annex "A"), completely and accurately accomplished and made under oath;
2. Acceptance Payment Form (APF) (BIR Form No. 0621-DA, Annex "B") duly validated by the Authorized Agent Banks (AABs) or APF duly stamped 'received" with accompanying bank deposit slip duly validated by the concerned AABs or Revenue Official Receipt (ROR) issued by the Revenue Collection Officers (RCOs);
3. Certificate of Tax Delinquencies/Tax Liabilities issued by concerned BIR offices (Annex "C"); and
4. In case of application under Seciton 3 (A)(2) of these Regulations, a copy of the assessment found in the FAN/FDDA: Provided that, in cases of application under Section 3(D), either delinquent account or not, with or without FAN/FDDA, the Preliminary Assessment Notice (PAN)/Notice for Informal Conference or equivalent document is sufficient.

B. PLACE OF FILING- The Tax Amnesty Return and other documentary requirements shall be filed with the following BIR offices:

Classification	Place of Filing
Non-Large Taxpayers	Revenue District Office (RDO) where applicant-taxpayer is registered

xxx xxx xxx

(Underscoring supplied)

"**SECTION 8. IMMUNITIES AND PRIVILEGES OF AVAILING TAX AMNESTY ON TAX DELINQUENCIES.** The tax delinquency of those who avail of the Tax Amnesty on Delinquencies under these Regulations, upon full compliance with all the conditions set forth hereof, shall be considered settled, and the criminal case in connection therewith and its corresponding civil or administrative case, if applicable, shall be terminated, The taxpayer shall be immune from all suits or actions, including the payment of said delinquency or assessment, as well as additions thereto, and from all appurtenant civil, criminal and administrative cases, and penalties under the 1997 Tax Code, as amended, as such relate to the internal revenue taxes for taxable years that are subject to the tax amnesty availed of.

<u>The availment of the Tax Amnesty on Delinquencies herein provided and the issuance of the corresponding APF do not imply any admission of criminal, civil or administrative</u>

liability on the part of the availing taxpayer." (Underscoring supplied)

A perusal of the record shows that on September 9, 2015 a PAN[27] was issued to accused assessing accused for deficiency income, percentage and value-added taxes for taxable years 2004, 2006, 2008, 2009, 2010, 2011 and 2012. A Formal Letter of Demand (FLD) dated December 1, 2016 with attached Details of Discrepancies was issued. [28] Thereafter, Audit Result/Final Assessment Notices[29] dated May 16, 2017 were issued to accused for deficiency income, percentage and value-added taxes for taxable years 2004, 2006, 2008, 2009, 2010, 2011 and 2012. The instant criminal cases are under Chapter II of Title X of the NIRC of 1997, as amended. Thus, applying the provisions of R.A. No. 11213 and R.R. No. 4-2019, accused can validly avail of the Tax Amnesty Program of the BIR.

On July 8, 2019, accused applied for the Tax Amnesty program of the BIR relative to his delinquent accounts covered by the subject criminal cases. Records show that he paid the following amounts representing 60% of the basic tax assessed for taxable years 2006, 2009 and 2012 covered by Criminal Case Nos. O-479, O-480, O-481, O-482 & O-484, as shown in the table below:

Criminal Case No.	Taxable Year	Basic Tax	Amount Paid	BIR Payment Slip Number
O-479	2006	P1,713,317.53	P1,027,990.52	19689123
O-480	2009	P2,892,312.49	P1,735,387.49	19688254
O-481	2012	P1,102,181.82	P661,309.09	19688262
O-482	2006	P1,713,317.53	P1,027,990.52	19689123
O-484	2012	P1,102,181.82	P661,309.09	19688262

On November 7, 2019, the Court ordered accused to submit within ten (10) days from notice the original or certified true copies of the documents evidencing his payment for tax amnesty covered only by the instant cases and to submit the authority of the person who signed the BIR Form on behalf of accused. The plaintiff was likewise ordered to submit to the Court the original or certified true copies of the Memorandum and Certification attached in its Comment dated September 4, 2019.[30]

On November 29, 2019, accused submitted the following documents in support of his Motion to Dismiss, to wit:

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[27] Exhibits "P-2S and "P-32"
[28] Exhibits "P-43" and "P-43-A"
[29] Exhibits "P-44", "P-44-A", "P-44-B", "P-44-C", "P-44-D", "P-44-E".
[30] Resolution, Docket, CTA CRIM. CASE NO. O-479, pp. 1991-1993.

1. Original copy of the Certificate of Tax Delinquencies/Tax Liabilities dated June 21, 2019, signed by Zeus Gamaliel S. Mendoza, OIC-Chief, Prosecution Division;

2. BIR Payment Slips dated July 8, 2019 with numbers 19689123, 19688261, 19689124, 19688260, 19688256, 19688258, 19688262, 19688253, 19689125, 19688254, 19688255, 19688257, 19688263, 19688206;

3. Various BIR Form No. 0621-DA- Acceptance Payment Form Tax Amnesty on Delinquencies;

4. Various BIR Form No. 2118-DA- Tax Amnesty Return on Delinquencies;

5. Affidavit dated November 28, 2019 executed by accused stating that on July 8, 2019, he authorized his staff, Mr. Gerald B. Apuang to process and facilitate the settlement or payment of his delinquency taxes with the BIR in compliance with his application for Tax Amnesty program of the BIR subject to the criminal cases filed against him before the Court of Tax Appeals; and

6. Special Power of Attorney dated July 3, 2019 signed by accused, appointing Gerald B. Apuang to be his true and lawful attorney-in-fact.

On the other hand, the plaintiff filed on November 20, 2019 a "Compliance *(to the Resolution dated November 7, 2019)*." Plaintiff submitted the certified true copy of the Memorandum for Antonino L. Ilagan and the original copy of the Certification signed by Carmelita C. Glorioso.

The Certification signed by Carmelita C. Glorioso reads as follows:

"C E R T I F I C A T I O N

This is to certify that based on our Integrated Tax System – Collection and Bank Reconciliation System, (ITS-CBR) there appears to be payments made by **JAIME GARCIA NAPOLES** with TIN No. 153-954-811-000 and with registered address at Philippine Navy Roxas Blvd., Ermita, Manila, with Acceptance Payment Form Tax Amensty on Delinquencies (BIR FORM No. 0621-DA), and Tax Amnesty Return on Delinquencies (BIR Form No. 2118-DA).

Reference:

Bank Code	Coll. Date	BCS #	Item #	Form Type	Tax Type	Period Covered	Amount
086294	07/08/2019	A-20472	19	0621DA	MC	07/31/2019	25,510.87
086294	08/08/2019	A-20472	22	0621DA	MC	07/31/2019	56,128.50

086294	07/08/2019	A-20472	23	0621DA	MC	07/31/2019	84,025.91
086294	08/08/2019	A-20472	24	0621DA	MC	07/31/2019	99,206,86
086294	07/08/2019	A-20472	25	0621DA	MC	07/31/2019	114,468.01
086294	08/08/2019	A-20472	26	0621DA	MC	07/31/2019	151,525.91
086294	07/08/2019	A-20472	27	0621DA	MC	07/31/2019	157,142.89
086294	08/08/2019	A-20472	28	0621DA	MC	07/31/2019	183,869.09
086294	07/08/2019	A-20472	29	0621DA	MC	07/31/2019	263,065.91
086294	08/08/2019	A-20472	31	0621DA	MC	07/31/2019	363,869.09
086294	07/08/2019	A-20472	32	0621DA	MC	07/31/2019	661,309.09
086294	08/08/2019	A-20472	33	0621DA	MC	07/31/2019	665,845.31
086294	07/08/2019	A-20472	34	0621DA	MC	07/31/2019	1,027,990.52
086294	08/08/2019	A-20472	35	0621DA	MC	07/31/2019	1,735,387.49

This Certification is being issued in compliance with the request letter of Zeus Gamaliel S. Mendoza, OIC Chief, Prosecution Division Dated August 20, 2019 for purposes of filing the necessary pleading before the CTA and the RTC of the above cited taxpayer.

Given this 23th day of August 2019, Manila

(Sgd.) **CARMELITA C. GLORIOSO**
Chief, Collection Section

Noted by:

(Sgd.) **ANTONIO L. ILAGAN**
Revenue District Officer"

After consideration, the Court finds that accused had fully complied with all the conditions set forth in R.A. No. 11213. He availed of the Tax Amnesty program on July 8, 2019, that is within one (1) year from the effectivity of RR No. 4-2019. He had delinquent accounts for taxable years 2006, 2009 and 2012. He submitted before this Court the documentary requirements he filed with RDO No. 33 in compliance with the provisions of Section 5 of R.R. No. 4-2019.

The accused's obligation to declare his income tax and supply correct and accurate his tax liabilities in the Income Tax Returns are obligations created by law, specifically Sections 254 and 255 of the NIRC of 1997, as amended. The said provisions are under Chapter II, Title X of the NIRC of 1997, as amended. The NIRC of 1997, as amended is a general law.

On the other hand, Section 20 of R.A. No. 11213 and Section 8 of RR No. 4-2019 provide for the immunities and privileges of a taxpayer who availed of the provisions of the Tax Amnesty Act. R.A. No. 11213 is a special law.

As between the NIRC of 1997, as amended, a general law governing taxation in the Philippines, and R.A. No. 11213, a special law granting an amnesty to all unpaid internal revenue taxes imposed by the Philippine government, the latter shall prevail.

In the case of *Provincial Assessor of Agusan del Sur vs. Filipinas Palm Oil Plantation, Inc.*,[31] the Supreme Court, citing the case of *Manila Electric Company vs. City Assessor,*[32] held as follows:

> Section 199 (o) of the Local Government prevails over Article 415 (5) of the Civil Code. In *Manila Electric Company*:
>
> As between the Civil Code, a general law governing property and property relations, and the Local Government Code, a special law granting local government units the power to impose real property tax, then the latter shall prevail. As the Court pronounced in *Disomangcop v. The Secretary of the Department of Public Works and Highways Simeon A. Datumanong*:
>
>> It is a finely-imbedded principle in statutory construction that a special provision or law prevails over a general one. *Lex specialis derogant generali.* As this Court expressed in the case of Leveriza v. Intermediate Appellate Court, "another basic principle of statutory construction mandates that general legislation must give way to special legislation on the same subject, and generally be so interpreted as to embrace only cases in which the special provisions are not applicable, that specific statute prevails over a general statute and that where two statutes are of equal theoretical application to a particular case, the one designed therefor specially should prevail."

In view of the foregoing discussions the instant cases are considered terminated.

WHEREFORE, premises considered, the "Motion to Dismiss" is **GRANTED**. Accordingly, CTA Criminal Cases Nos. O-479, O-480, O-481, O-482, and O-484 are **DISMISSED**.

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[31] G.R. No. 183416, October 5, 2016.
[32] G.R. No. 166102, August 5, 2015.

SO ORDERED.

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice