REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,	C.T.A. CRIM. CASE NO. O-142
Plaintiff,	For: Violation of Section 255 of NIRC (Failure to Pay Tax)
	Members:
- versus -	UY, *Acting Chairperson and* FABON-VICTORINO, *JJ.*
	Promulgated:
GINA ROHRA y AMARNANI *No. 1207-A Cardona St., Valenzuela, Makati City,* Accused.	MAR 13 2013 ; 9:35 a.m.

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DECISION

Fabon-Victorino, J.:

In the Information dated November 19, 2008, filed with the Court on May 5, 2009, accused **Gina Rohra y Amarnani** is charged with violation of Section 255 of the 1997 National Internal Revenue Code for her alleged failure to pay income tax and value added tax, committed as follows:

> That on or about the 18th day of October 2004, in Makati City, and within the jurisdiction of this Honorable Court, the above-named accused, GINA ROHRA y AMARNANI, a taxpayer who derived income from sources within the Philippines for taxable year 2002, being the sole owner of RGA/NELTRONICS Enterprise and is engaged in the sales of goods

> and therefore mandated under the law to pay the Value-Added-Tax and income tax pursuant to Section 114 (A)(B) and Section 52 (A)(B)(C) respectively, of the 1997 National Internal Revenue Code, did, then and there willfully, unlawfully and feloniously fail to pay her Value-Added Tax (Php 304,893.90) and income tax (Php 946,052.54) liabilities, willfully and deliberately in the total amount of Php1,250,946.44, exclusive of surcharges and interest, after having been given the opportunity to settle the same through notices until final demand has been made in October 2004, but still failed and refused to pay the same to the damage and prejudice of the government.
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> CONTRARY TO LAW

On June 19, 2009, accused personally appeared and voluntarily surrendered her person to the jurisdiction of the Court and posted the recommended bond for her provisional liberty.

When arraigned on February 16, 2010, accused, duly assisted by counsel, pleaded "NOT GUILTY" of the crime charged.

On June 21, 2010, the parties filed their Joint Stipulation of Facts & Issues on the basis of which a Pre-Trial Order was issued on July 8, 2010.

To prove its case, the prosecution presented Roberto A. Baquiran, Ronaldo Alday, Beatriz S. Peliño, Raquel Cristina V. Baltazar and Antonio Salazar, all employees of the Bureau of Internal Revenue (BIR).

Witness **Roberto A. Baquiran** testified that prior to his appointment as Chief of the National Investigation Division of the BIR in June 2009, he was the Revenue District Officer of Makati Region for eight (8) years, from year 2001 to 2009. Sometime in November 2004, he executed a Complaint Affidavit[1] in relation to the present criminal case against accused. On November 16, 2004, he restated his declarations in a Joint Affidavit[2] he executed with Marissa Rabago Uy, Acela E. Sese, and Sheila Marie A. Guevarra. The two affidavits were sworn to before the State Prosecutor of the Department of Justice (DOJ) only on September 12, 2005 and September 26, 2005, respectively.

Per his Complaint Affidavit, accused is the owner and responsible officer of Neltronics Enterprise with business address at 1207-A Cardona Street, Valenzuela, Makati City. By virtue of the Summary List of sales and purchases of goods and services subject to VAT filed by taxpayer Star Appliance Center, Inc., the BIR discovered that for the 4th quarter of 2002, Neltronics sold appliances and other consumer products to Star Appliance amounting to Php8,632,446.40. However, the VAT returns of Neltronics filed with the BIR reported a total sales for the same quarter of only Php 226,218.20, thus a discrepancy of Php8,406,228.20 or 97% of the total actual sales. In view thereof, a Letter Notice LN No. 049-R-02-04-S-01113 dated October 17, 2003 was served upon Neltronics by BIR Data Entry Machine Operator II Ronnie R. Alday on March 30, 2004, requiring accused to reconcile the discrepancy or settle the tax liability. Despite service of Final Demand on October 13, 2004, accused failed to settle her tax liability in the total amount of Php 2,281,238.75. Neither did she avail of amnesty under Voluntary Assessment & Abatement Program (VAAP) pursuant to RR No. 12-2001 and 17-2002. For this reason, he recommended the filing of a criminal case against accused.

In open court, Baquiran clarified that the investigation of accused was triggered by the Letter Notice LN No. 049-R-02-04-S-01113 dated October 17, 2003 signed by Commissioner of Internal Revenue Guillermo Parayno, Jr.[3] It was also the latter who referred the case of accused to the Office of the City Prosecutor of Makati City via an undated referral letter.[4] The case was later transferred to the DOJ

[1] Exhibits D to D-2, docket pp. 21-23.
[2] Exhibits E to E-2, docket pp. 24-26.
[3] Exhibits K and K-1.
[4] Exhibits A to A-3, docket pp. 17-20.

main office in Manila by virtue of the Order[5] dated August 9, 2005 and 1st Indorsement letter dated August 9, 2005.[6]

Baquiran specified that the Letter Notice of October 17, 2003 was received by one Jenilyn Astronomo on March 30, 2004. The second Letter Notice dated January 26, 2004 bearing the same advise was also personally delivered at accused' registered business address at 1207-A Cardona Street, Valenzuela, Makati City and was also received by one Jenilyn P. Astronomo. The latter however failed to indicate the date of her receipt but wrote therein accused' telephone number. The same letter was likewise received by one Irene Corpuz, who wrote the date 2-10-04. Thus, he presumed that these two persons were present at the office of accused when the notice was served.[7]

On October 13, 2004, [8] the Final Demand was served upon the business address of accused which was received by one Bing Lirio. Again, accused failed to submit any controverting evidence or pay the stated tax liability. Their record is bereft of any indication that accused availed of an abatement or amnesty program.[9]

On cross-examination, Baquiran admitted that he did not know if accused was present at the time the three (3) notices were served by Ronnie Alday [10] at her business address. He relied on the received copies of the documents served which show the name of Jenilyn P. Astronomo, Bing Lirio and Irene Corpuz as those who received the letter notices. He is not certain though if the three (3) were duly authorized to receive communications for accused. It is possible that a taxpayer may change address, hence, may not be able to receive communications from the BIR.

Baquiran admitted that the assessment against accused was solely based on the Summary List of sales and purchases submitted by Star Appliance to the BIR. The BIR summarized the information gathered from the Summary

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[5] Exhibit C, docket p. 45.
[6] Exhibit B, docket p. 44.
[7] Exhibits L to L-3.
[8] Exhibits M to M-2.
[9] Exhibits O to O-2.
[10] Exhibit N.

List and furnished them with a copy thereof. He and his co-affiants relied on the Letter Notice with attachments signed by Commissioner Parayno and considered the information therein conclusive. He and his co-affiants did not verify the content of the Summary List considering that Star Appliance was not within the jurisdiction of his district office and to call the taxpayer under that circumstance was improper. Neither did they examine the sales invoices or books of account of accused before the case against accused was filed with the DOJ to verify the information supplied to them by the main office. They only examined the returns filed by accused and compared them with the Summary List of sales and purchases submitted by Star Appliance. For this reason, the assessment from which the instant case is hinged may be deemed a jeopardy assessment. In any event, he would not have been allowed to file this case had it involved a jeopardy assessment. Under RR No. 6-2000, a jeopardy assessment refers to a delinquency tax assessment which was assessed without the benefit of a complete or partial audit by an authorized revenue officer.

Accused paid a compromise settlement for her tax liability but only after the complaint was filed against her with the DOJ.

Prosecution witness **Ronaldo R. Alday** testified that one of his duties as a Data Entry Machine Operator of the Collection Section of RDO 49, North Makati of the BIR is to save and encode non-payment returns. He also delivers letters and notices to taxpayers. As stated in his Affidavit of Service[11] dated November 4, 2004, he personally served the letter notice dated October 17, 2003 with LN No. 049-R-02-04-S-01113, letter dated January 26, 2004, and Final Demand letter dated October 11, 2004[12] at 1207-A Cardona Street, Valenzuela, Makati City, the business address of accused. The first and the second notices were received by Jenilyn P. Astronomo,[13] while the Final Demand letter of October 11, 2004[14] was received by Bing Lirio on October 13, 2004.[15] Without asking for proof, he relied on the

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[11] Exhibit N.
[12] Exhibit M.
[13] Exhibits L to L-2.
[14] Exhibit M.
[15] Exhibit M-2.

representation of Jenilyn P. Astronomo as an employee and Bing Lirio, as the accountant, respectively, of accused.

On cross-examination, Alday claimed that he went to the business address of accused thrice to serve the subject letter notices, as stated in his Affidavit of Service[16] executed on November 4, 2004 for the purpose of filing the instant case. To date, he is still not aware of the circumstances surrounding the issuance of the said letters.

Beatriz S. Peliño testified that she has been working in the BIR for thirty-four (34) years, the last eight (8) years of which as the Chief of the Large Taxpayer Document Processing and Quality Assurance Division under the Large Taxpayer Services. Her Division is responsible for the daily monitoring of tax collections of 1,382 large taxpayers nationwide and receives reports submitted to the BIR. As chief of the Division, she issues certificates of payments, monitors compliance with the submission of inventory list of sales and purchases and directs the sending of notices to non-compliant or delinquent large taxpayers.[17]

She further testified that under Revenue Regulation (RR) No. 13097, as amended by RR No. 13-97, submission of Summary List of sales and purchases by a large taxpayer is mandatory. The BIR prescribes and provides a specific program and format for the said Summary List such that it cannot be accessed by an ordinary computer. The Summary List is usually filed with the Office of the Large Taxpayers Assistance Division in a diskette form as it contains confidential information supplied by the taxpayers themselves. The contents of the diskette are not allowed for viewing until they are manually uploaded in the Information System and Operation Service (ISOS) of the BIR. Once uploaded, it cannot be changed, altered or modified.

Sometime in 2002, she received a verbal instruction from the Office of Commissioner Parayno to verify the Summary List of sales and purchases submitted by Star Appliance for 2002 particularly those from Neltronics. Upon her formal request, the ISOS emailed to her a document in

[16] Exhibit N.
[17] Exhibits F to F-3.

response. Although the document downloaded was not the Summary List of sales and purchases submitted by Star Appliance to the BIR for the 4th quarter of 2002, it was nonetheless based on the said Summary List only that it was presented in a different format.

Star Appliance submitted to the BIR a Summary List of sales and purchases of goods and services for the 4th quarter of year 2002 in a floppy diskette. It showed that Star Appliance purchased goods from accused during the 4th quarter of 2002 in the amount of Php 8,632,446.40,[18]with a corresponding output VAT of Php 863,244.64.[19] However, she did not verify the veracity of this information due to her limited authority.

On cross-examination, the witness merely stated that Neltronix is not a large taxpayer as Star Appliance.

Raquel Cristina V. Baltazar declared that she occupies the position of Director I at the BIR National Office. She is with the information system group under the ISOS and specifically involved in the development of information program or systems for the use of the BIR. She is the Project Manager for Application Systems Development since 2002. She is in-charge of the development of the computer system or programs on which the data submitted by the taxpayer to the BIR District Offices are uploaded and processed for discrepancy upon written instruction from the office of the BIR Commissioner.

The data may either come from third party information or from tax declarations filed by the taxpayers. The generation of reports from the system is automated rendering manipulation of information uploaded remote. The Quarterly Report on Third Party Information upon which the instant case was based was generated through this computer system. She, however, had no participation of any kind in the preparation of the said Quarterly Report. The task belongs to a different BIR division. Her function is solely to develop computer systems or programs for the use

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[18] Exhibit P-4.
[19] Exhibit P-5.

of the BIR. Finally, she does not verify the accuracy of the data manually uploaded into the system.

Antonio Salazar testified that as a Computer Operator IV of the ISOS, BIR main office, he only prints reports generated by the computer program specifically letter notices on discrepancies and those pertaining to refunds upon instruction of the Chief of the ISOS. Once the report is printed, it cannot be revised or modified since it can no longer be accessed. His only participation in the instant case is the printing of the Quarterly Report on Third Party Information involving Neltronics owned by accused, a photo copy of which he presented in Court.[20] He did not verify the data stated in the said Quarterly Report on Third Party Information.

With the admission of the offered exhibits, [21] the prosecution rested its case.

When called to the witness stand, accused **Gina Rohra y Amarnani** denied the accusation against her. She however admitted that she is the proprietor of Neltronics Enterprise and the person charged in the instant case.

Accused explained that this case arose from the assessment issued against her by the BIR in the amount of Php8.6 Million involving Neltronics sales to Star Appliance Center Inc. for the 4th quarter of 2002. The said assessment was issued without the required examination of her records, books of account, sales invoices and receipts pertaining to the questioned quarter. As reflected in Form 2307 and the Certification issued in her favor by SM Appliance Center, her sales to Star Appliance for the 4th quarter of 2002 was only Php3,487,269.00.[22]

Contrary to the testimonies of prosecution witnesses, the letter notices and demand letter were not personally served upon her on the alleged dates. The letter of October 17, 2003 was received by Jenilyn P. Astronomo as well as that of January 26, 2004, together with Irene Corpuz, both

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[20] Exhibit H.
[21] Docket p. 341.
[22] Exhibits 5 and 6.

of whom are employees of her accountant Bing Lirio. The telephone number under the receiving signatures is also not hers. The PAN dated May 27, 2004 with attached Details of Discrepancies has no indication of receipt while the Final Demand Letter dated October 11, 2004[23] shows that it was received by Bing Lirio, with a contact number beneath the receiving signature.

It is untrue that the alleged letter notices were personally served at her former business address at No. 1207-A, Cardona Street, J.P. Rizal Makati City. The truth is that they were picked-up by Bing Lirio from the BIR Makati office, per instruction of the said office.

Accused pointed out that Astronomo, Corpuz and Lirio were never authorized to receive any communication or correspondence for and in her behalf. Bing Lirio holds office and conducts her works with her own set of employees at the 2nd Floor of Guadalupe Building, 7463, Batican Street, San Antonio Village, Kamagong, Makati City.

She learned about her alleged tax liability when it was already for preliminary investigation at the City Prosecutors Office of Makati. She attended the proceeding in the DOJ unaccompanied by a lawyer. The non-appearance of the BIR during the proceeding, led her to conclude that it was the end of the case. Only during the reinvestigation that she submitted her Counter-Affidavit dated July 30, 2009. [24] Sometime in 2010, she learned that the instant criminal case was eventually filed with the Court of Tax Appeals (CTA). Prior to the formal charge, the BIR did not conduct any audit or examination of her tax records and books of account.

This notwithstanding and as a sign of good faith, she offered to settle her alleged tax deficiency with the BIR through a Letter dated January 18, 2010[25] addressed to Director Alfredo Misajon of RRO-8 Makati. She paid a compromise settlement of P500,378.56, representing 40% of the assessed tax deficiency as evidenced by a Payment

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[23] Common exhibit, Exhibit M.
[24] Exhibit 10, docket pp. 196-199.
[25] Exhibit 7, docket pp. 192-193.

Form (BIR Form No. 0605)[26] and Development Bank of the Philippines BIR Tax Payment Deposit Slip dated December 15, 2009. [27]

She also belies the contention that her sales for the 4th quarter of 2002 amounted to Php 8,632,446.40 as stated in the Quarterly Report on Third Party Information on sales and purchases[28] presented by the prosecution. Her own records show that Neltronics' sales to Star Appliance from October 1 to December 31, 2002 was only Php 3,487,269.00. Even her client SM Appliance Center confirmed this fact through a Certification dated February 14, 2005[29] and bolstered by the Certificate of Creditable Tax Withheld at Source (BIR Form 2307)[30] for the 4th quarter of 2002. SM Appliance Center and Star Appliance Center Inc. are one and the same company as indicated in BIR Form 2307.

The signatures appearing above the name Gina Rohra in the Annual Income Tax Return[31] for the year 2002 as well as in the Quarterly VAT Return[32] for the 4th quarter of the same year are not hers.

On cross-examination, accused added that she established Neltronics Enterprise in 1999, with Bing Lirio as her accountant. From 1999 to 2004, her business address was No. 1207-A, Cardona Street, J.P. Rizal Makati City. In January 2004, she transferred to her current business address at 2024 Layug Street, San Miguel Village, Makati City. Thus, the letter notices could not have possibly been served upon her at her former address on February 10, 2004, March 30, 2004, and October 13, 2004, since she already vacated the premises as of January 2004. She informed the BIR of her change of address but has no proof to substantiate it. But to prove her transfer to her new business address in January of 2004, accused presented two PLDT Statements of Account as of January 17, 2004,[33] and

[26] Exhibit 8, docket p. 194.
[27] Exhibit 9, docket p. 195.
[28] Not admitted for being a photocopy of the purported document.
[29] Exhibit 5, docket p. 189.
[30] Exhibits 6 to 6-a, docket pp. 190-191.
[31] Exhibit I, docket pp. 200-201.
[32] Exhibit J, docket p. 202.
[33] Exhibit 11, docket p. 344.

February 17, 2004,[34] both addressed to Naresh Kanyalal Rohra.

Bing Lirio never worked at the office of Neltronics. Despite the apparent lapses committed, she continues to retain her as her accountant as the latter is in possession of all her accounting records. Accused hastened to add though that Lirio furnishes her with copies of her accounting documents.

When confronted, accused was however unable to explain the discrepancy between the total sales of Neltonics of only Php P748,105.14[35] appearing in her Amended Annual Income Tax Return for year 2002,[36] and her total sales of Php 3,487,269.00,[37]appearing in the Certificate of Creditable Tax Withheld at Source[38] issued in her favor by Star Appliance. But accused emphasized that the said Amended Annual ITR for 2002 was prepared by her accountant and the signature appearing thereon is not hers.

In her letter[39] dated January 18, 2010 addressed to Dir. Alfredo Misajon, she offered to settle her alleged tax liability even in the absence of any audit or examination of her records and books of account by the BIR.

Accused informed the Court that she only reached high school. She meets with Bing Lirio every quarter of the year for accounting matters. In their previous meetings, the latter never mentioned her problem with the BIR.

Defense witness **Iris P. Medina**, the AVP for Corporate Services of Star Appliance Center, testified that accused' client Star Appliance Center, Inc. and SM Appliance Center are one and the same business entity. Star Appliance Center, Inc. is the corporate name while SM Appliance Center is the trade name. From the last quarter of 2004 until 2005, she was the company's AVP Controller under the

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[34] Exhibit 12, docket p. 345.
[35] Exhibit I-3, docket p. 200.
[36] Exhibit I, docket p. 200.
[37] In the document, the figures are for Oct-P1,062,119.00; for Nov-P1,117,356.00; for Dec-1,307,794.00=P3,487,269.00.
[38] Exhibits 6 to 6-a, docket pp. 190-191.
[39] Exhibit 7, docket pp. 192-193.

Accounting Department which was responsible for the issuance of BIR Forms to suppliers as well as certifications when requested. As such, she paid suppliers, collected receivables from clients, and prepared financial statements for presentation to the management.

As the AVP Controller, she issued a Certification[40] dated February 14, 2005 in behalf of SM Appliance Center showing its total purchases from Neltronics for the period covering October 1 to December 31, 2002 in the amount of Php3,487,269.00. She reconciled the pertinent documents composed of sales invoices of Neltronics and the purchase order/s of Star Appliance before she issued the Certification. All pertinent sale transactions were considered supported as they were with sufficient documents. The Certificate of Creditable Tax Withheld at Source[41] for the 4th quarter of 2002 issued by Star Appliance in favor of Neltronics likewise reflects the same total sales of Netronics to Star Appliance.

She used the same verified documents of the sale transactions between Neltronics and the Star Appliance when she prepared the Summary List of sales and purchases of the company submitted to the BIR. These documents however are no longer available since Star Appliance keeps transaction records for only five years. At the time that she issued the Certification in favor of Neltronics, all the sales invoices pertinent to the sales for the questioned period were in her possession. She and SM Appliance Accounting Supervisor Ma. Ellen R. Borabo signed the said Certification of February 14, 2005 before it was issued to Neltronics. This indicates that the supporting documents used for its issuance were verified correct.

To prove her employment with Star Appliance, the witness presented her employee Identification Card[42] which shows that Star Appliance Center, Inc. is the corporate name while SM Appliance Center is the trade name. SM Appliance Center and Star Appliance Center, Inc. share the same address at Corporate Offices at Bay Boulevard, Pasay City.

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[40] Exhibit 5, docket p. 189.
[41] Exhibits 6 to 6-a, docket p. 190-191.
[42] Exhibit 13, docket p. 352.

The witness pointed out that neither her name nor her signature appears in the Summary List of sales and purchases presented by the prosecution. She could not recall if Star Appliance submitted the Summary List of purchases to the BIR in printed form or through a diskette.

On the other hand, her signature appears in BIR Form 2307 for the period October 1, 2002 to December 31, 2002 issued in favor of Neltronics.[43] She had a direct hand in the payment of purchases from Neltronics. She could not recall if the BIR conducted an audit on Neltronics' sales to Star Appliance.

Eufrocina C. Lirio, a consultant and the accountant of accused for the past eleven (11) years was the last defense witness to take the witness stand. She confirmed that the former business address of accused was No. 1207 Cardona Street, J.P. Rizal Makati City and that accused moved in late 2003 or early 2004 to her present address at 2024 Layug Street, San Miguel Village, Makati City. As an accountant, she has her own staff and works only in her office located at 7462 Batican Street, San Antonio Village, Makati City.

Lirio admitted that the signature at the bottom of the Final Demand[44] letter dated October 11, 2004, under the name Bing Lirio is hers. Bing is her nickname. Jenilyn P. Astronomo whose name appears in the letters dated October 17, 2003 and January 26, 2004 is her employee. So with Irene Corpuz who allegedly received the letter dated January 26, 2004. The letter notices presented by the prosecution were not received at the business address of accused because she personally picked them up from the BIR Office in Makati. When the BIR failed to locate accused at her old business address, the BIR called her office advising her to pick up the mail matters addressed to accused. With the letter notices, she went to the Legal Department of the BIR for the status of the case. She was informed that a complaint was already filed with the Prosecutor's Office of Makati. Only then did she inform accused about the complaint.

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[43] Exhibit 6.
[44] Exhibit M, docket p. 214.

Bing Lirio concurred with accused that the signature[45] in the Amended Annual Income Tax Return[46] for 2002 above the name Gina Rohra is not of accused but of Jenilyn P. Astronomo, her employee. The latter signed it in behalf of the accused since it was the last day for filing of the return. The BIR did not conduct an audit of the records of Neltronics pertaining to the assessments issued.

On cross-examination, Lirio claimed that the BIR got her office address from the Audit Reports submitted to the BIR on April 21, 2003.[47] She could not recall when the BIR called her office. Rarely does she go to the office of accused who usually sends her accounting records to her office.

In a Resolution dated December 1, 2011, the Court admitted most of the documentary exhibits offered by accused but denied the admission of Exhibits 1, 1-A, 3, 3-A, 4, 14, 14-A, and 15 for failure to submit the originals of the purported documents for comparison.

Despite the opportunity granted, the prosecution failed to file the required memorandum. Only accused complied with the Court's directive on March 3, 2012.

THE RULING OF THE COURT

It is basic rule in evidence that the burden of proof lies on the party who makes the allegations – *et incumbit probatio, qui dicit, non qui negat; cum per rerum naturam factum negantis probation nulla sit* (The proof lies upon him who affirms, not upon him who denies since by nature of things, he who denies a fact cannot produce any proof).[48]

Further, under the Constitution, accusation is not synonymous with guilt. In a criminal case, such as the instant case, the accused is presumed innocent until proven otherwise. It is therefore incumbent upon the prosecution to prove the guilt of accused for the crime charged beyond

[45] Exhibit 16.
[46] Exhibits I to I-1, docket pp. 200-201.
[47] Exhibit 15.
[48] Ching v. Nicdao, 522 SCRA 316.

reasonable doubt. The burden of proof rests on the prosecution and never shifts to the accused.[49] The prosecution who alleges the commission of the offense charged and not accused who denies the infraction of the law, must prove.

In other words, the prosecution bears the *onus probandi* of showing beyond moral certainty that each and every essential element of the crime charged exists to sustain a conviction. Otherwise, the scale of justice must necessarily tilt in favor of accused who deserves an acquittal.

Under the Information, accused is indicted for violation of Section 255 of the NIRC of 1997, as amended, for alleged failure to pay VAT in the amount of Php 304,893.90 and income tax of Php 946,052.54 for the taxable year 2002. Section 255 reads as follows:

> SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* – Any person **required under this Code or by rules and regulations** promulgated thereunder **to pay any tax**, make a return, keep any record, or supply correct and accurate information, who **wilfully 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.
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Thus, the prosecution must prove the following essential elements of the above provision, to wit: (1) that accused Gina Rohra y Amarnani is required under the law, rules and

[49] Caugma V. People, 486 SCRA 611.

regulation to pay the assessed VAT and income tax, (2) that she wilfully failed to pay them; (3) at the time required by law, rules and regulations.

It is undisputed that accused Gina Rohra Y Amarnani is the sole proprietor of Neltronics Enterprise who derived income from sales of appliances and other consumer products to Star Appliance Center, Inc. during the 4th quarter of 2002, or from October 1 to December 31, 2002. In fact, in their Joint Stipulation of Facts & Issues dated June 17, 2010, the parties stipulated that accused is the sole owner of Neltronics and the person charged and arraigned under the subject Information.

Likewise undisputed is the fact that accused is a VAT registered taxpayer with TIN 205-898-425-000 and her Quarterly VAT and Annual Income Tax Returns covering the period in question were filed as required by law. In fact, the BIR investigating team composed of Roberto A. Baquiran, Marissa Rabago Uy, Acela E. Sese, and Sheila Marie A. Guevarra used these tax returns and referred to them in their assessment against accused. Thus, under Section 114(A) and (B), and Section 51 (A), accused is the person required by law to file a return and pay the corresponding taxes due from her sale transactions with Star Appliance for the last quarter of 2002.

But did accused wilfully fail to pay the assessed tax liabilities at the time she was legally required to the damage and prejudice of the government in the amount of Php1,250,946.44, exclusive of surcharges and interest?

The answer is in the negative.

It has been held that before one is prosecuted for wilful attempt to evade or defeat any tax under Sections 253 and 255 of the Tax Code, the fact that a tax is due must first be proved.[50]

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[50] Commissioner of Internal Revenue, et al. vs. Court of Appeals, et al., G.R. No. 119322, June 4, 1996.

As admitted by the prosecution, the investigation of accused for alleged non-payment of taxes was triggered by the verbal instruction of former BIR Commissioner Guillermo Parayno to look into the Summary List of sales and purchases submitted by Star Appliance for 2002 with particular attention to its purchases from Neltronics owned by accused.

In compliance thereof, the Chief of the Large Taxpayer Document Processing and Quality Assurance Division Beatriz S. Pelino requested the Information System and Operation Services or ISOS of the BIR for the necessary data for the conduct of investigation against accused.

Acting on the said request, Raquel Cristina V. Baltazar, the Project Manager for Application Systems Development of the BIR, caused the processing of data requested through a computer information system that she developed for the use of the BIR. After the computerized matching of the purchases made by Star Appliance as appearing in its Summary List of sales and purchases submitted to the BIR against the sales declared in the VAT and Annual Income Tax Returns of accused, a document denominated as the Quarterly Report on Third Party Information was generated.

The said Quarterly Report on Third Party Information was printed by Computer Operator IV Antonio Salazar and was subsequently e-mailed to Beatriz S. Peliño. The document revealed the following discrepancy:

Per Summary List of Purchases submitted by your Star Appliance	8,632,446.40
Sales per Tax Return	226,218.20
Discrepancy in Sales (under-declaration)	8,406,228.20
Percentage (%) of Discrepancy	97.38

Significantly, Beatriz S. Peliño, Raquel Cristina V. Baltazar and Antonio Salazar admitted that they did not verify or validate any of the information reflected in the Quarterly Report on Third Party Information on the ground that it was beyond their authority. All of them candidly declared that they had no participation in the gathering of information reflected in the document or in the preparation thereof.

Even Baquiran, who claimed to be part of the investigating team, categorically testified that neither he nor the other members of the investigating team validated the data in the Quarterly Report on Third Party Information to determine the propriety and correctness of the assessment against accused. He testified that on October 17, 2003, a Letter Notice with LN. No. 049-R-02-04-S-01113 signed by former Commissioner Parayno was issued directing accused to either pay the discovered tax liability or submit controverting evidence to refute the findings of discrepancy. This was followed by a Letter Notice dated January 26, 2004 of the same tenor and a Final Demand for payment. When nothing was heard from accused, he, as the BIR Revenue District Officer of Makati Region, recommended the filing of the instant criminal case against accused with the City Prosecutor of Makati.

Baquiran admitted that the criminal case was filed without them conducting the required examination or audit of the records, books of accounts, or sales invoices of accused pertaining to her sales to Star Appliance during the last quarter of 2002. They merely relied on the endorsement letter signed by former BIR Commissioner Parayno attached to the Letter Notice dated October 17, 2003, and assumed that the information therein were valid and correct if not conclusive.[51] In view thereof, Baquiran intimated that the assessment issued against accused may be deemed a jeopardy assessment.

Baguiran blamed accused for the lapses committed saying that their failure to conduct the required examination of the records and books of account of accused to determine the accuracy of the initial finding of discrepancy was due to the latter's inability to submit documents required in the letter notices. But he himself admitted that it was not accused upon whom the letter notices were served. Per the documents in his possession, the letter notices were received by persons named Jenilyn P. Astronomo, Irene Corpuz and Bing Lirio. He did not even know if accused was

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[51] TSN. August 12, 2010, pp. 104-109.

at all present when the three named persons received the letter notices.

Even Ronaldo Alday, who claimed to have served the letter notices at the business address of accused, confessed that the letter notices were received by persons other than accused, namely, Jenilyn P. Astronomo, Irene Corpuz and Bing Lirio. As proof of service of the letter notices, he executed an Affidavit of Service. But this Affidavit is anything but credible having been executed on November 4, 2004, or far remote from the dates of alleged service of the subject letter notices. Without pretensions, Alday admitted that he executed the Affidavit of Service only for the purpose of filing a criminal case against accused.

The foregoing admissions by no less than the prosecution witnesses lend credence to the contention of accused that Alday could not have possibly served the letter notices upon her on the alleged dates because she already vacated her former place of business at No. 1207-A Cardona St., J.P. Rizal, Makati City as early as January of 2004, as evidenced by the PLDT statements of account for January and February 2004. Moreover, she learned about the assessment only after her accountant Bing Lirio informed her that it was already for preliminary investigation at the Makati prosecutor's office.

In corroboration, Bing Lirio testified that the letter notices were not served upon accused as she personally picked them up from the BIR Makati office per advice from the said office when it failed to locate accused at her registered business address. According to Lirio, at the time of the alleged service of letter notices, accused had long transferred to No. 2024 M. Layug St. Barangay Poblacion, San Miguel Village, Makati City. Only after receipt of the letter notices and verification of the status of the assessment that she informed accused about it.

During the trial, prosecution attempted to seal the indictment of accused by presenting (1) a photocopy of Summary List of Sales & Purchases for the Year 2002 provisionally marked as Exhibit "G"; (2) a photocopy of Quarterly Report on Third Party Information on Purchases

Per Taxpayer marked as Exhibit "H"; and (3) the original of the Summary List of Sales of Star Appliance Center, Inc. from Neltronics Enterprise for TY 2002 marked as Exhibit "P". However, these three documentary exhibits upon which the alleged assessment and subsequent prosecution of accused were based were not formally offered in evidence not even as part of the testimonies of the prosecution witnesses.[52] The prosecution did not even attempt to explain why the originals of Exhibits "G" and "H" were not presented for comparison and why Exhibit P, which was an original document, was not even formally offered in evidence. The prosecution did not even endeavour to take any action to rectify the lapses.

Elementary is the rule that evidence not formally offered will not be considered in the determination of the case. Documents to be admitted by the Court should be formally offered and shown to the opposing party so that the latter may have the opportunity to object thereto.[53] The mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence. Any evidence which a party desires to submit for the consideration of the court must formally be offered by the party; otherwise, it is excluded and rejected.[54] In other words, they have no probative value.

In fine, there was no valid assessment for which accused is obligated to pay. The prosecution utterly failed to establish that the assessment was valid and correct and that notices thereof were duly served upon accused. From the declarations of prosecution witnesses, accused was not even accorded the required due process before the instant case was referred to the Makati City Prosecutor's Office for preliminary investigation. In the absence of evidence that accused was assessed in accordance with law and that she had been duly notified and was aware of the subject assessment, the accusation that she wilfully failed to pay the deficiency tax must fail.

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[52] Docket, pp. 000325 to 000330.
[53] Ramcar vs. Hi-Power Marketing, G.R. NO. 157075, July 17, 2006 (emphasis supplied).
[54] People vs. Villanueva, G.R. No. 181829, September 01, 2010.

Significantly, the testimony of defense witness Iris P. Medina, the AVP for Corporate Services of Star Appliance Center belied the contention of the prosecution that for the last quarter of 2002, Neltronics sold appliances and other consumer products to Star Appliances in the total amount of Php8,632,446.40. Medina explained that upon request, she issued in behalf of SM Appliance Center a Certification dated February 14, 2005 showing that total purchase of Star Appliance from Neltronics for the last quarter of 2002 was only Php3,487,269. She issued the Certification based on the documents of each and every transaction of Star Appliance with Neltronics, such as purchase orders of Star Appliance and sales invoices of Neltronics. These were the same documents utilized in the preparation of the Summary List of sales and purchases for the last quarter of 2002 that Star Appliance submitted to the BIR. SM Appliance Accounting Supervisor Ma. Elene R. Borabo and herself signed the Certification which simply means that all the supporting documents used for the issuance of the Certification were verified correct. Although these documents were in her possession at the time the Certification was issued, they no longer exist as the company's accounting records are kept for only five years. Medina also noted that the Summary List of sales and purchases presented by the prosecution and marked as Exhibit "G" did not bear her signature.[55]

The Court cannot also close its eyes on the fact that despite the lack of due notice and opportunity to present her side, accused formally offered to settle her alleged tax liability before the case was filed in Court.[56] In fact, she paid a compromise settlement of Php 500,378.56, representing 40% of the assessed tax deficiency, before the case was filed in court.[57]

The term "willful" is defined as voluntary and intentional.[58] In tax crimes statutes, "willful" is defined as voluntary or intentional violation of a known legal duty. [59]

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[55] TSN, July 19, 2011, pp. 48 to 50.
[56] Exhibit 7.
[57] Exhibit 8.
[58] Black Law Dictionary 8th Ed., p. 1630.
[59] Mertens Law of Federal Income Taxation, Vol. 15, 1988 Ed., Chapter 55A, p. 76.

In the case of Commissioner of Internal Revenue v. The Estate of Benigno P. Toda, Jr., et al.,[60] the Supreme Court ruled as follows:

> 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] *(Boldfacing supplied)*

Further, in the case of Commissioner of Internal Revenue v. Japan Air Lines, Inc., et al.,[62] it was held, thus

> The willful neglect to file the required tax return or the fraudulent intent to evade the payment of taxes, considering that the same is **accompanied by legal consequences, cannot be presumed.** [63] The fraud contemplated by law is actual and constructive. **It must be intentional fraud, consisting of deception wilfully and deliberately done or resorted to in order to induce another to give up some legal right.** *(Boldfacing supplied)*

Applying the foregoing principles in the case at bench, the element of willful failure to pay the correct assessed amount must be fully established as a positive act or state of mind which condition the prosecution utterly failed to satisfy. That condition cannot be presumed nor attributed to mere inadvertence or negligent acts. It was also held that mere understatement of a tax is not itself proof of fraud for the purpose of tax evasion.

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[60] G.R. No. 147188, September 14, 2004, 438 SCRA 290.
[61] De Leon, Fundamentals of Taxation, 1988 Ed., citing Batter, Fraud under Federal Tax Law, 1953 Ed.
[62] G.R. No. 60714, October 4, 1991, 202 SCRA 450.
[63] Commissioner of Internal Revenue v. Air India and the Court of Tax Appeals, G.R. No. 72443, January 29, 1988, 157 SCRA 648.

Even granting that the denial of accused is a weak defense, the same will not justify her conviction. Her conviction must rest on the strength of the evidence of the prosecution and never on the weakness of her defense.[64] It is safely entrenched in our jurisprudence that the evidence for the prosecution must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense. The Court cannot magnify the weakness of the defense and overlook the prosecution's failure to discharge the *onus probandi*.[65] To repeat, accused is presumed innocent and the prosecution utterly failed to prove otherwise. To overcome such presumption, no less than proof beyond reasonable doubt of every fact necessary to constitute the crime charged must be established.[66] If it falls short of establishing moral certainty of guilt, as in this case, the verdict must be one of acquittal.[67]

In view of the foregoing, a disquisition on the last element of the crime charged is unwarranted.

WHEREFORE, the accused **Gina Rohra y Amarnani** is hereby **ACQUITTED**, for failure of the prosecution to prove her guilt beyond reasonable doubt.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

ERLINDA P. UY
Associate Justice

[64] People vs. Danilo Abino, G.R. No. 137288, December 11, 2001.
[65] People vs. Jaime Gatlabayan, G.R. No. 186467, July 13, 2011.
[66] People vs. Florentino O. Ramirez, Jr., G.R. Nos. 150079-80, June 10, 2004.
[67] People vs. Florentino O. Ramirez, Jr., G.R. Nos. 150079-80, June 10, 2004.

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.

ERLINDA P. UY
Associate Justice
Acting Chairperson

CERTIFICATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice