REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

MAILA LAXAMANA Y BALUYOT,
Accused.

CTA CRIM. CASE NOS. O-445
For: Attempt to evade or defeat the payment of income tax under Section 254 of the NIRC, as amended.

x--x

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

MAILA LAXAMANA Y BALUYOT,
Accused.

CTA CRIM. CASE NOS. O-446
For: Failure to File Income Tax Return under Section 255 of the NIRC, as amended.

x--x

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

MAILA LAXAMANA Y BALUYOT,
Accused.

CTA CRIM. CASE NOS. O-447
For: Attempt to evade or defeat the payment of income tax under Section 254 of the NIRC, as amended.

x--x

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

MAILA LAXAMANA Y BALUYOT,
Accused.

CTA CRIM. CASE NO. O-448
For: Failure to Supply Correct and Accurate Information in the Income Tax Return under Section 255 of the NIRC, as amended.

Members:

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

Promulgated:

JAN 17 2018 9:00 a.m.

x - x

DECISION

CASTAÑEDA, JR., *J.*:

STATEMENT OF THE CASE

Accused Maila Laxamana y Baluyot is charged before this Court of the crimes of attempt to evade or defeat the payment of income tax under Section 254 of the National Internal Revenue Code (NIRC) of 1997, as amended, for taxable year 2010 and 2011, failure to file income tax return (ITR) under Section 255 of the NIRC, as amended, for taxable year 2010, and failure to supply correct and accurate information in the income tax return under Section 255 of the NIRC, as amended, for taxable year 2011.

STATEMENT OF FACTS

The prosecution filed before this Court four (4) separate Informations against the accused, which read as follows:

CRIMINAL CASE NO. O-445

INFORMATION

The undersigned prosecutor of the Department of Justice, with the approval of the Commissioner of Internal Revenue, hereby accuses **MAILA LAXAMANA y BALUYOT** of the crime of Attempt to evade or defeat the payment of income tax under Section 254 of the National Internal Revenue Code, committed as follows:

> That on or about April 15, 2011, in the City of Angeles, Pampanga, Philippines, and within the jurisdiction of this Honorable Court, accused MAILA LAXAMANA y BALUYOT, being the sole proprietor of FRACOJAN CATERING SERVICES, and a registered taxpayer under BIR Tax Identification Number 116-748-581-000, who is required by laws and regulations to pay correct taxes, did then and there wilfully, unlawfully, and feloniously attempt to evade or defeat payment of income tax as said accused did not declare all her income for taxable year 2010 thereby resulting to basic income tax deficiency in the amount of One Million Two Hundred Fifty Five Thousand Four Hundred Forty Eight and 38/100 Pesos (₱1,255,448.38), more or less, exclusive of surcharge and interest, to the damage and prejudice of the government.

CONTRARY TO LAW.

<u>CRIMINAL CASE NO. O-446</u>

INFORMATION

The undersigned prosecutor of the Department of Justice, with the approval of the Commissioner of Internal Revenue, hereby accuses **MAILA LAXAMANA y BALUYOT** of the crime of Failure to File Income Tax Return under Section 255 of the National Internal Revenue Code, committed as follows:

> That on or about April 15, 2011, in the City of Angeles, Pampanga, Philippines, and within the jurisdiction of this Honorable Court, accused MAILA LAXAMANA y BALUYOT, being the sole proprietor of FRACOJAN CATERING SERVICES, and a registered taxpayer under BIR Tax Identification Number 116-748-581-000, who is required by laws and regulations to pay correct taxes, did then and there wilfully, unlawfully, and feloniously fail to file her annual income tax return and pay the corresponding tax for taxable year 2010, to the damage and prejudice of the government of the Republic of the Philippines in the amount of One Million Two Hundred Fifty Five Thousand Four Hundred Forty Eight and 38/100 Pesos (₱1,255,448.38), more or less, as basic income tax deficiency, exclusive of surcharges and interest.
>
> **CONTRARY TO LAW.**

CRIMINAL CASE NO. O-447

INFORMATION

The undersigned prosecutor of the Department of Justice, with the approval of the Commissioner of Internal Revenue, hereby accuses **MAILA LAXAMANA y BALUYOT** of the crime Attempt to evade or defeat the payment of income tax under Section 254 of the National Internal Revenue Code, committed as follows:

> That on or about April 15, 2012, in the City of Angeles, Pampanga, Philippines, and within the jurisdiction of this Honorable Court, accused MAILA LAXAMANA y BALUYOT, being the sole proprietor of FRACOJAN CATERING SERVICES, and a registered taxpayer under BIR Tax Identification Number 116-748-581-000, who is required by laws and regulations to pay

correct taxes, did then and there wilfully, unlawfully, and feloniously attempt to evade or defeat payment of income tax as said accused substantially under declared her income for taxable year 2011 thereby resulting to basic income tax deficiency in the amount of One Million Two Hundred Forty Three Thousand Two Hundred Fifty Eight and 56/100 Pesos (₱1,243,258.56), more or less, exclusive of surcharge and interest, to the damage and prejudice of the government.

CONTRARY TO LAW.

CRIMINAL CASE NO. O-448

INFORMATION

The undersigned prosecutor of the Department of Justice, with the approval of the Commissioner of Internal Revenue, hereby accuses **MAILA LAXAMANA y BALUYOT** of the crime Failure to Supply Correct and Accurate Information in the Income Tax Return under Section 255 of the National Internal Revenue Code, committed as follows:

That on or about April 15, 2012, in the City of Angeles, Pampanga, Philippines, and within the jurisdiction of this Honorable Court, accused MAILA LAXAMANA y BALUYOT, being the sole proprietor of FRACOJAN CATERING SERVICES, and a registered taxpayer under BIR Tax Identification Number 116-748-581-000, who is required by laws and regulations to pay correct taxes, did then and there wilfully, unlawfully, and feloniously failed to supply correct and accurate information in her annual income tax return by not declaring her true income earned for taxable year 2011, to the damage and prejudice of the government of the Republic of the Philippines in the amount of One Million Two Hundred Forty Three

Thousand Two Hundred Fifty Eight and 56/100 Pesos (₱1,243,258.56), as basic income tax deficiency, exclusive of surcharges and interest.

CONTRARY TO LAW.[1]

On January 12, 2015, the Court issued Warrants of Arrest against the accused in CTA Crim. Case No. O-445[2] and CTA Crim. Case No. O-446[3].

Accused voluntarily surrendered before this Court and posted the required cash bail bond for her provisional liberty, in the amount of ₱20,000.00 each, in CTA Crim. Case No. O-445[4], CTA Crim. Case No. O-446[5] and CTA Crim. Case No. O-447[6] on March 2, 2015, and ₱10,000.00 in CTA Crim. Case No. O-448[7] on April 8, 2015.

Upon motion[8] of the prosecution, the Court consolidated CTA Crim. Case Nos. O-445, O-446, O-447, and O-448[9].

Accused, assisted by her counsel, pleaded "not guilty" during her arraignment held on April 8, 2015 for CTA Crim. Case No. O-445[10] and on May 6, 2015 for CTA Crim. Case Nos. O-446, O-447, and O-448[11].

The preliminary conference was held on June 3, 2015[12], while the pre-trial conference was held on July 9, 2015[13]. Thereafter, on

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[1] This is the amended information filed on February 11, 2015, docket, CTA Crim. Case No. O-448, docket, pp. 66-67.
[2] Docket, CTA Crim. Case No. O-445, vol. I, p. 61.
[3] Docket, CTA Crim. Case No. O-446, p. 62.
[4] Docket, CTA Crim. Case No. O-445, vol. I, pp. 67-68.
[5] Docket, CTA Crim. Case No. O-446, pp. 71-72.
[6] Docket, CTA Crim. Case No. O-447, pp. 105 and 108.
[7] Docket, CTA Crim. Case No. O-448, pp. 96-97.
[8] Motion for Consolidation filed on February 25, 2015, docket, CTA Crim. Case No. O-445, vol. I, pp. 62-66; docket, CTA Crim. Case No. O-446, pp. 66-70; docket, CTA Crim. Case No. O-447, pp. 93-96; docket, CTA Crim. Case No. O-448, pp. 72-75.
[9] Resolution dated March 27, 2015, docket, CTA Crim. Case No. O-445, vol. I, p. 88; Resolution dated March 26, 2015, docket, CTA Crim. Case No. O-446, p. 92; Resolution dated March 31, 2015, docket, CTA Crim. Case No. O-447, p. 113; Resolution dated March 2, 2015, docket, CTA Crim. Case No. O-448, p. 83.
[10] Certificate of Arraignment, docket, CTA Crim. Case No. O-445, vol. I, p. 91; Minutes of the hearing dated April 8, 2015, docket, CTA Crim. Case No. O-445, vol. I, p. 93.
[11] Certificate of Arraignment, docket, CTA Crim. Case No. O-445, vol. I, p. 98; Minutes of the hearing dated May 6, 2015, docket, CTA Crim. Case No. O-445, vol. I, p. 99.
[12] Minutes of Preliminary Conference, docket, CTA Crim. Case No. O-445, vol. I, pp. 103-109.
[13] Minutes of the hearing dated July 9, 2015, docket, CTA Crim. Case No. O-445, vol. I, p. 125.

July 22, 2015, the Court issued a Pre-Trial Order[14] and the pre-trial was deemed terminated.

During trial, the prosecution presented the following witnesses:

1. Revenue Officer (RO) Fabian Ceasar B. Exmundo of the Bureau of Internal Revenue (BIR), assigned at the National Investigation Division (NID), testified that his group received an NID Memorandum of Assignment dated April 25, 2012 (Exhibit "P-3"[15]) to conduct a preliminary investigation of a certain Maila Laxamana y Baluyot. During the preliminary investigation, they found out in their integrated tax system that accused is a registered taxpayer of Pampanga and has a TIN but did not file any ITR for taxable year 2010. Upon their request, the Commissioner of Internal Revenue (CIR) issued a Letter of Authority LOA-211-2012-00000087 dated July 27, 2012 (Exhibit "P-9"[16]) authorizing them to examine the books of accounts and other accounting records for internal revenue taxes of the accused for January 1, 2009 to December 31, 2011. Upon written request (Exhibit "P-4"[17]), they were able to secure Certifications from the Philippine Amusement and Gaming Corporation (PAGCOR), Casino Filipino - Angeles City as regards the income payment it has made to the accused for the years 2010 (Exhibit "P-5"[18]) and 2011 (Exhibit "P-6"[19]). Also, upon written request (Exhibit "P-7"[20]), they received a Memorandum dated September 6, 2012 (Exhibit "P-8"[21]) from the Revenue District Officer of RDO No. 21-A, North Pampanga, as regards the filing of the various returns of the accused with attached annexes (Exhibits "P-8-a" to "P-8-o"[22]). He further testified that despite the payment of PAGCOR to accused in 2010 and 2011, the accused did not file an ITR for 2010 and filed an ITR for 2011 but the amount was inadequate. Upon their recommendation, a Joint Complaint

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[14] Docket, CTA Crim. Case No. O-445, vol. I, pp. 127-132.
[15] Docket, CTA Crim. Case No. O-445, vol. I, p. 300.
[16] Docket, CTA Crim. Case No. O-445, vol. I, p. 321.
[17] Access Letter dated July 27, 2012 addressed to Mr. Cristino L. Naguiat, Jr., CEO of PAGCOR, from the Chief of the BIR National Investigation Division, docket, CTA Crim. Case No. O-445, vol. I, p. 301.
[18] Docket, CTA Crim. Case No. O-445, vol. I, p. 302.
[19] Docket, CTA Crim. Case No. O-445, vol. I, p. 303.
[20] Memorandum dated August 1, 2012 issued by Estela V. Sales of the BIR, docket, CTA Crim. Case No. O-445, vol. I, p. 304.
[21] Docket, CTA Crim. Case No. O-445, vol. I, p. 305.
[22] Docket, CTA Crim. Case No. O-445, vol. I, pp. 306-320.

Affidavit dated September 13, 2012 (Exhibit "P-1"[23]) was filed with the Department of Justice (DOJ).[24]

On cross-examination, RO Exmundo admitted that in the NID Memorandum of Assignment, the signature of Sixto C. Dy, Jr. does not appear.[25] There was a verbal instruction from their group supervisor that accused is one of the food concessionaire of PAGCOR Pampanga and to conduct an inquiry with PAGCOR. He has no personal knowledge on how their group supervisor obtained the information regarding the transaction of accused with PAGCOR.[26] He does not know Alexander C. Ozaeta, the general manager of PAGCOR Casino Filipino Angeles who issued the Certifications (Exhibits "P-5" and "P-6") and has no personal knowledge on how the Certifications were issued by Mr. Ozaeta and they did not likewise verify the genuineness of the contents of these certifications.[27]

When RO Exmundo was recalled to the witness stand. He testified that he was tasked to draft, issue and serve the Preliminary Assessment Notice (PAN) and Final Assessment Notice (FAN) to the accused. In drafting the PAN and FAN, he used the PAGCOR Certifications for the periods January-December 2010 and January-December 2011 as bases and applied the interest and surcharges mandated by law to come up with the total amounts due. The PAN was sent to the accused through registered mail by the Communication Operation Reproduction and Miscellaneous Services Section of the BIR while the FAN was personally delivered to accused by RO Exmundo.[28]

On cross-examination, RO Exmundo confirmed that the basis for the computation was the Certification from PAGCOR. He admitted that he merely relied on the documents that were

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[23] Docket, CTA Crim. Case No. O-445, vol. I, pp. 288-298.
[24] Minutes of the hearing dated July 29, 2015, docket, CTA Crim. Case No. O-445, vol. I, p. 133; TSN, July 29, 2015 hearing, pp. 7-22.
[25] TSN, July 29, 2015 hearing, p. 25.
[26] TSN, July 29, 2015 hearing, pp. 27-29.
[27] TSN, July 29, 2015 hearing, pp. 30-31.
[28] Minutes of the hearing dated July 20, 2016 and October 19, 2016, docket, CTA Crim. Case No. O-445, vol. I, p. 241 and 269, respectively; Exhibit "P-18", docket, CTA Crim. Case No. O-445, vol. I, pp. 210-215.

submitted by PAGCOR.[29] They do not have proof that the PAN was indeed received by the accused.[30]

On re-direct examination, RO Exmundo likewise confirmed that prior to the sending of the PAN, the criminal case was already filed. The reason for the filing of the criminal case prior to the issuance of the PAN was because they believed, and upon consultation with the Prosecution Division, fraud exists in the case.[31] Re-cross examination was likewise conducted on RO Exmundo.[32]

2. RO Imelda Alcantara testified that through a Letter of Authority (Exhibit "P-9"), they were authorized to examine the books of accounts of accused. They personally served this Letter of Authority to the accused but accused was not able to submit the documents to them. After that, they sent a Second Notice and Final Notice dated May 6, 2013 for the presentation of books of accounts and other accounting records to the accused and Notice of Informal Conference dated May 22, 2013. After the Notice of Informal Conference, accused came to their office probably in June 2013. Since no document was submitted by accused, they proceeded to issue a Preliminary Assessment Notice. She executed a Joint Complaint Affidavit dated September 13, 2012 (Exhibit "P-1").[33]

   On cross-examination, RO Alcantara admitted that the criminal case was not filed after the notices were sent to accused.[34]

3. RO Leticia Lorna L. Dosado testified, by way of Judicial Affidavit, that she is part of the team which conducted an audit of the accused and her business and they eventually filed a criminal case (Joint Complaint Affidavit or Exhibit "P-1") against the accused. She clarified that her participation is that she was the one who computed the tax deficiencies of the accused for taxable years 2010-2011. The computation

[29] TSN, October 19, 2016, p. 7.
[30] TSN, October 19, 2016, p. 8.
[31] TSN, October 19, 2016, p. 21.
[32] TSN, October 19, 2016, pp. 22-27.
[33] Minutes of the hearing dated September 2, 2015, docket, CTA Crim. Case No. O-445, vol. I, p. 138; TSN, September 2, 2015 hearing, pp. 10-23.
[34] TSN, September 2, 2015 hearing, pp. 24-25.

is found on pages 8-9 of the Joint Complaint Affidavit and based on the Certifications issued by PAGCOR and the ITR filed by the accused for 2011.[35] No cross was conducted on RO Dosado.[36]

4. Alexander C. Ozaeta, then general manager of PAGCOR, Angeles City Branch, testified, by way of Judicial Affidavit, that PAGCOR was asked by the BIR (Exhibit "P-4") to provide certifications in relation to the payments made by PAGCOR to Fracojan Catering which is owned by the accused and he provided these certifications. He then identified the Certifications (Exhibits "P-5" and "P-6") issued by his office.[37] The right of the accused to cross-examine Mr. Ozaeta was deemed waived.[38]

The prosecution filed its Formal Offer of Documentary Exhibits[39] on November 8, 2016, offering in evidence Exhibits "P-1" to "P-17", inclusive of submarkings. In the Resolution[40] dated January 26, 2017, the Court admitted the prosecution's evidence except for Exhibits "P-2", "P-10" to "P-13", "P-16", and "P-17".

On the other hand, as the lone witness of the defense, accused testified, by way of Judicial Affidavit[41] executed in Filipino, that the BIR filed a case against her before the DOJ on September 13, 2012 (Exhibits "A-2"[42] and "A-3"[43]). Before the case was filed against her, she operates her catering services known as Fracojan Catering Services. She merely cooks at her house and sells her products there until in year 2010 when she started to deliver food to the Sagip Musmos Program and later on to the employees of PAGCOR in Clark, Pampanga. She started delivering food to the employees of PAGCOR in October 2010. Before that, she delivers food to public schools under

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[35] Minutes of the hearing dated October 19, 2015, docket, CTA Crim. Case No. O-445, vol. I, p. 173; Exhibit "P-15", docket, CTA Crim. Case No. O-445, vol. I, pp. 155-159.
[36] TSN, October 19, 2015 hearing, p. 7.
[37] Minutes of the hearing dated March 16, 2016, docket, CTA Crim. Case No. O-445, vol. I, pp. 207-208; Exhibit "P-14" (although marked as Exhibit "P-16"), docket, CTA Crim. Case No. O-445, vol. I, pp. 194-198.
[38] Minutes of the hearing dated March 16, 2016, docket, CTA Crim. Case No. O-445, vol. I, pp. 207; TSN, March 16, 2016 hearing, pp. 3-7; 12-14.
[39] Docket, CTA Crim. Case No. O-445, vol. I, pp. 279-287.
[40] Docket, CTA Crim. Case No. O-445, vol. I, pp. 332-333.
[41] Minutes of the hearing dated February 22, 2017, docket, CTA Crim. Case No. O-445, vol. II, p. 334, Panghukumang Salaysay (ni Maila B. Laxamana) or Exhibit "A-211", docket, CTA Crim. Case No. O-445, vol. II, pp. 592-601.
[42] Investigation Data Form, docket, CTA Crim. Case No. O-445, vol. I, p. 20.
[43] Joint Complaint Affidavit, docket, CTA Crim. Case No. O-445, vol. I, pp. 288-298.

the Sagip Musmos Program of PAGCOR, which is a charitable work of PAGCOR whereby a budget meal of ₱30.00 is allotted per student.

Accused further testified that she was not able to file an ITR and Percentage Tax Returns for 2010 because, during that time, she inquired from the accounting office of PAGCOR why they withhold 2% and 3% tax from her gross income even if she earns a meager income from the Sagip Musmos Program of PAGCOR which is a charitable work. She was told that the taxes withheld by PAGCOR serve as her taxes to the government. She never intended not to submit an ITR for 2010. She had no reason not to submit an ITR for year 2010 because she could have reported the tax withheld by PAGCOR and availed of allowable deductions like actual expenses she incurred in preparing the food she served and she has a minor child. PAGCOR was able to deduct ₱122,479.51 and ₱314,450.56 from her income in years 2010 and 2011, respectively. Also based on the receipts which she was able to keep, she has incurred expenses amounting to at least ₱322,489.87. She was able to complete the certificates of creditable tax withheld by PAGCOR only in 2015.

She presented the Certificates of Creditable Tax Withheld at Source or BIR Form No. 2307 issued by PAGCOR to her for the year 2010 (Exhibits "A-112" to "A-157"[44]) and 2011 (Exhibits "A-14" to "A-111"[45]), several receipts (Exhibits "A-169" to "A-209"[46]) for expenses she incurred in 2010 and the Certificate of Live Birth of her child (Exhibit "A-210"[47]).

Accused also testified that she was advised by the Accounting Department of PAGCOR in year 2012 that she needs to file an ITR for 2011 because she already started delivering food to the employees of PAGCOR aside from the Sagip Musmos Program. Hence, she submitted an ITR for year 2011. She put the amount of ₱7,531,761.00 in her ITR for year 2011 because that is the only gross income she received from PAGCOR. In fact, she was not able to submit the Certificates of Creditable Tax Withheld at Source for year 2011 because PAGCOR did not give to her the said certificates. She thought that all the taxes withheld from her will be automatically credited to her taxes due.

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[44] Docket, CTA Crim. Case No. O-445, vol. II, pp. 473-518.
[45] Docket, CTA Crim. Case No. O-445, vol. II, pp. 374-472.
[46] Docket, CTA Crim. Case No. O-445, vol. II, pp. 544-565.
[47] Docket, CTA Crim. Case No. O-445, vol. II, p. 566.

Accused also narrated that as she was new to the business, she was not aware that she has to register as a VAT taxpayer should her gross income for the entire year exceeds ₱1,500,000.00. She has no intention at all not to register as a VAT taxpayer and when she learned in 2012, when a criminal case was filed against her, that she needs to register as such, she immediately did on November 26, 2012. The accused said that before the filing of the criminal complaint on September 13, 2012, she did not receive any notice from the BIR requiring her to pay any tax deficiency. The only document she received was the FAN, which she was asked to sign on March 10, 2016.

Accused also mentioned that there are pending criminal cases of the same nature as those pending before this Court filed by the BIR in the Municipal Trial Court Branch 1 and Regional Trial Court Branch 60 in Angeles City. She closed Fracojan Catering Services in 2012 because of business losses. At present, accused has no more source of income and became indigent (Exhibit "A-167"[48] and "A-168"[49]).

On cross examination, accused admitted that she received the Letter of Authority but did not submit her books of accounts and other records because she has not heard from the BIR. She said she was not informed what she must submit. Later on, she found out that she has a case with the BIR. Upon learning of her case, she was not able to submit any documents because she does not know what to submit.[50]

Accused filed her Formal Offer of Evidence[51] on July 4, 2017 through registered mail and received by the Court on July 10, 2017, offering in evidence Exhibits "A-1", "A-2", "A-3", "A-8", "A-9", "A-10", "A-11", "A-13", "A-14" to "A-111", "A-112" to "A-157", "A-158", "A-159", "A-160", "A-161", "A-162" to "A-166", "A-167", "A-168", "A-169" to "A-209", "A-210" and "A-211". In the Resolution[52] dated August 18, 2017, the Court admitted accused's evidence except for Exhibits "A-8", "A-9", "A-10", "A-11", "A-158", "A-159", "A-160" and "A-162" to "A-166".

The case was submitted for decision on October 30, 2017[53], considering the Memorandum (For the Accused)[54] filed through

[48] Certificate of Indigency, docket, CTA Crim. Case No. O-445, vol. II, p. 542.
[49] Certificate of No Property Holdings, docket, CTA Crim. Case No. O-445, vol. II, p. 543.
[50] Minutes of the hearing dated June 21, 2017, docket, CTA Crim. Case No. O-445, vol. II, p. 575; TSN, June 21, 2017 hearing, pp. 6-8.
[51] Docket, CTA Crim. Case No. O-445, vol. II, pp. 577-581.
[52] Docket, CTA Crim. Case No. O-445, vol. II, pp. 605-606.
[53] Resolution dated October 30, 2017, docket, CTA Crim. Case No. O-445, vol. II, p. 632.
[54] Docket, CTA Crim. Case No. O-445, vol. II, pp. 607-627.

registered mail on October 6, 2017 and received by the Court on October 18, 2017 and the Records Verification[55] dated October 20, 2017 stating that the prosecution failed to file a memorandum.

STATEMENT OF ISSUES

The issues[56] stipulated by the parties for the Court's resolution are:

1. Whether or not accused attempted to evade or defeat payment of income tax by not declaring all her income for taxable year 2010.

2. Whether or not accused feloniously failed to file her annual income tax return and pay the corresponding tax for taxable year 2010.

3. Whether or not accused evaded or defeated payment of income tax by substantially under declaring her income for taxable year 2011.

4. Whether or not accused feloniously failed to supply correct and accurate information in her annual income tax return by not declaring her true income earned for taxable year 2011.

5. Whether or not the instant cases were prematurely filed for non-exhaustion of administrative remedies.

6. Whether or not there is indeed tax deficiency payment for 2010-2011.

7. Whether or not accused has intent to defraud and avoid tax payment for 2010-2011 as contemplated by law.

8. Whether or not accused has intent to comply to the government as to the payment of tax due.

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[55] Docket, CTA Crim. Case No. O-445, vol. II, p. 631.

[56] Stipulated Issue, Pre-Trial Order, docket, CTA Crim. Case No. O-445, vol. I, pp. 128-129.

9. Whether or not accused was accorded administrative due process by the BIR.

10. Whether or not this Honorable Court has jurisdiction over the case.

DISCUSSION/RULING

The Court shall first address accused's argument that the complainant failed to exhaust all available administrative remedies prior to the filing of the instant criminal cases.

Accused argues that Section 115 of the NIRC of 1997, as amended, and its corresponding rules and regulations provide that taxpayers found to have under declared their income or failed to register as VAT taxpayers should be notified thereof and given a certain period of time to rectify any mistakes that has been committed in the process of filing and paying the required taxes. Moreover, accused avers that she was not given at least the opportunity to air her side or produce the documents which the BIR allegedly required before the filing of the complaint. Worse, accused stresses that no assessment was made against the accused prior to the filing of the instant cases.

In the case of *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation*[57], the Supreme Court held that an assessment is not necessary before filing a criminal complaint, to wit:

> Private respondents maintain that the filing of a criminal complaint must be preceded by an assessment. This is incorrect, because **Section 222 of the NIRC specifically states that in cases where a false or fraudulent return is submitted or in cases of failure to file a return such as this case, proceedings in court may be commenced without an assessment.** Furthermore, Section 205 of the same Code clearly mandates that the civil and criminal aspects of the case may be pursued simultaneously. In *Ungab v. Cusi*, petitioner therein sought the dismissal of the criminal

[57] G.R. No. 128315, June 29, 1999, 309 SCRA 414.

> 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**. (*Emphasis supplied*)

Moreover, in the case of *Adamson, et al. vs. Court of Appeals, et al.*[58], the Supreme Court held that a crime is complete when the violator has knowingly and willfully filed a fraudulent return, with intent to evade and defeat the tax, *viz*:

> Thus, the applicability of *Ungab v. Cusi* is evident to the cases at bar. In this seminal case, this Court ruled that there was no need for precise computation and formal assessment in order for criminal complaints to be filed against him. It quoted Merten's Law of Federal Income Taxation, Vol. 10, Sec. 55A.05, p. 21, thus:
>
>> **An assessment of a deficiency is not necessary to a criminal prosecution for willful attempt to defeat and evade the income tax. A crime is complete when the violator has knowingly and willfully filed a fraudulent return, with intent to evade and defeat the tax. The perpetration of the crime is grounded upon knowledge on the part of the taxpayer that he has made an inaccurate return, and the government's failure to discover the error and promptly to assess has no connections with the commission of the crime.** (*Emphasis supplied*)

The Court shall now proceed to discuss whether the prosecution was able to discharge the burden of establishing by proof beyond reasonable doubt each and every element of the crimes charged. After all, the prosecution has the burden of proving beyond reasonable ȷc

[58] G.R. Nos. 120935 & 124557, May 21, 2009, 588 SCRA 46.

doubt each element of the crime as its case will rise or fall on the strength of its own evidence, never on the weakness or even absence of that of the defense.[59] Failing to prove the required quantum of evidence, the presumption of innocence must prevail and accused should be acquitted.[60]

Attempt to evade or defeat the payment of income tax for 2010 and 2011 (Criminal Case Nos. O-445 and O-447)

Accused is charged with attempt to evade or defeat the payment of income tax for taxable year 2010 and 2011, under Section 254 of the NIRC of 1997, as amended, which provides:

> SEC. 254. *Attempt to Evade or Defeat Tax.* – Any person who **willfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment thereof** shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Thirty thousand (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*)

To sustain a conviction for attempt to evade or defeat tax under Section 254 of the NIRC of 1997, as amended, the following elements must be established:

1. An attempt in any manner to evade or defeat any tax imposed under the NIRC or the payment thereof; and

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

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[59] *Alferez vs. People of the Philippines, et al.,* G.R. No. 182301, January 31, 2011, 641 SCRA 124, 125.

[60] *The People of the Philippines vs. Santos,* G.R. No. 175593, October 17, 2007, 536 SCRA 489.

In *Commissioner of Internal Revenue vs. The Estate of Benigno P. Toda, Jr.*, the Supreme Court held that tax evasion connotes the integration of three factors:

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

2. An accompanying state of mind which is described as being "evil," in "bad faith," "willful," or "deliberate and not accidental"; and

3. A course of action or failure of action which is unlawful.[61]

Criminal Case No. O-445

As to the first element, it was established, as will be discussed later, that there was payment of income tax that is less than what is legally due from the accused, accused having failed to file an ITR for taxable year 2010. The failure of action, which is unlawful, is the willful non-filing of the ITR for taxable year 2010, considering that it is a crime under Section 255 of the NIRC of 1997, as amended.

However, as to the second element, the prosecution failed to prove that there was "willfulness" or deliberate intent on the part of accused to evade or defeat the payment of income taxes. The prosecution failed to prove by direct or circumstantial evidence that accused, by some overt or affirmative act, indeed had an accompanying state of mind which is described as being evil, in bad faith, willful or deliberate and not merely accidental.

Hence, failing to file a return, standing alone, is not an attempt to evade or defeat tax.

If accused deliberately intended to evade the payment of income tax, she could have likewise omitted to file an ITR and pay her income tax for taxable year 2011. Moreover, she could have withheld presenting the Creditable Tax Withheld at Source or BIR Form No.

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[61] G.R. No. 147188, September 14, 2004, 438 SCRA 290, 299.

2307 issued by PAGCOR, but she presented the same even though it might be adverse to her cause.

Criminal Case No. O-447

As will be discussed later, the prosecution failed to prove that accused filed an inaccurate return resulting in the under declaration of her income for taxable year 2011. Hence, there is doubt whether there was payment of income tax which is less than that known by the accused to be legally due. Consequently, the Court will no longer discuss if there was "willfulness" on the part of accused.

From all the foregoing, the prosecution was not able to prove the guilt of the accused beyond reasonable doubt for the crime of attempt to evade or defeat the payment of income tax under Section 254 of the NIRC of 1997, as amended.

Failure to file ITR for 2010
(Criminal Case No. O-446)

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

> SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* – **Any person required under this Code or by rules and regulations promulgated thereunder to** pay any tax, **make a return,** keep any record, or **supply correct and accurate information**, who **willfully fails to** pay such tax, **make such return**, keep such record, or **supply such correct and accurate information**, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, **at the time or times required by 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. xxx (*Emphasis supplied*)

To sustain a conviction for failure to make or file a return under Section 255 of the NIRC of 1997, as amended, the following elements must be established:

1. Accused is a person required by the NIRC or rules and regulations to make or file a return;

2. Accused failed to make or file the return at the time or times required by law or rules and regulations; and

3. The failure to make or file the return was willful.

As to the first element, it is necessary to determine who are those required to file an income tax return. Sections 51(A) and 74 of the NIRC of 1997, as amended, provide:

> SEC. 51. *Individual Return.* –
>
> (A) *Requirements.* –
>
> (1) Except as provided in paragraph (2) of this Subsection, the following individuals are required to file an income tax return:
>
> (a) Every Filipino citizen residing in the Philippines;
> (b) Every Filipino citizen residing outside the Philippines, on his income from sources within the Philippines;
> (c) Every alien residing in the Philippines, on income derived from sources within the Philippines; and
> (d) Every nonresident alien engaged in trade or business or in the exercise of profession in the Philippines.
>
> (2) The following individuals shall not be required to file an income tax return:
>
> (a) An individual whose gross income does not exceed his total personal and additional exemptions for dependents under Section 35: *Provided,* **That a citizen of the Philippines and any alien individual engaged in**

business or practice of profession **within the Philippine shall file an income tax return, regardless of the amount of gross income**;

xxx xxx xxx

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

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

In relation thereto, Section 32(A)(2) of the NIRC of 1997, as amended, defines what gross income is, to wit:

SEC. 32. *Gross Income.* —

(A) *General Definition.* — Except when otherwise provided in this Title, **gross income means all income** *[initials]*

> **derived from whatever source**, including (but not limited to) the following items:
>
> xxx xxx xxx
>
> (2) **Gross income derived from the conduct of trade or business** or the exercise of a profession; (*Emphasis supplied*)

It was stipulated that the accused is the sole proprietor of "Fracojan Catering Services"[62]. Based on the Certification[63] issued by PAGCOR, it paid Fracojan Catering Services the amount of ₱3,879,132.73, net of withholding taxes, for taxable year 2010. The accused likewise confirmed in her testimony that she delivers food to the Sagip Musmos Program and later on to the employees of PAGCOR.[64] Accused also presented in evidence the Certificates of Creditable Tax Withheld at Source or BIR Form No. 2307 issued by PAGCOR to her for the year 2010 (Exhibits "A-112" to "A-157"[65]).

Based on these pieces of evidence, the Court is convinced that accused received income payments for taxable year 2010 from conducting business as a sole proprietor. Accordingly, accused is required by law to file an ITR for taxable year 2010.

After establishing that the accused is required by law to file an ITR for 2010, the prosecution now has the burden to prove that the accused failed to make or file a return at the time required by law.

Based on the records of the BIR, no ITR was filed by the accused for taxable year 2010 as certified by OIC-Revenue District Officer Rosalina F. Legaspi of RDO No. 21-A, North Pampanga.[66] Moreover, accused admitted in her testimony that she failed to file her ITR for 2010.[67] Hence, the Court finds that despite deriving income payments from PAGCOR, accused failed to file an ITR for taxable year 2010.

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[62] Par. II(A)(2), Stipulated Facts, Pre-Trial Order, docket, CTA Crim. Case No. O-445, vol. I, p. 127;
[63] Exhibit "P-5", docket, CTA Crim. Case No. O-445, vol. I, p. 302.
[64] Panghukumang Salaysay (ni Maila B. Laxamana) or Exhibit "A-211", docket, CTA Crim. Case No. O-445, vol. II, pp. 593-596.
[65] Docket, CTA Crim. Case No. O-445, vol. II, pp. 473-518.
[66] Exhibit "P-8", docket, CTA Crim. Case No. O-445, vol. I, p. 305.
[67] Panghukumang Salaysay (ni Maila B. Laxamana) or Exhibit "A-211", docket, CTA Crim. Case No. O-445, vol. II, p. 593.

Anent the third element, it requires that failure to make or file the return was willful. The term "willful" in tax crime statutes means a voluntary, intentional violation of a known legal duty and bad faith or bad purpose need not be shown.[68]

In *People v. Judy Anne Santos y Lumagui*,[69] the accused was charged with violation of Section 255 by allegedly under-declaring her income. On the issue of willfulness, the CTA ruled as follows:

> Citing *Black's Law Dictionary*, the term "willful" is defined as voluntary and intentional. And in *Merten's Law of Federal Income Taxation*, "willful" in tax crimes statutes is defined as voluntary, intentional violation of a known legal duty.
>
> Applying the foregoing in the case at bench, the element of willful failure to supply correct and accurate information must be fully established as a positive act or state of mind; it cannot be presumed nor attributed to mere inadvertent or negligent acts. (*Citations omitted, underscoring supplied*)

Applying the same to the instant case, the willful failure to file an ITR was not fully established by the prosecution as a positive act or state of mind of the accused.

As to whether there was "willfulness" on the failure to file an ITR, the accused testified that she was not able to file an ITR for 2010 because, during that time, she inquired from the accounting office of PAGCOR why they withhold 2% and 3% tax from her gross income even if she earns a meager income from the Sagip Musmos Program of PAGCOR which is a charitable work. She was told that the taxes withheld by PAGCOR serve as her taxes to the government. She never intended not to submit an ITR for 2010.[70] This testimony was not even objected to by the prosecution and not even raised during the cross-examination.[71]

In this case, the above circumstances merely show the negligence of the accused for relying on the assertion of the PAGCOR accounting office that the withholding tax serves as her taxes to the

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[68] *Ongsiako, Jr., et al. vs. People of the Philippines*, CTA EB Crim. Case No. 031, May 26, 2015, citing Mertens (Law of Federal Income Taxation) Chapter 47.05, p. 28, Vol. 13 cited in *People of the Philippines vs. Estelita Delos Angeles*, CTA Crim. Case No. 0-027, November 25, 2009.

[69] CTA Crim. Case No. O-012, January 16, 2013.

[70] Panghukumang Salaysay (ni Maila B. Laxamana) or Exhibit "A-211", docket, CTA Crim. Case No. O-445, vol. II, p. 593.

[71] TSN, June 21, 2017 Hearing.

government. It also shows accused's lack of knowledge as to her duty to file an ITR, considering that she still had to ask from PAGCOR why taxes were being withheld from her gross income.

As gleaned from accused's Panghukumang Salaysay, accused was informed that the taxes withheld by PAGCOR were the taxes required to be submitted to the government, thus she no longer submitted an ITR based on this assertion by PAGCOR, to wit:

> 16. T: Bakit po kayo hindi nakapagsumite ng Income Tax Return at Percentage Tax Returns noong 2010?
>
> S: Dahil po noong taon pong iyon ay nagtanong po ako sa accounting office ng PAGCOR kung bakit meron akong withholding tax na 2% at 3% gayong nasa Sagip Musmos Program lamang ako naghahatid ng pagkain at halos wala akong kita, ang sabi po sa akin ay iyon na po ang pinaka buwis ko sa gobyerno. Kaya po hindi na ako nakapagsubmit pa ng Income Tax Return dahil ang pagkakaintindi ko po ay iyon na ang buwis ko dahil for charitable work naman ang transaksiyon ko sa PAGCOR. Hindi ko po sinasadyang hindi magpasa ng ITR ma'am.[72]

Accused's lack of willfulness is further shown by her filing of an ITR for 2011, upon being informed that she was required to file an ITR.[73]

Based on the foregoing discussions, lacking the element of "willfulness", the Court acquits the accused of the crime of willful failure to file ITR for 2010 under Section 255 of the NIRC of 1997, as amended.

Failure to Supply Correct and Accurate Information in the ITR (Criminal Case No. O-448)

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

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[72] Docket, CTA Crim. Case No. O-445, Vol. II, Exhibit "P-211", p. 594.
[73] Docket, Vol. II, Exhibit "P-211", Question Nos. 28-29, p. 596.

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

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

3. Such failure to supply correct and accurate information is willful.

As to the first element, based on the discussion earlier, accused is required by law to file a return and to declare all her gross income derived from her catering business.

For 2011, accused filed her ITR but the amount of gross income declared therein differs from the income payments certified by PAGCOR to have been paid to the accused, to wit:

Gross Income Per PAGCOR's Certification[74]	₱11,576,318.99
Sales/Revenues/Receipts/Fees per Accused's ITR[75]	7,531,761.00
Difference	₱ 4,044,557.99

Accused explains in her testimony that she put the amount of ₱7,531,761.00 in her ITR for year 2011 because that is the only gross income she received from PAGCOR. In fact, she was not able to submit the Certificates of Creditable Tax Withheld at Source for year 2011 because PAGCOR did not give to her the said certificates. She thought that all the taxes withheld from her will be automatically credited to her taxes due.[76]

Accused also presented in evidence the Certificates of Creditable Tax Withheld at Source or BIR Form No. 2307 issued by PAGCOR to her for the year 2011 (Exhibits "A-14" to "A-111"[77]). The sum of the income payments declared on these certificates amounts to ₱21,888,302.99. Unfortunately, no explanation was offered why the

[74] Exhibit "P-6", docket, CTA Crim. Case No. O-445, vol. I, p. 303.
[75] Exhibit "8-c", docket, CTA Crim. Case No. O-445, vol. I, p. 308.
[76] Panghukumang Salaysay (ni Maila B. Laxamana) or Exhibit "A-211", docket, CTA Crim. Case No. O-445, vol. II, pp. 596.
[77] Docket, CTA Crim. Case No. O-445, vol. II, pp. 374-472.

income payments made to accused per PAGCOR's Certification (Exhibit "P-6") are different from the income payments per the Certificates of Creditable Tax Withheld at Source issued by PAGCOR.

In view of the inconsistencies of the amount of income payments made to accused per PAGCOR's Certification (₱11,576,318.99) and the Certificates of Creditable Tax Withheld at Source or BIR Form No. 2307 issued by PAGCOR to her for the year 2011 (₱21,888,302.99), the Court has doubts as to the true amount of the total income payments made by PAGCOR to the accused. Moreover, RO Exmundo admitted that he has no personal knowledge on how the Certifications were issued by Mr. Ozaeta and they did not likewise verify the genuineness of the contents of the certifications.[78]

Hence, the Court finds that the prosecution was not able to prove beyond reasonable doubt that the accused failed to supply the correct and accurate information on her ITR filed for taxable year 2011.

As to the civil aspect of these consolidated cases, the same is deemed simultaneously instituted and jointly determined with the instant criminal cases pursuant to Section 7(b)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282, which provides that "the filing of a criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized."

Moreover, it is well-settled that the acquittal of a taxpayer in the criminal case cannot operate to discharge him or her from the duty to pay tax, because that duty is imposed by statute prior to and independent of any attempt on the part of the taxpayer to evade payment. The obligation to pay the tax is not a mere consequence of the felonious acts charged in the information, nor is it a mere civil liability derived from crime that would be wiped out by the judicial declaration that the criminal acts charged did not exist.[79]

However, the evidence presented by the prosecution and admitted by the Court is lacking as to the computation of the deficiency income tax of accused. In the instant cases, the Court cannot consider the Preliminary Assessment Notice (Exhibit "P-16") and the Formal Letter of Demand (Exhibit "P-17") since these exhibits were denied

[78] TSN, July 29, 2015 hearing, pp. 30-31.
[79] *Castro vs. The Collector of Internal Revenue*, G.R. No. L-12174, April 26, 1962, 4 SCRA 1093.

admission.[80] Section 205 of the NIRC of 1997, as amended, provides that "the judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case **as finally decided by the Commissioner**." Thus, while "there is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution",[81] Section 205 of the NIRC of 1997, as amended, "requires that in order to be included in the judgment of said civil liability, it must be the final decision of petitioner [CIR]. Thus, it refers to a formal assessment."[82]

Hence, the Court cannot merely rely on the computation of deficiency income tax found in the Joint Complaint Affidavit[83] that does not even bear the signature of the CIR. Considering that such document is not a formal assessment and does not constitute competent and sufficient evidence in determining the civil liability of the accused as provided under Section 205 of the NIRC of 1997, as amended,[84] the Court cannot include in this judgment an order to pay the deficiency taxes subject of the instant criminal cases.

WHEREFORE, premises considered, accused Maila Laxamana y Baluyot is hereby **ACQUITTED** of the crimes charged in Criminal Case Nos. O-445, O-446, O-447 and O-448 for failure of the prosecution to prove her guilt beyond reasonable doubt.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[80] Resolution dated January 26, 2017, docket, CTA Crim. Case No. O-445, vol. I, p. 333.
[81] *Ungab vs. Cusi, Jr., et al.*, G.R. No. L-41919-24, May 30, 1980, 97 SCRA 877, 883-884.
[82] *People of the Philippines vs. Mendez*, CTA EB Crim. Nos. 038 & 039, September 8, 2017.
[83] Exhibit "P-1", docket, CTA Crim. Case No. O-445, vol. I, pp. 295-296.
[84] *People of the Philippines vs. Mendez*, CTA EB Crim. Nos. 038 & 039, September 8, 2017.

ATTESTATION

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice