REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	CTA Crim. Case Nos. O-599, O-601, O-603 & O-604 For: Violation of Section 255 of the National Internal Revenue Code of 1997, as amended.
- versus -	Members: DEL ROSARIO, *PJ*, *Chairperson;* FABON-VICTORINO, and MANAHAN, *JJ.*
REBECCA S. TIOTANGCO Entrepreneur of Anilos Trading and Construction, Accused.	Promulgated: NOV 13 2019 ; 8:40 a.m.

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DECISION

FABON-VICTORINO, *J.*

Stands charged in CTA Criminal Case Nos. O-599, O-601, O-603 and O-604, for violations of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, is Rebecca S. Tiotangco, the sole proprietor of Anilos Trading and Construction, for alleged failure to supply correct and accurate information in her Quarterly Value-Added Tax Returns (QVAT) for the 3rd and 4th quarters of taxable year (TY) 2008 and 1st and 2nd quarters of TY 2010, allegedly committed as follows:

CTA Crim. Case No. O-599

> "That on or about January 25, 2009 and thereafter, in Puerto Princesa City, and within the jurisdiction of this Honorable

Court, the above-named accused, a registered taxpayer and entrepreneur of Anilos Trading and Construction, did then and there willfully, unlawfully and feloniously fail to supply correct and accurate information in the VAT return of the said business for the 4th quarter of 2008 filed with the Bureau of Internal Revenue by did and there not declaring other revenue in the amount of Twenty Four Million Eight Hundred Fifty Four Thousand and Four Pesos and 80/100 (P24,854,004.80) subject to 12% VAT resulting in tax deficiency of Two Million Nine Hundred Eighty Two Thousand Four Hundred Eighty Pesos and 58/100 (P2,982,480.58), exclusive of surcharges and interests.

CONTRARY TO LAW."

<u>CTA Crim. Case No. O-601</u>

"That on or about April 25, 2010 and thereafter, in Puerto Princesa City, and within the jurisdiction of this Honorable Court, the above-named accused, a registered taxpayer and entrepreneur of Anilos Trading and Construction, did then and there willfully, unlawfully and feloniously fail to supply correct and accurate information in the VAT return of the said business tax for the 1st quarter of 2010 filed with the Bureau of Internal Revenue by did and there not declaring other revenue in the amount of Thirteen Million Two Hundred Sixteen Thousand Eight Hundred Eighty Three Pesos and 33/100 (P13,216,883.33) subject to 12% VAT resulting in tax deficiency of One Million Five Hundred Eighty Six Thousand and Twenty Six Pesos (P1,586,026.00), exclusive of surcharges and interests.

CONTRARY TO LAW."

CTA Crim. Case No. O-603

"That on or about October 25, 2008 and thereafter, in Puerto Princesa City, and within the jurisdiction of this Honorable Court, the above-named accused, a registered taxpayer and entrepreneur of Anilos Trading and Construction, did then and there willfully, unlawfully and feloniously fail to supply correct and accurate information in the VAT return of the said business for the 3rd quarter of 2008 filed with the Bureau of Internal Revenue by did and there not declaring other revenue in the amount of Thirty Million Thirty Nine Thousand One Hundred Sixty Five Pesos and 7/100 (P30,039,165.07) subject to 12% VAT resulting in tax deficiency of Three Million Six Hundred Four Thousand Six Hundred Ninety Nine Pesos and 81/100 (P3,604,699.81), exclusive of surcharges and interests.

CONTRARY TO LAW."

CTA Crim. Case No. O-604
(Amended Information)

"That on or about July 25, 2010 and thereafter, in Puerto Princesa City, and within the jurisdiction of this Honorable Court, the above-named accused, a registered taxpayer and entrepreneur of Anilos Trading and Construction, did then and there willfully, unlawfully and feloniously fail to supply correct and accurate information in the VAT return of the said business tax for the 2nd quarter of 2010 with the Bureau of Internal Revenue by did and there not declaring other revenue in the amount of Nine Million Nine Hundred Seventy One Thousand Twelve Pesos and 97/100 (P9,971,012.97) subject to 12% VAT resulting in tax deficiency of One Million One Hundred Ninety Six Thousand Five Hundred Twenty One Pesos and 56/100 (P1,196,521.56), exclusive of surcharges and interests.

CONTRARY TO LAW."

Accused Rebecca S. Tiotangco voluntarily submitted her person to the jurisdiction of the Court when she posted cash bail bond for her provisional liberty.[1]

When arraigned on different dates, accused, duly assisted by counsel, pleaded "Not Guilty" of the crimes charged.[2] Shortly thereafter, or on March 20, 2017, the four (4) criminal cases were consolidated at the instance of accused.[3]

After the termination of the Pre-trial Conference, the prosecution presented its witnesses to prove the accusation against accused, namely: (1) May Q. Jaminola (May F. Quiambao, maiden name);[4] (2) Jose Maria Y. Reyes;[5] (3) Edna R. Maligro;[6] (4) Arlene N. Sabellina;[7] and (5) Luzviminda Acosta.[8]

Revenue Officer (RO) **May F. Quiambao Jaminola** testified that she is with the Project Management & Implementation Service (PMIS) of the Bureau of Internal Revenue (BIR) National Office. Priorly, or from 2010 until August 2016, she was with the National Investigation Division (NID) of the BIR.

By virtue of Memo Assignment and Letter of Authority LOA-211-2013-00000180[9] with Checklist of Requirements issued by the NID, she and her Supervisor Jose Maria Reyes conducted an investigation on accused' tax liabilities sometime in September 2013. The said LOA authorized them to examine the books of accounts and other

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[1] CTA Crim Case No. O-599, docket, p. 463; CTA Crim Case No. O-601, docket, p. 458; CTA Crim Case No. O-603; docket, p. 448; and CTA Crim Case No. 604; docket, p. 449.
[2] CTA Crim Case No. O-599, docket, p. 482; CTA Crim Case No. O-601, docket, p. 472; CTA Crim Case No. O-603; docket, p. 466; and CTA Crim Case No. 604; docket, p. 482.
[3] Resolution, CTA Crim Case No. O-599, docket, pp. 499-502.
[4] With Judicial Affidavit marked as Exhibit P-22.
[5] With Judicial Affidavit marked as Exhibit P-26.
[6] With Judicial Affidavit marked as Exhibit P-24.
[7] With Judicial Affidavit marked as Exhibit P-25.
[8] With Judicial Affidavit marked as Exhibit P-27.
[9] Exhibit P-6.

accounting record of accused, with address at 153 Mabini Street, Puerto Princesa City, Palawan, for all internal revenue taxes for the period covering January 1, 2008 to December 31, 2012. On October 10, 2013, they personally served the LOA upon accused who affixed her signature on its lower portion.

Their investigation revealed that accused is the sole proprietor of Anilos Trading and Construction engaged in the business of construction and sale of construction materials and supplies. Per her BIR Registration, she is a registered taxpayer of Revenue District Office (RDO) No. 36, Puerto Princesa City, Palawan with Taxpayer Identification Number (TIN) 121-252-527-000.

After the tax investigation, they prepared a Joint Complaint-Affidavit[10] dated September 11, 2014, for the purpose of filing the corresponding criminal cases against accused. In the referral Letter[11] dated September 11, 2014 to the Department of Justice, then BIR Commissioner Kim S. Jacinto-Henares authorized them to file appropriate criminal action with corresponding civil liability against accused.

RO **Jose Maria Y. Reyes**, corroborated the foregoing testimony confirming his participation in the tax audit against accused as stated in the Joint Compliant-Affidavit dated September 11, 2014 which also bears his signature. He added that per their investigation, accused, during TYs 2008, 2009 and 2010, was engaged in the construction of several infrastructure projects in Palawan funded by the Malampaya Funds.

In the BIR access letter[12] dated September 24, 2013, addressed to the then Governor of Palawan Province, Hon. Jose C. Alvarez, the BIR requested for a certification pertaining to the total payments (annual and quarterly basis) for the period 2008 to 2010 made or release by the Provincial Government of Palawan to the contractors enumerated in the letter, among which was Anilos Trading and Construction.

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[10] Exhibit P-1.
[11] Exhibit P-2.
[12] Exhibit P-7.

Acting on the said access letter, the Provincial Government of Palawan, through the Office of the Provincial Accountant, issued a Certification[13] dated December 5, 2013, to the effect that it paid Anilos Trading and Construction a total amount of Php120,145,403.48 for TYs 2008 to 2010. This prompted them to verify whether such payment had been reported by accused in her income tax returns filed with the BIR for pertinent TYs.

By their evaluation and comparison of the gross income declared by accused in her 2008 and 2010 QVAT Returns as against the income she earned for the same periods as certified by the Provincial Government of Palawan, they discovered that accused deliberately failed to supply correct and accurate information in her QVAT Returns by substantially under-declaring her gross income for the said taxable quarters. Consequently, accused also failed to pay the correct amount of taxes due.

The witness declared that the amount of under-declaration made by accused for the 2nd, 3rd, and 4th quarters of TYs 2008 and the 1st, 2nd, and 4th quarters of TY 2010, are as follows:

	Per Quarterly VAT Return Filed	Per Audit	Under-declaration
2nd Qtr of 2008	P 3,887,695.20	P 10,380,383.59	P 6,492,688.39
3rd Qtr of 2008	4,655,063.50	34,694,228.57	30,039,165.07
4th Qtr of 2008	6,261,377.58	31,115,382.38	24,854,004.80
1st Qtr of 2010	-	13,216,883.33	13,216,883.33
2nd Qtr of 2010	6,374,325.35	16,345,338.32	9,971,012.97
4th Qtr of 2010	-	835,422.90	835,422.90

In view of their findings, they recommended the filing of criminal charges against accused for tax evasion under Sections 254 and 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, and prepared the Joint Complaint-Affidavit dated September 11, 2014 for that purpose. The said Joint Complaint-Affidavit filed with the DOJ also contained the computation of deficiency VAT due from accused.

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[13] Exhibit P-8.

Witness **Edna R. Maligro**, Accountant IV in the Office of the Provincial Accountant, Puerto Princesa City, Palawan, testified that pursuant to the BIR access letter endorsed by the Office of the Governor to their office, and in compliance with the directive of the Assistant Provincial Accountant of the Province of Palawan, Arlene N. Sabellina, she prepared the schedule of payments attached to the Certification dated December 5, 2013 issued by the Provincial Accountant of the Province of Palawan summarizing the payments made by the Government of Palawan to Anilos Trading and Construction for TYs 2008 to 2010.

The said schedule of payments consisting of three (3) pages, was based from their Office's accounting record, specifically the Journal Entry Vouchers from the Electronic-New Government Accounting System of their Office. For the TYs 2008 to 2010, the provincial government of Palawan paid Anilos Trading and Construction the following amounts:

2nd Qtr of 2008	Php 10,380,383.59
3rd Qtr of 2008	34,694,228.57
4th Qtr of 2008	31,115,382.38
1st Qtr of 2009	3,783,908.03
2nd Qtr of 2009	2,248,053.57
3rd Qtr of 2009	3,609,297.52
4th Qtr of 2009	2,687,069.47
1st Qtr of 2010	13,216,883.33
2nd Qtr of 2010	16,345,338.22
3rd Qtr of 2010	1,229,435.90
4th Qtr of 2010	835,422.90

The schedule of payments and the Certification dated December 5, 2013 indicating the payments made by the Provincial Government of Palawan to Anilos Tranding and Construction in the total amount of Php120,145,403.48 for the period 2008 to 2010, were transmitted to the Office of the Governor.

The prosecution also presented the Assistant Provincial Accountant, **Arlene N. Sabellina**, who testified that she issued the Certification dated December 5, 2013 because she received an Endorsement Letter from the Office of the Governor with attached letter from the BIR, requesting for the total payments made or released by the Provincial Government of Palawan to the contractors enumerated therein, and one of which was Anilos Trading and Construction.

She certified as correct the schedule of payment prepared by witness Edna R. Maligro who worked under her supervision.

The former Head of the Data Processing Section (DPS) of Revenue District Office (RDO) No. 36, Puerto Princesa City, **Luzviminda S. Acosta**, testified that she was in-charge and custodian of the BIR Tax Returns filed with RDO No. 36. She also issued certified true copies of tax returns upon request.

Sometime in 2013, she issued certified true copies of accused's Income Tax for TYS 2008 and 2010 and her second and third Quarterly VAT Returns for TY 2010 which she identified in Court.

After the prosecution rested, accused, with leave of court, filed a Demurrer to Evidence, [14] praying for the dismissal of the four (4) cases filed against her. The same was denied in the Resolution dated November 19, 2018.[15]

For her defense, accused admitted [16] being the registered owner of Anilos Trading and Construction, an entity registered with the Department of Trade and Industry (DTI) which is engaged primarily in construction and selling construction materials. As the owner, she manages its operation with the help of some engineers, an accountant, and staff who assist her in the daily operation of the business.

Her accountant Annabelle Pastrana Ong (1) maintains their financial record; (2) ensures that all financial reporting deadlines are met; (3) monitors their compliance with taxation issues; (4) timely files all compliance requirements

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[14] CTA Crim. Case No. O-599, docket, pp. 1967-1974.
[15] Resolution, CTA Crim. Case No. O-599, docket, pp. 1979-1982.
[16] With Judicial Affidavit marked as Exhibit A-219.

with the BIR; and (5) prepares their Income Tax and Value-Added Tax Returns. Thus, it was her accountant who prepared the VAT Returns for the subject TYs 2008 to 2010.

She basically relied on her accountant Annabelle Pastrana Ong in the preparation of her Income Tax and VAT returns as it was beyond her knowledge being a technical matter. Nevertheless, she read them and thereafter affixed her signature thereon.

Per her understanding, the VAT in government contracts was deducted from the gross billings, as shown in the disbursement vouchers she received from the Provincial Government of Palawan. Deductions called "contractor's tax" and "expanded withholding tax" appeared in every disbursement voucher she received for the Provincial Government of Palawan. When she inquired about it, she was told by a representative from the Office of the Provincial Accountant that it was the VAT.

Accused further testified that aside from the contractor's tax that was withheld at 5%, the disbursement vouchers she received also showed that a 2% expanded withholding tax was withheld or deducted from their gross billing. Thus, she was shocked when she learned about her alleged deficiency VAT relative to her construction projects with the Provincial Government of Palawan, as she believed that the VAT due thereon had been withheld.

When she inquired, her accountant explained that as a rule, the government or any of its political subdivision is mandated to withhold 5% of VATable sales upon payment to VAT sellers of goods and services. The 5% withholding tax shall represent the net payable by the seller to the government meaning that the seller would not pay more than 5% out of the 12% VAT on government sales in the Philippines.

In any event, she did not receive any assessment from the BIR on the alleged tax deficiency. Contrary to the BIR's allegation, there was no intention on her part to conceal the gross receipts of Anilos Trading and Construction for TYs

2008 and 2010 and evade payment of the corresponding VAT. In fact, she did not omit the alleged undeclared revenues in her Audited Financial Statements (AFS) and Income Tax Returns.

Accused rested after she filed her Formal Offer of Evidence[17] on February 4, 2019. In the Resolution[18] dated April 10, 2019, the Court admitted all her documentary exhibits, except Exhibits A-115 and A-218.

On July 15, 2019, the instant consolidated cases were submitted for decision.[19]

THE ISSUES

The issues, as defined by the parties and indicated in the Pre-Trial Order[20] dated February 7, 2018, are as follows:

1. Whether or not accused is guilty beyond reasonable doubt of the offense charged in the Informations subject of Criminal Case Nos. O-599, O-601, O-603 and O-604; and

2. Whether or not accused is liable to pay the Deficiency VAT for the Third (3rd) and Fourth (4th) quarters of taxable year 2008 and for the first (1st) and Second (2nd) quarters of taxable year 2010.

THE RULING OF THE COURT

In the consolidated cases, the accused is indicted for violations of Section 255 of the NIRC, as amended, for her alleged failure to supply correct and accurate information in her Quarterly VAT (QVAT) Returns for the 3rd and 4th quarters of TY 2008 and for the 1st and 2nd quarters of TY 2010. The pertinent provision reads as follows:

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[17] CTA Crim. Case No. O-599, docket, pp. 2037-2057.
[18] CTA Crim. Case No. O-599, docket, pp. 2067-2068.
[19] CTA Crim. Case No. O-599, docket, p. 2117.
[20] CTA Crim. Case No. O-599, docket, pp. 1636-1684.

> 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. (*Emphasis supplied*)

Thus, to convict accused, the prosecution must prove beyond reasonable doubt the following elements of the crimes charged, to wit:

1. The accused is the person required under the Tax Code or by the rules and regulations to supply correct and accurate information in the tax return;

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

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

For The First Element:

ACCUSED IS THE PERSON REQUIRED BY LAW TO SUPPLY CORRECT AND ACCURATE INFORMATION.

Section 114(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

> SEC. 114. *Return and Payment of Value-Added Tax.* —
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> (A) *In General.* — **Every person liable to pay the value-added tax** imposed under this Title **shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter** prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis. (*Boldfacing and underscoring supplied*)

Corollarily, Section 105 of the NIRC of 1997, as amended, provides:

> SEC. 105. ***Persons Liable.*** — **Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax** (VAT) imposed in Sections 106 to 108 of this Code.
>
> xxx xxx xxx
>
> The phrase '**in the course of trade or business' means the regular conduct or pursuit of a commercial or an economic activity, includinq transactions incidental thereto, by any person** regardless of whether or not the person engaged therein is a nonstock,

> nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity. (*Boldfacing supplied*)
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> xxx xxx xxx

It is undisputed that accused Rebecca S. Tiotangco is the sole proprietor of Anilos Trading and Construction, a company primarily engaged in the business of construction and sale of construction materials and supplies. She, without any hesitation, admitted this during the Pre-Trial Conference on November 22, 2017. She also admitted that she is a registered taxpayer of Revenue District Office (RDO) No. 36, Puerto Princesa City, Palawan with Tax Identification Number (TIN) 121-252-527-000 and as such filed her QVAT Returns for the 3rd and 4th quarters of TY 2008 and for the 1st and 2nd quarters of TY 2010 - the taxable quarters in question in the present consolidated cases. In fine, the first element of the crime charged is present.

<u>Second Element</u>:

ACCUSED FAILED TO SUPPLY CORRECT AND ACCURATE INFORMATION IN HER QUARTERLY VAT RETURNS FOR THE 3RD AND 4TH QUARTERS OF TAXABLE YEAR 2008 AND THE 2ND QUARTER OF TAXABLE YEAR 2010.

It appears that the instant consolidated cases are related to the controversial issue of the Malampaya Funds, an allocation used to finance energy resource development programs pursuant to Presidential Decree No. 910 of 1976.

It was established that on September 25, 2013, the BIR issued Letter of Authority No. eLA201100045739 LOA-211-2013-00000180, which ushered in the tax audit against accused, for all internal revenue taxes for the period covering January 1, 2008 to December 31, 2012. As part of its investigation, the BIR sent access letter to the Provincial

Government of Palawan requesting for a certification on the payments it made or released to its contractors enumerated therein, one of which was Anilo Trading and Construction, owned by accused.

In reply to the access letter, the Office of the Provincial Accountant issued a Certification dated December 5, 2013, that per their accounting records, the Provincial Government of Palawan paid Anilos Trading and Construction the total amount of Php120,145,403.48 for various construction projects it contracted for the years 2008 to 2010. The said amount was broken down per quarter, as follows:

Taxable Year	Quarter	Amount
2008	2nd	P 10,380,383.59
	3rd	**34,694,228.57**
	4th	**31,115,382.38**
2009	1st	3,783,908.03
	2nd	2,248,053.57
	3rd	3,609,297.52
	4th	2,687,069.47
2010	**1st**	**13,216,883.33**
	2nd	**16,345,338.22**
	3rd	1,229,435.90
	4th	835,422.90

As testified to by RO Jose Marie Reyes, upon receipt of the requested Certification with attached schedules of payments from the Provincial Government of Palawan, they evaluated and compared the same with the gross income declared by accused in her QVAT Returns for the 3rd and 4th quarters of TY 2008 and the 1st and 2nd quarters of TY 2010. The result of such comparison betrayed accused disclosing the following information, thus:

Taxable Year	Total Payments Received	Gross Sales/Receipts per Return	Under-declaration	% of Under-declaration
2008 3rd Qtr	P34,694,228.57	P4,655,063.50	P30,039,165.07	645%
4th Qtr	31,115,382.38	6,261,377.58	24,854,004.80	397%
2010 1st Qtr	13,216,883.33	-	13,216,883.33	100%
2nd Qtr	16,345,338.22	6,374,325.35	9,971,012.97	156%

Notably, accused failed to refute the contents of Certification issued by the Provincial Government of Palawan. In her Amended Judicial Affidavit, accused even admitted that she thought her sales to, or receipt from government agencies were not to be declared in her VAT Returns as they have already been subjected to final withholding of VAT. The relevant portion of her testimony reads:

> 32) Q – A while ago you said that you were shocked and confused when you learned that the Bureau of Internal Revenue is suing you for deficiency in payment of Value Added Tax in your projects with the Provincial Government of Palawan, can you elaborate on these?
>
> A – I was shocked because I did not receive any assessment from the BIR regarding the alleged tax deficiency. In addition, contrary to the allegations of the BIR it is not our intention to hide Anilos Trading and Construction's gross receipts for taxable years 2008 and 2010 and evade payment of value added tax (VAT). Otherwise, we would have omitted that in our audited financial statements and income tax returns altogether. **We thought sales to government agencies were not supposed to be declared in our VAT returns in a way like interest on bank deposits do. After all, not a single centavo was deprived of the government by the said transactions because they have been already subjected to five percent**

> **(5%) withholding tax.**
> (*Boldfacing supplied*)

With the express admission of accused that her QVAT Returns did not include the income from her transactions with the Provincial Government of Palawan, the second element of the crime charged is unquestionably present as well, with the exception of the crime charged in CTA Crim Case No. O-601 covering the 1st quarter of TY 2010. This is due to the failure of the prosecution to submit the original of the *BIR-Returns Processing System Print-out of Quarterly VAT (BIR Form 2550Q) for the 1st quarter of 2010* (Exhibit P-15), the very tax return in question, for comparison. In other words, the prosecution failed to prove beyond reasonable doubt that accused failed to supply correct and accurate information in her QVAT Return for the 1st quarter of TY 2010. Thus, accused must be acquitted in CTA Crim. Case No. O-601.

<u>Third Element</u>:

THE FAILURE TO SUPPLY CORRECT AND ACCURATE INFORMATION WAS WILLFUL.

Considering that the prosecution failed to establish that accused failed to supply correct and accurate information in CTA Crim. Case No. O-601, the Court shall limit its discussion, as to the third and final element of the crimes charged, to CTA Crim Case Nos. O-599, O-603, and O-604.

Anent the third and final element of the crime, the prosecution must prove beyond reasonable doubt willfulness on the part of accused in the commission of the crimes charged.

The Eighth Edition of Black's Law Dictionary described a willful act as a voluntary and intentional act but not necessarily malicious, *viz.*:

> The word "wilful" or "wilfully" when used in the definition of a crime, it has

> been said time and again, means only intentionally or purposely as distinguished from accidentally or negligently and does not require any actual impropriety; while on the other hand it has been stated with equal repetition and insistence that the requirement added by such a word is not satisfied unless there is a bad purpose or evil intent. Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 875-76 (3D D. 1982).
>
> "Almost all of the cases under [Bankruptcy Code 53 (a)(6)] deal with the definition of the two words 'willful' and 'malicious' initially one might think that willful and malicious mean the same thing. If they did, Congress should have used one word and not both. Most courts feel compelled to find some different meaning for each of them. David B. Epstin, et al. *Bankruptcy* 730, at 531 (1993).

Also, an act or omission is "willfully" done if it is voluntarily and intentionally and with specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done. [21] Moreover, "willfulness" in tax crimes has been defined as:

> "Willful in the tax crime statutes means a **voluntary, intentional violation of a known legal duty** and bad faith or bad purpose need not be shown. [22] (*Boldfacing supplied*)"

Therefore, to convict accused for willful failure to supply correct and accurate information in the pertinent QVAT Returns, it was incumbent upon the prosecution to show that the violations were done by the accused knowingly, intentionally and with the specific intent to disregard the law. In other words, the prosecution must establish that the

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[21] Black's Law Dictionary, 6th Ed., p. 1599.

[22] [Mertens (Law of Federal Income Taxation) Chapter 47.04, page 28, Volume 13, see U.S. v. Green, 757 F2d 116, 85-1 USTC 9178 (CA7 1985), in which the Court, citing *U.S. v. Moore*, 627 F2d 830 (CA 1980) and *U.S. v. Verkuilen*, 690 F2d 648, 82-2 USTC 9618 (CA7 1982), upheld the conviction of a tax protester for willful failure to file returns], also cited in *People of the Philippines vs. Estelita Delos Angeles*, CTA Crim. Case No. O-027, November 25, 2009.

accused was cognizant of the lawful obligation to supply correct and accurate information in her QVAT Returns for the 3rd and 4th quarters of TY 2008 and the 2nd quarter of TY 2010 and yet voluntarily, knowingly and intentionally failed to comply.

In these consolidated cases, the prosecution submits that the repeated acts of substantial under-declaration (more than 30%) by accused of her gross sales/receipts in her QVAT Returns for the 3rd and 4th quarters of TY 2008 and the 2nd quarter of TY 2010 are clear manifestation of her willful and deliberate failure to supply correct and accurate information in the subject QVAT Returns which theory accused rejected.

According to accused, the conclusion of RO Jose Maria Y. Reyes that she willfully failed to supply correct and accurate information in her QVAT Returns for the relevant periods was merely based on the documents he received from the Provincial Government of Palawan.

Further, contrary to the contention of the prosecution's witnesses, she supplied correct and accurate information in her VAT Returns for 2009, thus, negating any indication of fraudulent or intent to cheat the government of its taxes.

Further, she merely relied on her accountant who prepared her subject QVAT Returns which she only read and signed. Allegedly, she lacks the required technical knowledge to understand the same.

Lastly, per her understanding, the VAT, relative to her transactions with the Provincial Government of Palawan, was usually deducted from her gross billing. Since the VAT due from her sales to the government had been withheld, there was no obligation on her part to declare her sales to it in her VAT Returns just like interests on bank deposits.

The Court is not persuaded.

Accused claims that she is not obliged to declare her sales to Provincial Government of Palawan in her QVAT Returns as the same have already been subjected to final withholding VAT.

Perusal of the of the QVAT Return (BIR Form No. 2550Q) includes the item "***Sale to Government***" that must be accomplished or filled up if a taxpayer, such as accused, has VATable sales of goods or services to government agencies.

Accused is literate. She is a retired school teacher who is more than capable of understanding the content and even the instructions indicated in the tax forms. In fact, she admitted that she would first read the tax returns prepared by her accountant before affixing her signature therein, negating her claim that she merely relied on what her accountant prepared for her. Astute as she was, she obviously made sure that nothing therein would pass without her examination and approval.

By filing her QVAT Returns for the pertinent periods, accused complied with what the law required of a taxpayer only that she willfully supplied incorrect and inaccurate information therein. Accused's repeated act of substantial under-declaration of her gross sales/receipts (more than 30%) manifests her willful intention to deprive the government of the taxes due it.

As to the civil aspects of the instant consolidated cases, which were deemed instituted with the criminal prosecution, it is unfortunate that the prosecution failed to present any evidence that an assessment has been issued by the BIR against accused. The presentation of the computation of the unreported income cannot be used as basis for the determination of the civil liabilities of accused. While an assessment of the tax before a criminal action is not necessary, a civil action for collection of the tax requires that the assessment procedures be first complied with. As such, no proper determination of the civil liabilities can be made by the Court.

WHEREFORE, the Court finds accused Rebecca S. Tiotangco **GUILTY BEYOND REASONABLE DOUBT** on three (3) counts of violation of Section 255 of the National Internal Revenue Code of 1997, as amended, and sentences her **for each of the offense charged** in CTA Criminal Case No. O-599, CTA Criminal Case No. O-603, and CTA Criminal Case No. O-604, to suffer an indeterminate penalty of one (1) year, as minimum, to two (2) years as maximum term of imprisonment, and is **ORDERED TO PAY** a fine in the amount of Php10,000.00, with subsidiary imprisonment in case she has no property with which to meet such fine pursuant to Section 280 of the NIRC of 1997, as amended.

Accused Rebecca S. Tiotangco is however **ACQUITTED** in CTA Criminal Case No. O-601, for failure of the prosecution to prove her guilt beyond reasonable doubt.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

(With Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice